Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 8, NUMBER 7

FRIDAY, JANUARY 1, 1982

IN THIS ISSUE

NOTE: The January meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—WEDNESDAY, January 6, 1982, at 10 a.m., in Room 103, Capitol Annex.

This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes Chapter 13.

Persons having an interest in the subject matter of a proposed regulation published herein may request a public hearing or submit comments within 30 days of the date of this issue to the official designated at the end of each proposed regulation.

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1982 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the *Administrative Register of Kentucky* by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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

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

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Administrative Register of Kentucky

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $24 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 300, State Capitol, Frankfort, Kentucky 40601.

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Public Hearings Scheduled

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held at 10 a.m., February 1, 1982, in the Eureka Room (next door to Capital Camera Shop) at the Capital Plaza Shops, Frankfort, Kentucky on the following regulations:

401 KAR 2:060. Hazardous waste site or facility permit process and application. [8 Ky.R. 505]
401 KAR 2:063. General standards for hazardous waste sites or facilities. [8 Ky.R. 542]
401 KAR 2:070. Standards applicable to generators of hazardous waste. [8 Ky.R. 508]
401 KAR 2:073. Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. [8 Ky.R. 572]
401 KAR 2:075. Identification and listing of hazardous waste. [8 Ky.R. 513]

A public hearing will be held at 7:00 p.m., February 11, 1982, in the cafeteria of the Farmers Bank Building, Frankfort, Kentucky, on the following regulations:

405 KAR 30:025. Experimental practices. [8 Ky.R. 573]
405 KAR 30:035. General requirements for performance bond and liability insurance. [8 Ky.R. 574]
405 KAR 30:050. Bonding requirements for long-term facilities and structures. [8 Ky.R. 575]
405 KAR 30:121. Oil shale exploration. [8 Ky.R. 576]
405 KAR 30:125. Oil shale exploration performance standards. [8 Ky.R. 578]

A public hearing will be held at 10 a.m. February 4, 1982, in Room G-2 of the Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

401 KAR 59:105. New process gas streams. [8 Ky.R. 517]
401 KAR 61:035. Existing process gas streams. [8 Ky.R. 518]

Emergency Regulations Now In Effect

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 81-1025
December 11, 1981

EMERGENCY REGULATIONS
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible under the provisions of KRS Chapters 194 and 205 for promulgating, by regulation, the policies of the Department with regard to the provision of Aid to Families with Dependent Children and the provision of Medical Assistance; and

WHEREAS, federal law with respect to those programs has been amended, effective October 1, 1981; and

WHEREAS, at the current rate of spending the Department will incur a deficit which necessitates reductions in the Department's budget to bring spending in line with appropriation; and

WHEREAS, the Secretary has found that, to reduce the rate of spending and to conform to federal law, it is necessary to implement new regulations governing eligibility for the Aid to Families with Dependent Children and Medical Assistance programs; and

WHEREAS, the Secretary has promulgated regulations on Technical Requirements: AFDC, Standards for Need and Amount, Resource and Income Standard of Medically Needy, and Technical Eligibility Requirements; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulations and that, therefore, said regulations should, pursuant to the provisions of KRS 13.085(2), become effective upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.085(2), do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulations on Technical Requirements: AFDC, Standards for Need and Amount, Resource and Income Standard of Medically Needy, and Technical Eligibility, and hereby direct that said regulations shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

JOHN Y. BROWN, JR., Governor
FRANCES JONES MILLS, Secretary of State

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:004E. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: December 14, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by 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 regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations of the Medically Needy: An applicant for or recipient of medical assistance is permitted to retain:
(1) A homestead, occupied or abandoned, household equipment, motor vehicles and farm equipment without limitation on value;
(2) Equity of $6,000 in income-producing, non-homestead property;
(3) Equity of $3,000 in non-income producing, non-homestead property;
(4) Savings, stocks, bonds, totaling no more than $1,500 for family size of one (1); $3,000 for family size of two (2); and fifty dollars ($50) for each additional member.
(5) Burial reserves in the form of pre-paid burial, trust fund or life insurance policies are exempt from consideration if the reserve does not exceed $1,500 per individual. If burial reserves have a face value in excess of the above amount, the cash surrender value is determined and any excess of the allowable reserve added to total liquid assets in determining eligibility.

Section 2. Income and Resource Exemptions: Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the department, except that the AFDC earned income disregard (first thirty dollars ($30) and one-third (⅓) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy: Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	2,200	183
2	2,600	217
3	3,100	258
4	3,800	317
5	4,400	367
6	5,000	417

For each additional member, $600 annually or fifty dollars ($50) monthly is added to the scale.

Section 4. Additional Income Considerations: In comparing income with the scale as contained in Section 3, gross income is adjusted as follows in all cases with exceptions as contained in Section 5:
(1) In cases of adults and children, the standard [or actual] work related expenses of adult members and out-of-school youth are deducted from gross earnings. *For those with full-time employment (defined as employment of thirty (30) hours per week or 130 hours per month or more) the standard work expense deduction is seventy-five dollars ($75) per month. For those with part-time employment (defined as employment of twenty-nine (29) hours per week or 129 hours per month or less) the standard work expense deduction is forty dollars ($40) per month.* All earnings of an in-school child are disregarded [plus any amount of a statutory benefit received by an eighteen (18) to twenty-one (21) year old youth contingent upon school attendance actually used for school expenses].
(2) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1)) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1)). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.
(3) [(2)] In all cases, verified fixed and measurable medical costs, including cost of health insurance premiums and expenses for medical services, recognized under state law but outside the scope of the medical assistance program, are deducted from income before comparison with the scale.

Section 5. Individuals in Chronic Care Institutions: For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable:
(1) Income protected for basic maintenance is twenty-five dollars ($25) monthly in lieu of the figure shown in Section 3. All income in excess of twenty-five dollars ($25) is applied to the cost of care except as follows:
(a) Available income in excess of the twenty-five dollars ($25) is first applied to the cost of non-covered medical expenses and to other verified fixed and measurable medical expenses; and
(b) Remaining income of the patient is conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3, including any additional amount needed to cover the verified fixed and measurable medical expenses of the spouse or minor children.
(2) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs. However, an individual entering

a facility on the first day of the month, and who remains institutionalized for the remainder of the month, would not receive a disregard for home maintenance.

Section 6. Spend-Down Provisions: No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 may qualify for any part of a three (3) month period in which medical expenses incurred during the period have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment and is thus disregarded as a fixed and measurable medical expense. When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the medical assistance program) if actually available for payment to the provider.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the medical assistance program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases which are solely responsible for ineligibility of the individual for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements.

Section 10. Relative Responsibility. For purposes of the medical assistance program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. *Stepparents are responsible for their stepchildren as shown in Section 11.* This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2) In cases of aged, blind, or disabled applicants or recipients living with their spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind, or disabled couples, living apart, both of whom are concurrently applying for or receiving MA only, income is considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart. After the six (6) month period, each is considered as a single individual.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, the applicant or recipient is considered as a single individual in the month after separation and only that individual's income and resources are considered.

(5) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 10(3) and (4), who has jointly held resources with his spouse, one-half (½) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(6) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(7) In cases of a blind or disabled child under eighteen (18), or age eighteen (18) through twenty (20) if in school, living with his parent(s), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent.

(8) Income and resources of parent(s) are not considered available to a child living apart from the parent(s) for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

(9) When a recipient in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five dollars ($25) maintenance standard is not applicable since his needs are considered with that of other family members. The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent and Effect on Eligibility of the *Assistance Group* [Parent]. An incapacitated (as determined by the department) stepparent's income is considered in the same manner as for a parent if the stepparent is included in the family case. *When the stepparent living in the home is not being included in the family case on the basis of incapacity, the stepparent's gross income is considered available to the*

assistance group subject to the following exclusions/disregards:

(1) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time (with full-time and part-time employment as defined in Section 4(1)).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability.

(3) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(4) Payments by the stepparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent receiving Supplemental Security Income.

(6) Verified fixed and measurable medical expenses for the stepparent and his/her dependents in the home.

[When the stepparent is not being so included, the amount of available income to allocate to the parent from the stepparent is determined by first deducting from the combined income of the stepparent and his minor dependent children in the home the standard or actual work expenses if income is earned (not to exceed earnings). Then disregard the maintenance amount (Section 3) for the stepparent and his/her children in the home, their verified fixed and measurable medical expenses, and any child support payments being paid by the stepparent for children outside the home. From the remainder, deduct any income attributable to the stepparent's children which is in excess of the children's prorated share of the maintenance scale. The balance is then allocated to the parent. If this balance, plus other income of the parent, equals or exceeds the parent's prorated share from the maintenance scale, the parent is precluded from eligibility. If the balance is less than the prorated share, the parent may be included in the family case with the income allocated from the stepparent to the parent considered when determining eligibility of the family case.]

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, *resources* and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability *(except as shown in subsection 3).*

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 14, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: December 14, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

NECESSITY AND FUNCTION: The Department for Human Resources has responsiblity to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment.

Section 2. The Medically Needy. Other individuals, meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Department for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars ($50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii).

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Parents may be included for assistance in the cases of families with children including adoptive parents and alleged fathers where circumstances indicate the alleged father has admitted the relationship prior to application for assistance. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(10) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member.

(12) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(13) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(14) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(15) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 6. Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the department shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if non-homestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for non-homestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) If retention would result in ineligibility, the department will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) of this subsection shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

Section 7. 904 KAR 1:003 and 904 KAR 1:003E, Technical eligibility, are hereby repealed, effective November 1, 1981.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 14, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:006E. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3)
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: December 14, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.

NECESSITY AND FUNCTION: The Department for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, hereinafter referred to as AFDC, in accordance with title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Residence and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity of a natural or adoptive parent. A married child living with her/his spouse in the home of her/his parents is not deprived of parental support or care. A married child living in the home of her/his parents but divorced or legally separated from her/his spouse is deprived of parental support if she/he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.

(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his/her function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, military service, deportation or single parent adoption. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(3) Incapacity defined. Incapacity is any condition of mind or body which makes a parent physically or mentally unable to provide the necessities of life for his/her needy child. The condition must be anticipated to continue for at least thirty (30) days beyond the date of application and may be presumed to continue during a period in which the parent is undergoing diagnostic studies and/or evaluation of rehabilitation potential. Incapacity of the parent must prevent him/her from working in an occupation in which he/she previously engaged, or another job for which he/she is equipped and which is accessible in the county or community where he/she normally resides. If a job opportunity exists in the community or county, it shall be considered accessible regardless of its immediate availability. Scarcity of work does not establish incapacity unless there is a causal relationship between the parent's unemployment and actual physical or mental disability. Lack of paid work experience does not preclude the parent from being considered incapacitated.

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(4) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(5) A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

(6) A child placed in foster care is not required to be living in the home of a relative to be eligible to receive AFDC-FC in his/her foster home.

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19). Full and part-time is defined in accordance with 45 CFR 233.90. A child is considered in regular attendance in months in which he/she is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he/she has indicated an intention not to re-enter school.

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Strikers. (1) Benefits shall be denied to any family for any month in which any legally liable caretaker relative, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual's needs shall be considered in determining amount of benefits if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 7. Work Registration. (1) Unless exempt under the criteria, as specified in Title VI of the Social Security Act and 45 CFR Section 224.20(b) needs of an individual for whom application has been made may not be included in the AFDC assistance grant if he/she refuses to register for the Work Incentive Program, (WIN) or if registered, refuses to participate without good cause. Participation in a strike shall not constitute good cause.

(2) Individuals exempt from WIN registration pursuant to 45 CFR 224.20(b) are as follows:

(a) An individual under age sixteen (16);

(b) A child age sixteen (16) to age eighteen (18), if enrolled as a full-time student; or to age nineteen (19), if a full-time student who meets the requirements set forth in Section 4 of this regulation;

(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;

(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;

(e) An individual age sixty-five (65) or over;
(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible;
(g) A parent or other caretaker relative of a child under six (6) who personally provides full-time care of the child with only very brief and infrequent absences from the child;
(h) A person so far remote from a work incentive project that his/her effective participation is precluded;
(i) An individual who is employed not less than thirty (30) hours per week, in unsubsidized employment expected to last a minimum of thirty (30) days, except when there is a temporary break in employment expected to last longer than ten (10) days.

Section 8. Cooperation in Child Support Activities. (1) Inclusion of the specified relative in the AFDC budget is dependent upon cooperation in child support activities pursuant to 45 CFR 232.40 and refusal, except for "good cause," results in removal of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.
(2) If, after exclusion from the grant for failure to cooperate, the individual states that he/she is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.
(3) Pursuant to 45 CFR Part 232.40, the Department for Human Resources will provide written notice to the applicant or recipient that he/she may claim good cause for refusing to cooperate.
(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:
(a) The applicant or recipient's cooperation is reasonably anticapted to result in physical or emotional harm of a serious nature to the child; or
(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself/herself to such an extent that it would reduce his/her capacity to care for the child(ren) adequately; or
(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicants's/recipient's cooperation; or
(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or
(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him/her for adoption and discussion has not gone on for more than three (3) months and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation.
(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 9. Potential Entitlement for Other Programs. All applicants/recipients must apply for any statutory benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 10. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 11. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Department for Human Resources of any child support owed for the child up to the amount of AFDC payments made to the recipient.

Section 12. Eligibility Criteria for Foster Care. To be eligible for foster care, the child must meet the technical requirements of the regular AFDC program as set forth in this regulation. In addition, the child must have been:
(1) Removed from the home after April 30, 1961; and
(2) Committed to the department by a judicial determination under the authority of KRS 208.200 or 208.080 specifying that the child is delinquent, neglected, needy, or dependent (as stated in KRS 208.020), or if prior to June 1976, KRS 205.430, that continuance in or return to the home of a relative would be contrary to his/her welfare; and
(3) Receiving AFDC as of the month in which court action was initiated, or if not, would have received AFDC if application had been made; or if not living with a relative at the time of court action, did live with such relative within six (6) months prior to the month of initiation of court action and was eligible or would have been eligible for AFDC if application had been made.

Section 13. 904 KAR 2:005 and 2:005E, AFDC; Technical requirements, are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 14, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:016E. Standards for need and amount, AFDC.

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 13.082, 205.200(2)
EFFECTIVE: December 14, 1981
EXPIRES: Sine Die adjournment of 1982 regular session of the General Assembly, or upon being replaced through regular procedure.
NECESSITY AND FUNCTION: The Department for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006E, Section 3. The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative may be included as second parent if the technical eligibility factors are met. The decision regarding application for or continued inclusion of an individual child rests with the parent or other specified relative.

(2) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(3) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month.

Section 2. Resource Limitations. The amount of real and personal property that can be reserved by each assistance unit shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed $1,500 equity value; and

(e) Items valued at less than fifty dollars ($50) each.

(2) Disposition of resources. An applicant/recipient must not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the application is denied or assistance discontinued. The time period of ineligibility shall be based on the amount of excess transferred property and begins with the month of transfer. If the amount of excess transferred property does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of natural parent(s), and stepparent(s) living in the home, shall not exceed 150 percent of the assistance standard set forth in Section 8. Disregards specified in Section 4, subsection (1), shall apply. If total gross income exceeds the 150 percent income limitation standard as shown below, the assistance group is ineligible.

Number of Eligible Persons	Monthly Gross Income Limitation Standard
1 Child	$200
2 Persons	$243
3 Persons	$282
4 Persons	$353
5 Persons	$413
6 Persons	$465
7 or more Persons	$518

(2) Applicant eligibility test. If the gross income is below 150 percent of the assistance standard and the applicant has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4, subsections (1) and (2), shall be compared to the assistance standard set forth in Section 8. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4, subsections (1), (2), and (3). If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(4) A period of ineligibility shall be established for recipients whose income exceeds the limits set forth in subsection (1) or (3) of this section in accordance with 45 CFR 233.20(a)(3)(D).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received in the month of application or redetermination by the assistance group, natural parent(s) and/or stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test.

(a) Disregards applicable to stepparent income, as set forth in Section 5;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v) and 45 CFR 233.20(a)(11)(i)(b)(1)(i);

(d) Work Incentive Program (WIN) and Comprehensive Employment and Training Act Program (CETA) incentive payments;

(e) Reimbursement for training-related expenses made by a manpower agency to applicants in institutional and work experience training;

(f) Value of food coupons;

(g) Non-emergency medical transportation payments;

(h) Principal of loans obtained to meet needs not included in the assistance plan, e.g., home repair, farm expansion;

(i) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans administered by the United States Commissioner of Education;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce for household consumption;

(n) Experimental housing allowance program payment made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended; and HUD Section 8 payments for existing housing under Title 24 part 882;

(o) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(p) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(q) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Title II and III, pursuant to Section 418 of Public Law 93-113;

(s) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113;

(t) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(u) Any payment from Department for Human Resources, Bureau for Social Services, for child foster care, adult foster care, or subsidized adoption;

(v) Energy assistance payments;

(w) Earned income tax credit payments.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received by a person employed by CETA under the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Project (YCCIP), and the Youth Employment and Training Program (YETP);

(b) Earnings received from participation in Job Corps by an AFDC child;

(c) Earnings of a child in full-time school attendance or in half-time school attendance, if not working full time;

(d) Standard work expense deduction of seventy-five dollars ($75) for full-time employment. A forty dollar ($40) deduction is allowed for part-time employment; and

(e) Child care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment or $110 per child or incapacitated adult per month for part-time employment.

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2), as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty dollars ($30) and one-third (⅓) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. This disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income unless he/she has not been a recipient for twelve (12) consecutive months in accordance with 45 CFR 233.20(a)(11)(ii).

(4) Exceptions. Disregards in subsection (2)(d) and (e) and subsection (3)(b) shall not apply, in accordance with 45 CFR 233.20(a)(11)(iii) in any instance where an individual, without good cause:

(a) Reduces or terminates employment;

(b) Refuses to accept employment;

(c) Fails to make a timely report of income; or

(d) Requests assistance be terminated for the sole purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

Section 5. Stepparent Income and Resources. (1) Income. The gross income of a stepparent living in the home is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability;

(c) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent receiving Supplemental Security Income under Title XVI.

(2) Resources. Resources belonging exclusively to the stepparent are deemed available to the natural parent and considered in determining eligibility of the natural parent for inclusion in the assistance group. Resources of a stepparent receiving SSI under Title XVI shall not be considered.

Section 6. Alien Income and Resources. The gross non-AFDC income and resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. The provisions of this section shall not apply to those aliens indentified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor and spouse is considered available to the assistance group subject to the following disregards:

(a) Twenty percent (20%) of the total monthly gross earned income, not to exceed $175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are claimed by the sponsor as dependents in determining his/her federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to non-household members who are claimed as dependents in determining his/her federal personal income tax liability; and

(d) Actual payments of alimony or child support paid to non-household members.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he/she were an AFDC applicant, less $1,500.

Section 7. Earned Income Tax Credit. In the case of an applicant or recipient of AFDC, earned income shall include the amount of advance payments of the earned income credit for which he/she is eligible determined in accordance with 45 CFR 233.20(a)(6)(ix).

Section 8. Assistance Standard. The AFDC assistance standard, including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Number of Eligible Persons	Monthly Standard
1 Child	$133
2 Persons	$162
3 Persons	$188
4 Persons	$235
5 Persons	$275
6 Persons	$310
7 or more Persons	$345

Section 9. Foster Care. (1) Payment rates. Payment rates are based on the Department for Human Resources per diem payment rates. The department's rates are based on the age and needs of the child.

(a) A child in foster family care who is eligible for AFDC foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment (as determined by the Bureau for Social Services):

Age	Regular	Special	Extraordinary
0-5	$144	$167	$228
6-12	160	183	228
13-over	175	198	228

(b) A child in a private child caring institution who is eligible for AFDC foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment (as determined by the Bureau for Social Services):

Age	Regular	Special
0-5	$151	$212
6-12	175	212
13-over	192	212

(2) Income limitations. Gross income shall not exceed 150 percent of the payment rate set forth in subsection (1). If that gross income exceeds the 150 percent income limitation standard as shown below, the child(ren) is ineligible.

	Foster Family Care			Institutional Care	
Age	Regular	Special	Extraordinary	Regular	Special
0-5	216	251	342	227	318
6-12	240	275	342	263	318
13+	263	297	342	288	318

Section 10. 904 KAR 2:010 and 2:010E, AFDC; standards for need and amount, are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 14, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

Amended Regulations Now In Effect

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
As Amended

804 KAR 1:100. General advertising practices.

RELATES TO: KRS 244.130
PURSUANT TO: KRS 13.082, 241.060
EFFECTIVE: December 2, 1981
NECESSITY AND FUNCTION: KRS 244.130 permits this department to regulate the advertising of alcoholic beverages. This regulation is designed to regulate said advertising in a manner consistent with modern marketing practices and in conformance with relevant statutory provisions and legislative intent.

Section 1. No licensee shall advertise or cause to be advertised any alcoholic beverages or his place of business in any manner not in conformance with the statutes and regulations governing alcoholic beverages.

Section 2. Licensees may utilize outdoor advertising, provided, however, that no advertising by a manufacturer, producer, brewer, vintner, distributor or wholesaler pursuant to this section shall contain the name or business designation (DBA) or any reference whatsoever to any retail licensee.

Section 3. (1) Except as provided by subsection (2) of this section, no licensee shall advertise in material directed to the home or business of the consumer either by United States mail, personal delivery, or otherwise.

(2) Subsection (1) of this section shall not prohibit advertising in newspapers, magazines or periodicals having a general circulation among regular paying subscribers or patrons.

Section 4. (1) Except as provided by subsection (2) of this section, advertising novelties are permitted.

(2) No licensee shall require directly or indirectly the purchase or consumption of any alcoholic beverage as a condition for the sale, gift, or reduction in price of any advertising novelty.

(3) No malt beverage distributor shall sell, give away or furnish advertising novelties in any manner, directly or indirectly, to a retail licensee.

Section 5. Licensees may advertise by means of radio and television.

Section 6. (1) Licensees may sponsor athletic and charitable events provided that the consumption or purchase of alcoholic beverages is not a requirement, directly or indirectly, for participation therein.

(2) Any licensee sponsoring or co-sponsoring an event described in subsection (1) of this section upon the premises of another licensee may advertise said event upon that licensed premises for thirty (30) days immediately preceding the event.

Section 7. No advertising pursuant to this regulation shall use the terms "free," "complimentary" or any other terms which infer or suggest special prices, reduced prices, give-aways or similar words of pecuniary appeal in relation to the sale of alcoholic beverages.

Section 8. No licensee shall advertise any product, service or activity which the licensee is prohibited by statute or regulation from selling, providing, or conducting.

Section 9. No licensee may advertise in any manner the sale of distilled spirits and wine, by bottle or case, at a price below the minimum resale price.

RICHARD H. LEWIS, Commissioner
ADOPTED: September 9, 1981
APPROVED: JAMES TAYLOR, Acting Secretary
RECEIVED BY LRC: September 11, 1981 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
As Amended

804 KAR 1:101. Repeal of 804 KAR 1:010, 804 KAR 1:020, *804 KAR 1:040,* 804 KAR 2:025, and 804 KAR 3:070.

RELATES TO: KRS 244.130, 244.140, 244.380, 244.450
PURSUANT TO: KRS 13.082, 241.060
EFFECTIVE: December 2, 1981
NECESSITY AND FUNCTION: KRS 244.130 provides for the regulation of alcoholic beverage advertising by the Alcoholic Beverage Control Board. Regulations 804 KAR 3:070, 804 KAR 1:020, 804 KAR 2:025 and 804 KAR 1:010 were enacted to regulate various facets of alcoholic beverage advertising. These regulations are inconsistant with modern marketing practices and are being repealed with the view of updating alcoholic beverage advertising regulations.

Section 1. 804 KAR 3:070, Retail price advertising; 804 KAR 1:020, Outside signs, first and second class cities; 804 KAR 1:010, Inside signs; and *804 KAR 1:040, Novelties and specialties;* 804 KAR 2:025, Novelties and specialties are hereby repealed.

RICHARD H. LEWIS, Commissioner
ADOPTED: September 11, 1981
APPROVED: JAMES TAYLOR, Acting Secretary
RECEIVED BY LRC: September 14, 1981 at 10 a.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
As Amended

904 KAR 3:060. Administrative fraud hearings.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: December 2, 1981
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp progam as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 through 280. 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 regulation sets forth the procedures used by the department to disqualify food stamp recipients who have committed fraud.

Section 1. Fraud Disqualification Penalties. Individuals found through an administrative fraud hearing to have committed fraud shall be ineligible to participate for three (3) months beginning with the periods specified in 7 CFR Part 273.16(b)(8). Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six (6) months and not more than twenty-four (24) months as determined by the court. If the court fails to specify or address a disqualification period for the fraudulent act, the department shall impose a six (6) month disqualification period unless it is contrary to the court order. The department shall disqualify only the individual convicted of fraud and not the entire household. If the individual fails to agree to make restitution, the period of disqualification shall continue until the individual agrees to make restitution. Individuals or the remaining household members shall be permitted to make restitution during the period of disqualification in accordance with established procedures for cash repayment or allotment reduction. The department shall inform the household in writing of the disqualification penalties for committing fraud at each time it applies for benefits.

Section 2. Definition of Fraud. For purposes of determining at an administrative fraud hearing whether or not fraud was committed, fraud shall consist of any action by an individual to knowingly, willfully, and with deceitful intent:

(1) Make a false statement to the department, either orally or in writing, to obtain benefits to which the household is not entitled;

(2) Conceal information to obtain benefits to which the household is not entitled;

(3) Alter ATP's to obtain benefits to which the household is not entitled;

(4) Use coupons to buy expensive conspicuous nonfood items such as alcohol or cartons of cigarettes;

(5) Use or possess improperly obtained coupons or ATP's; or

(6) Trade or sell coupons or ATP's.

Section 3. Administrative Disqualification. An administrative fraud hearing *should* [may] be initiated by the department whenever the department has documented evidence to prove that a currently certified household member has committed fraud. The department may initiate an administrative fraud hearing regardless of the current eligibility of the individual. The disqualification

period for nonparticipants at the time of the final hearing decision shall be deferred until the individual applies for and is determined eligible for program benefits. Fraud hearings shall not be conducted if the amount the department suspects has been fraudulently obtained is less than thirty-five dollars ($35) or if [the value of the] ineligible items [that] have been purchased with food stamps *valued at less than* [is under] thirty-five dollars ($35). The burden of proving fraud is on the department.

Section 4. Fraud Hearing Procedures. The department will provide administrative fraud hearings at the [local level in all counties with a right to appeal to a] state[-]level [fraud hearing]. The conduct of *an administrative* [a] fraud hearing will be similar to that of a fair hearing. [The department will designate hearing officials to conduct only local fraud hearings.] *Administrative* [F] fraud hearings [decisions appealed to the state level] will be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case; who was not directly involved in the initial determination that the household member had committed fraud; and was not the immediate supervisor of the eligibility worker who took the action. [State level hearings shall be conducted by state-level personnel. The hearing official(s) shall be an employee of the department.]

(1) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 12.

(2) The household's rights during the fraud hearing shall be the same as those specified in 904 KAR 3:070, Section 13.

(3) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 14(1).

(4) At the fraud hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(5) Within ninety (90) days of the date the household member is notified in writing that a*n* [local] *administrative* hearing has been scheduled, the department shall conduct the hearing, arrive at a decision and initiate administrative action which will make the decision effective. [If the household decides to appeal its case to a state level hearing, the department shall conduct the state level hearing, arrive at a decision and initiate administrative action which will make the decision effective within sixty (60) days of the date the household member appealed its case.] The household member or representative is entitled to a postponement of up to thirty (30) days. If a hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

Section 5. Advance Notice of Hearing. [(1)] The department shall provide written notice to the household member suspected of fraud at least thirty (30) days in advance of the date a*n administrative* [local level] fraud hearing initiated by the department has been scheduled. The notice shall be *sent* [mailed] certified mail, return receipt requested and shall contain:

(1) [(a)] The date, time, and place of the hearing;

(2) [(b)] The charge(s) against the household member;

(3) [(c)] A summary of the evidence, and how and where the evidence can be examined;

(4) [(d)] A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(5) [(e)] A warning that a determination of fraud will result in a three (3) month disqualification;

(6) [(f)] A listing of the household member's rights as contained in 904 KAR 3:070, Section 13;

(7) [(g)] A statement that the hearing does not preclude the state or federal government from prosecuting the household member for fraud in a civil or criminal court action, or from collecting the overissuance;

(8) [(h)] A telephone number of someone who can give free legal advice.

[(2) If the household member suspected of fraud is appealing a local level hearing to a state level hearing the department shall provide a written notice to that household member at least ten (10) days in advance of the scheduled hearing. The ten (10) day advance notice shall contain the provisions of paragraphs (a), (f), (g), and (h) of subsection (1) of this section, as well as a statement that the department will dismiss the hearing request and the household member will be disqualified in accordance with the local hearing decision if the household or its representative fails to appear for the hearing without good cause. The department's hearing procedures will be listed on the ten (10) and thirty (30) day written notices.]

Section 6. Scheduling the Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of fraud. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the department without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if fraud was committed based on clear and convincing evidence. If the household member is found to have committed fraud but a hearing official later determined that the household member or representative had good cause as defined in 904 KAR 3:070, Section 9, for not appearing, the previous decision shall no longer remain valid and the department shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has ten (10) days from receipt of the notice of the fraud decision to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record. [If a local fraud hearing decision is appealed to a higher hearing level but the household member or its representative fails to appear for the hearing, the department shall dismiss the hearing request and notify the household member that it will be disqualified for three (3) months in accordance with the local hearing decision unless the household member or its representative provides good cause for not appearing at the hearing within ten (10) days of receipt of the notice. If the hearing official determines that the household member or representative had good cause for not appearing, the department shall reschedule the hearing.]

Section 7. Participation While Awaiting a Hearing. A pending fraud hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the department cannot disqualify a household member for fraud until the hearing official finds that the individual has committed fraud, the department shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.

Section 8. Fraud Hearing Decision. The hearing official

shall base the determination of fraud on clear and convincing evidence which demonstrates that the household member knowingly, willfully, and with deceitful intent committed fraud *as defined in Section 2.* Decisions of the hearing official shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent handbook section and corresponding FNS regulation and respond to reasoned arguments made by the household member or representative. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the department. This record shall also be available to the household or its representative during work hours for copying and inspection.

Section 9. Appeal Rights of the Household. [Household members found to have committed fraud may appeal their decision as follows:]

[(1)Appeal after local hearing. A household member found to have committed fraud by a local hearing authority has fifteen (15) days after the member receives the local hearing decision to appeal the decision to a state level hearing. The department shall mail the notice by certified mail, return receipt requested. If a state level hearing is not requested, the household member shall be disqualified for three (3) months. If, however, the household member requests a state level hearing within the fifteen (15) day period, the household member shall not be disqualifeid unless the state level hearing also finds the household member committed fraud. If a state level hearing is requested, a new hearing shall be conducted and a decision rendered within sixty (60) days of the request. In a new hearing, the prior decision shall not be taken into consideration.]

[(2) Appeal after state level hearing.] After a household member has been found to have committed fraud by a [state level] hearing official, the household member shall be disqualified for three (3) months beginning with the first month which follows the date the household member has received the state level hearing notice. No further administrative appeal procedure exists after an adverse *administrative fraud* [state level] hearing. The determination of fraud made by a fraud hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay or other injunctive remedy.

Section 10. Notification of Fraud Hearing Decisions. The department shall notify a household member in writing of fraud hearing decisions as specified below:

(1) If the hearing finds that the household member did not commit fraud, the department shall provide a written notice which informs the household member of the decision.

(2) If the administrative fraud hearing finds that the household member committed fraud, the department shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also inform the remaining household members, if any, of either the allotment they will receive during the period of disqualification, or *that* they must reapply because the certification period has expired[. For state level decisions, the notice shall inform the household member of] *and* the date disqualification will take effect. [For local level decisions, the notice shall inform the household member of the deadline for requesting a state level hearing, the date disqualification will take effect unless a state level hearing is requested, and that benefits will be continued pending a state level hearing if the household is otherwise eligible.] If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. A written agreement letter for restitution, explaining the repayment requirements shall also be sent. A list of the household member's rights shall also be printed on the notice of fraud hearing decisions.

Section 11. Court Imposed Disqualification. A court of appropriate jurisdiction, with either the state, a political subdivision of the state, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program for not less than six (6) months and not more than twenty-four (24) months if the court finds that individual guilty of civil or criminal fraud. Court ordered disqualifications may be imposed separate and apart from any action taken by the department to disqualify the individual through an administrative fraud hearing. In cases where the determination of fraud is reversed by a court the department shall reinstate the individual if eligible and restore any benefits that were lost as a result of the disqualification.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: July 13, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 15, 1981 at 2:40 p.m.

Amended After Hearing

(Republished prior to Subcommittee consideration as required by KRS 13.085(4).)

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:050. *Waste management* [Hazardous waste] definitions.

RELATES TO: KRS *224.033, 224.255, 224.855 to 224.884* [224.866]
PURSUANT TO: KRS 13.082, 224.017, *224.033(24)* [224.866]
NECESSITY AND FUNCTION: KRS 224.017 and *the waste management provisions of KRS Chapter 224* [224.866] require the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the management *of solid and* [for] hazardous wastes. This regulation defines essential terms used in connection with the [hazardous] waste *management* regulations.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or otherwise clearly indicated by their context, terms in KRS Chapter 224 and in the [hazardous] waste *management* regulations shall have the meanings given in this regulation.

(1) "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 hazardous waste facility would be damaged and thereby pose a threat to human health and the environment.

(2) "Active portion" means any area of a facility where treatment, storage, recycling or disposal operations are being conducted. 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 secretary.

(3) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(4) [(3)] "Aquifer" means a geologic[al] formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(5) [(4)] "Agricultural waste" means any non-hazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

(6) [(5)] [(4)] "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, and/or biological reaction or transformation occurring in the zone of aeration or zone of saturation.

(7) "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 equalled or exceeded once in 100 years on the average over a significantly long period.

(8) "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.

(9) [(6)] [(5)] "Cell" means a portion of a landfill which is isolated, usually by means of an approved barrier.

(10) [(7)] "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.

(11) [(8)] [(6)] "Closure" means the time at which a waste treatment, storage or disposal facility permanently ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for post-closure monitoring and maintenance or to make it suitable for other uses.

(12) "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.

(13) "Constituent" or "hazardous waste constituent" means a constituent which caused the administrator to list the hazardous waste in 40 CFR Part 261, Subpart D, filed herein by reference, or a constituent listed in Table I of 40 CFR 261.24.

(14) [(9)] "Construction materials" means non-hazardous non-soluble material [generally considered not to be water-soluble], 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.

(15) [(10)] [(7)] "Container" means any portable enclosure in which a material *is* [can be] stored, [handled,] transported, *treated,* [or] disposed, *or otherwise handled.*

(16) "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 2:055, Section 7.

(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 2:055, Section 7.

(17) [(11)] [(8)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(18) [(12)] "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 discharge] 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.

(19) [(13)] "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.

(20) "Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(21) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(22) [(15)] [(9)] "Discharge" means the *accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping* [release] of [any] solid or hazardous waste [or any constituent thereof] into *or on any land or water* [the environment].

(23) [(14)] "Disease vector" means all insects or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens [from one (1) organism to another].

(24) [(16)] [(10)] "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment, be emitted into the air or be discharged into any water, including groundwaters.

(25) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 U.S.C. 1536.

(26) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in 40 CFR Part 261, Subpart D, filed herein by reference, and to each characteristic identified in Part 261, Subpart C, filed herein by reference.

(27) "EPA identification number" means the number assigned by EPA or the department to each generator, transporter, and treatment, storage, or disposal facility.

(28) "Equivalent method" means any testing or analytical method, approved by the administrator under 40 CFR 260.20 and 40 CFR 260.21, filed herein by reference, or methods in 401 KAR 2:095 or 401 KAR 2:101, approved by the secretary of the department.

[(11) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.]

(29) "Explosive gas" means in 401 KAR 2:055, Section 6(1), methane (CH_4).

[(12) "Existing" means any hazardous waste site or facility that was in being or under construction on October 17, 1979.]

(30) [(17)] "Existing hazardous waste management facility" means a hazardous waste facility which was in operation, or for which construction had commenced, on or before November 19, 1980. A facility had commenced construction if the owner or operator had obtained all necessary governmental approvals or permits necessary to begin physical construction, and such construction had begun or contractual obligations for physical construction which cannot be cancelled or modified without substantial loss are established.

(31) [(18)] "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 (e.g., one (1) or more land landfills, surface impoundments, or combination of them).

(32) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(33) "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.

(34) [(19)] [(13)] "Final closure of a [hazardous] waste facility" means the procedures which must be followed by a facility owner/operator when it is determined that the facility will no longer accept [hazardous] waste for treatment, recycling, storage, or disposal on the entire facility.

(35) [(20)] [(14)] "Final cover" means cover material, soil or other suitable material, that is applied upon closure of a [hazardous waste] landfill *or sanitary landfills* and is permanently exposed to the natural elements.

[*(21)* [(15)] "Flash point" means the lowest temperature at which evaporation of a substance produces sufficient vapor to form an ignitable mixture with air, near the surface of the *substance* [liquid]. Ignitable mixture denotes a mixture that, when ignited, is capable of the propagation of flame away from the source of ignition. Propagation of flames means the spread of the flame from layer to layer independent of the source of ignition.]

(36) [(22)] "Flood plain" means [lowland and relatively flat] areas adjoining inland waters which are inundated by the base flood, unless othewise specified in 401 KAR 2:095.

(37) [(23)] [(16)] "Food chain crops" means *tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.* [a forage or feed grain used to feed animals which are raised for human consumption, used to produce products for human consumption, or also food or tobacco crops for human consumption.]

(38) [(24)] "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(39) [(25)] "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

[(26) "Fresh water aquifer" means those water bearing formations containing water with quantities of dissolved minerals less than 10,000 mg/l capable of yielding usable quantities of groundwater to drinking water wells, pumps, springs or streams.]

[(27) [(17)] "Generating" means the act or process of producing wastes except that any person who produces hazardous wastes in amounts not determined to be harmful to public health or the environment by regulation of the department consistent with the federal Resource Conservation and Recovery Act *of 1976, as amended* and regulations issued pursuant thereto shall not be a generator of hazardous waste or considered to be engaged in the generation of hazardous waste.]

(40) [(28)] [(18)] "Generator" means any person, *by site,* [federal agency, or state agency] whose act or process produces [or accumulates any] hazardous waste[,] identified or listed in 401 KAR 2:075 *or whose act first causes a hazardous waste to become subject to regulation.*

[(19) "Generation of hazardous waste" means the act or process by which any person or state or federal agency produces hazardous waste, including hazardous residue from recycling and treatment activities.]

(41) [(29)] [(20)] "Groundwater" means water which is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward mo-

tion 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."

(42) [(30)] [(21)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(43) [(31)] [(22)] "Hazardous waste" means any discarded material or material to be discarded or substance or combination of such substances to be discarded, in any form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; and as defined in 40 CFR *261* [261.3], filed herein by reference. Nothing in this chapter shall be construed to apply to any activity or substance which is subject to the federal Atomic Energy Act of 1954, *as amended,* or to agricultural wastes including manures and crop residues, which are returned to the soil as fertilizers or soil conditioners, or to pesticides, herbicides or fertilizers or their respective containers when disposed of under label instructions or in accordance with the federal Insecticide, Fungicide, and Rodenticide Act *of 1972,* as amended.

[(23) "Hazardous waste district" means a hazardous waste management area identified by the department.]

[(24) "Hazardous waste regulations" means those regulations relating to and pursuant to KRS 224.890.]

(44) [(32)] [(25)] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, recycled, and/or disposed of by landfilling, incineration, or any other method.

(a) "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.* [any facility which disposes of hazardous waste by landfilling in a manner approved by the department.]

(b) "Elementary neutralization unit" means a tank, container, transport vehicle, or vessel which is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic or are [listed] wastes listed in 401 KAR 2:075 [only for this reason].

(c) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

(d) "Injection well" means a well into which fluids are injected to achieve subsurface implacement.

(e) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

(f) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste [or any constituent thereof waste] will remain after closure.

(g) [(b)] "On site" means on the same or geographically *contiguous* [continuous] property *which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Non-contiguous 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.* [where hazardous waste generation, treatment, storage, recycling, or disposal occurs. Two (2) or more pieces of property which are divided only by a public or private right-of-way and which are otherwise geographically contiguous are considered a single site.]

[(c) "Off-site" means that the site at which receiving, treatment, storage, recycling, and/or disposal takes place, is separated from another site where generation, shipment, treatment, storage, recycling, and/or disposal takes place by more than the width of a public or private right-of-way.]

(h) [(d)] "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, or stored elsewhere.* [any hazardous waste facility which stores hazardous wastes.] A generator who *accumulates* [stores] 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.

(i) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made 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.

(j) "Tank" means a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthern materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(k) "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.

(l) "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.

(m) [(e)] "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 non-hazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.* [any facility which treats hazardous wastes, except one employing only treatment processes other than ponds and lagoons which are connected to a manufacturing process by a pipe or other fixed and enclosed means, except as may be determined by the department not to be a treatment facility.]

[(f) "Recycling facility" means any facility at which hazardous waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing hazardous waste for re-use.]

[(g) "Landfill" means an excavated or engineered area where hazardous waste is deposited and covered according to a plan approved by the department.]

(n) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to 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, stores, treats, generates or accumulates wastewater treatment sludge, either of which is a hazardous waste.

(45) "Inactive portion" means that portion of a hazardous waste site or facility which is not operated after the effective date of 40 CFR Part 261, filed herein by reference.

(46) [(33)] "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.

(47) [(34)] "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.

[(35) "Interim permit" means a permit (or permit-by-rule) deemed issued to the operator of an existing waste management facility while an application is being processed, or while a facility is being modified to comply with permit requirements.]

[(26) "Hazardous waste facility personnel" means those agents of the owner/operator who are responsible for performing and/or overseeing operations at a hazardous waste treatment, storage, recycling or disposal facility and whose acts or failures to act may result in a threat to human health or the environment.]

[(27) "Hazardous waste permit" means the written document issued by the department to the permittee pursuant to KRS 224.890 and the regulations promulgated thereto, for the act of treatment, storage, recycling, or disposal of hazardous wastes. The permit may be for any of the above acts, and may have conditions attached.]

[(28) "Incineration" means an engineered process using equipment approved by the department that uses controlled flame combustion or other methods to thermally degrade hazardous waste. Incineration is a method of treatment of hazardous waste.]

(48) "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.

(49) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(50) "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.

[(29) "Landfarming" means application of hazardous waste onto land and incorporation into the surface soil for the purpose of attenuation. Synonyms include land application, land cultivation, land irrigation, land spreading, soil farming, and soil incorporation.]

(51) [(36)] [(30)] "Leachate" means any liquid including any suspended components in the liquid, that has percolated through or drained from [hazardous] waste.

(52) [(37)] [(31)] "Liner" means a *continuous* layer of natural or man-made material [placed beneath or over a surface impoundment or landfill] which *restricts* [serves to restrict] the movement of the wastes, *waste constituents, or leachate.* [from within the surface impoundment or the landfill into the soil, rock or water outside of the surface impoundment or landfill.]

(53) "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.

(54) [(38)] "Major modification" means a change in ownership, area occupied, disposal method, or other significant change in the operation of a waste management facility [that would require prior administrative analysis and review before granting approval, as opposed to the issuance of a letter of acknowledgement upon notice of the proposed modification].

(55) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(56) [(39)] [(32)] "Manifest" means the shipping document originated and signed by the generator which contains information required by 401 KAR 2:070.

(57) "Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

(58) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that desposit and is then used for reclamation of a surface mine.

(59) [(40)] [(33)] "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.

(60) [(41)] [(34)] "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and goundwater levels.

(61) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(62) [(42)] [(35)] "New" means any hazardous waste site or facility that commenced construction after *November 19, 1980* [October 17, 1979].

(63) [(43)] [(36)] "One-hundred year flood" means a flood that has a one (1) percent or one (1) in 100 *or greater* chance of recurring in any year, or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period, *taking into consideration the present engineering aspect of the floodplain.*

(64) [(44)] [(37)] "Open burning" means the combustion of any material 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.* [Emission of the combustion products through a stack or vent adequate for both visual monitoring and point-source sampling.]

(65) [(45)] [(38)] "Owner/operator of a [hazardous] waste facility" means the owner of an on-site or off-site [hazardous] waste treatment, storage, recycling or disposal facility, as well as any person with whom rests ultimate decision-making authority over the facility.

(66) [(46)] [(39)] "Operational plan" means the approved plan of operations filed with the department which describes the method of operation that the permittee will use in the treatment, storage, [recycling,] and/or disposal of [hazardous] wastes.

(67) [(42)] "Partial closure of a hazardous waste facility" means the *closure of a discrete part of a facility in accordance with the applicable closure requirements of 40 CFR Parts 264 or 265, filed herein by reference.* [measures which must be taken at a facility when it is determined that the facility will no longer accept hazardous waste for treatment, recycling, storage or disposal on one (1) portion of the site.]

(68) "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.

(69) [(47)] [(40)] "Permit by rule" means that certain classes of sites or facilities are presumed to hold a permit so long as the operations of such sites or facilities *meet interim status requirements and/or* do not present a threat of imminent hazard to public health or a substantial environmental impact, *in violation of any of the environmental performance standards specified in 401 KAR 2:055.*

(70) [(48)] [(41)] "Permittee" means any person holding a valid permit issued by the department to *manage,* treat, store, and/or dispose of [hazardous] waste.

(71) [(49)] "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 regulations.

(72) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(73) "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, or vessel or other floating craft from which polluants are or may be discharged. This term does not include return flows from irrigated agriculture.

(74) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of any municipal sewage or industrial wastes of a liquid nature which is owned by the state, any political subdivision, municipality, or other public entity (as defined by Section 502(4) of the Clean Water Act). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(75) [(50)] [(43)] "Post closure care" means the manner in which a facility must be maintained when it no longer accepts hazardous waste for [treatment, storage, or] disposal.

(76) [(51)] [(44)] "Post-closure monitoring and maintenance" means the routine care, maintenance and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility.

(77) [(52)] "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions. [Putrescible wastes include but are not limited to organic matter such as food wastes, offal, dead animals, paper, cardboard, leaves, sawdust, woodchips, pruning waste, and organic sludges.]

(78) [(53)] "Recharge zone" means an area supplying the water which enters an underground drinking water source [a fresh water aquifer].

(79) "Regional Administrator" means the regional administrator for the EPA region in which the facility is located, or his designee.

(80) [(54)] [(45)] "Representative sample" means *a sample of a universe or whole (e.g., wastepile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.* [any sample of waste or groundwater which is equivalent to the total waste or groundwater in composition, and physical, biological, and chemical properties as specified in American Society for Testing Materials' (ASTM) standards.]

(81) [(55)] "Resource recovery" means the process by which materials subject to the waste management regulations which still have useful physical or chemical properties are reused or recycled for the same or other purposes, including uses as an energy source.

(82) [(56)] [(46)] "Run-off" means *any rainwater, or other liquid that drains overland from any part of a facility.* [that portion of precipitation that flows overland before entering a defined stream channel.]

(83) [(57)] "Run-on" means any rainwater or other liquid that drains overland onto any part of a facility.

(84) "Sanitary landfill" means a facility for the disposal of solid waste which complies with the "Environmental performance standards" specified in 401 KAR 2:055, Section 6.

(85) [(58)] [(47)] "Saturated zone (zone of saturation)" means that part of the earth's crust containing groundwater in which all voids, large and small, are filled *with liquid.*

(86) [(59)] "Salvaging" means the controlled removal of waste materials for utilization [from an area remote from the operating face of the fill] in a manner approved by the department.

(87) [(60)] "Scavenging" means the removal of waste materials from a waste management facility site in a manner deemed by the department to be dangerous to the health and safety of any person.

(88) [(61)] "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 such waste having similar characteristics and effects.

(89) [(62)] "Solid waste site or facility" means one (1) of the four (4) [three (3)] categories of sanitary landfills or a land farming facility permitted by the department for the disposal of solid waste involving the placement of solid waste on or into the land surface as follows:

(a) "Inert landfill" means a facility for the proper disposal of inert, non-soluble and non-putrescible solid waste [which meets minimal design and operation standards so as to achieve proper disposal of generally non-putrescible and non-soluble waste], including construction materials, certain industrial or special wastes, and other waste material with specific approval from the department [not deemed to pose environmental problems from leachate]. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, woodchips, and tree trimm-

ing, etc.) may be considered by the department for disposal at inert landfills.

(b) "Residential landfill" means a facility for the proper disposal of solid waste including [which is designed and operated so as to achieve proper disposal of any] residential waste, commercial waste, institutional waste, [;] and those [certain] sludges, industrial or special waste with specific approval from the department.

(c) "Contained landfill" means a facility for the proper disposal of solid waste including those [which is designed and operated so as to achieve proper disposal of certain] industrial wastes, [or] special wastes, or hazardous wastes exempted by regulation and any non-hazardous waste without case-by-case approval from the department.

(d) "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 the "Environmental performance standards" of 401 KAR 2:055, Section 6(1) and which receives a case-by-case design review by the department.

(e) [(d)] "Landfarming facility" means a facility for land application of sludges or other residual 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.

(90) [(48)] "Special wastes" means those wastes of high volume and low hazard which commonly include, but are not necessarily limited to, utility wastes (fly ash, bottom ash, scrubber sludge), mining wastes, sludge from pollution control equipment, water treatment facilities, and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, and oil production brines.[]]

(91) [(63)] [(49)] "Spill" means any accidental *spilling, leaking, pumping, pouring, emitting, or dumping or hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water* [discharge into the environment of any substance which meets the definition of hazardous waste].

(92) [(64)] [(50)] "Storage of hazardous waste" means the *holding* [containment] of hazardous waste *for* [either on] a temporary *period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.* [basis or for a period of years in such a manner as not to constitute disposal of such hazardous waste.]

[(51) "Storage tank" means any manufactured nonportable covered device used for containing pumpable hazardous waste.]

[(52) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made 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.]

(93) [(65)] [(53)] "Termination" means the final actions taken by the department as to a solid waste or hazardous waste [treatment, storage or] disposal facility when formal responsibilities for post-closure monitoring and maintenance cease.

(94) "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.

(95) [(66)] "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(96) [(67)] [(54)] "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(97) "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or man-made 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.

(98) "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.

(99) "Underground injection" means the subsurface implacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "hazardous waste site or facility, injection well.")

(100) [(68)] [(55)] "Unsaturated zone (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.

(101) [(69)] [(56)] "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.

(102) [(70)] "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on the water.

(103) "Washout" means the carrying away of waste by waters of the base flood.

(104) "Waste boundary" means either:

(a) The outmost 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 facility which may be used in lieu of paragraph (a) when the department 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;

7. Public health, safety, and welfare effects.

(105) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or car-

ried on board a vessel without containers or labels.

(106) [(71)] [(57)] "Wetlands" means those areas that are inundated by surface *water* or groundwater with a frequency and duration sufficient to support a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

(107) [(72)] [(58)] "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

JACKIE SWIGART, Secretary
ADOPTED: December 5, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:055. *Waste management* provisions, generally.

RELATES TO: KRS *224.033, 224.250, 224.255, 224.855 to 224.889* [224.037, 224.866]
PURSUANT TO: KRS 13.082, 224.017, *224.033(24)* [224.866]
NECESSITY AND FUNCTION: KRS 224.017, *224.033 and the waste management provisions of KRS Chapter* 224 [and 224.866], require the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the generation, treatment, storage, recycling and disposal of hazardous wastes *and the disposal of solid wastes.* This regulation sets forth general provisions which apply to the [hazardous] waste *management* regulations with regard to applicability, scope, exceptions, variances, general prohibitions, compatibility, conflicting provisions, and severability.

Section 1. Applicability. The [hazardous] waste *management* regulations shall apply to *the disposal of solid waste and* the management of all liquid, semisolid, solid, or gaseous waste defined or identified as hazardous in KRS Chapter 224 or the appropriate regulations (401 KAR 2:050, 401 KAR 2:075) by all persons and state and federal agencies who engage in the generation, treatment, storage, [recycling,] or disposal of such wastes, including hazardous substances spilled into the environment, thereby meeting the criteria of hazardous waste.

(1) The waste management regulations apply to all waste disposal sites or facilities with the following exceptions:

(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. These regulations do apply to sludges generated by the treatment of domestic sewage.

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. These regulations do apply to sludges generated by the treatment of industrial wastewater.

(c) Solid or dissolved materials in irrigation return flows.

(d) Source special nuclear or by-product material as defined by the Atomic Energy Act, as amended 42 U.S.C. 2011 et seq.

(e) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.

(2) Any waste that is not excepted by subsection (1) of this section and that is identified or listed under 401 KAR 2:075 is subject to the waste management regulations pertaining to hazardous waste.

(3) Any waste which is not excepted by subsection (1) and which is not subject to subsection (2) is subject to the waste management regulations pertaining to solid waste except for:

(a) Agricultural wastes including manures and crop residues, returned to the soil as fertilizers or soil conditioners.

(b) Overburden resulting from mining operations intended for return to the mine site.

(c) The location and operation of septic tanks. These regulations do, however, apply to the disposal of septic tank pumpings.

(d) Disposal of waste by underground well injection subject to the regulations (40 CFR Part 146) for the Underground Injection Control Program (UICP) under the Safe Drinking Water Act, as amended, 42 U.S.C. 3007 et seq.

Section 2. Variance. *A variance, except as provided in 401 KAR 2:060, is a written waiver from any provision of the waste management regulations, except the "Environmental performance standards" (Section 6 of this regulation), and the "Maximum groundwater contaminant levels" (Section 7 of this regulation) upon the finding by the department that the absence of such provision(s) will provide adequate protection to health and the environment in a manner consistent with the purpose of the waste management regulations and KRS Chapter 224.*

(1) The department may grant a [temporary] variance *or permit modification* from the requirements of the [hazardous] waste *management* regulations if a [hazardous] waste *or permit requirement* is determined by the department to be either:

(a) Insignificant as a potential hazard to public health or the environment because of its small quantity, low concentration, or physical, biological, or chemical characteristics; or

(b) Handled, processed, or disposed of pursuant to regulations of another governmental agency, providing the regulations of other agencies meet the requirements of the [hazardous] waste *management* regulations, *including federal delisting or exemption rulemaking actions pertaining to hazardous waste management.*

(2) A request for [temporary] variance from a requirement of the [hazardous] waste *management* regulations shall be submitted [to the department] in a [detailed] report *as prescribed by the department in sufficient detail to describe* clearly [setting forth] the analyses, procedures, controls, and other pertinent data necessary to support the request. The granting of such a request by the department shall be in writing and shall specify appropriate conditions such as duration, limitations, and review procedures.

[(3) Variances are authorized for non-commercial, one-time disposal of construction materials and other generally

non-soluble waste without a permit.]

[(4) Permit modifications may take the form of special permission issued to the disposal facility upon proper request for review of a specific waste stream made by either the disposal facility or the waste generator.]

Section 3. Compatibility with *the Federal Acts* [Solid Waste Disposal Act]. The regulations promulgated pursuant to *the waste management provisions of KRS Chapter 224* [KRS 224.890] are intended to be compatible with federal regulations adopted pursuant to [the Solid Waste Disposal Act as amended by] Public Law 94-580, the "Resource Conservation and Recovery Act of 1976," *as amended* [and as amended by the Quiet Communities Act of 1978].

Section 4. Conflicting Provisions. The provisions of the [hazardous] waste *management* regulations are to be construed as being compatible with and complimentary to each other. In the event that any of these regulations are found to be contradictory, the more stringent provisions shall apply.

Section 5. Severability. In the event that any provision of KRS Chapter 224 or any regulation promulgated pursuant thereto is found to be invalid, the remaining [hazardous] waste *management* regulations shall not be affected or diminished thereby.

[Section 6. Environmental Performance Standards. All facilities for the land disposal of solid waste, or the treatment, storage, or disposal of hazardous waste shall be located, designed, constructed, operated, maintained and closed in a manner so as not to pose a reasonable probability of environmental contamination that would result in a limitation of available use of natural resources. Environmental performance standards shall include but not be limited to:]

[(1) Prevention of adverse effects on both groundwater and subsurface environment water quality considering the volume and type of waste; hydrogeological characteristics; quantity, quality and direction of groundwater flow; proximity and withdrawal rates of existing groundwater users; potential damage to human health, wildlife, crops and vegetation caused by exposure to waste constituents.]

[(2) Prevention of adverse effects on surface water considering their proximity, established water quality standards, existing use, rainfall patterns, and other applicable factors from subsection (1).]

[(3) Prevention of adverse effects on air quality considering the potential for fire or other volatilization, and for wind dispersal of waste.]

Section 6. Environmental Performance Standards. These standards are for use under the waste management provisions of KRS Chapter 224 in determining which waste disposal sites or facilities pose a reasonable probability of adverse effects on health or the environment. Solid waste disposal sites or facilities failing to satisfy the applicable standards will be considered open dumps which are prohibited by KRS 224.255. Hazardous wastes disposal sites or facilities failing to satisfy the standards of this section will be considered to be in violation of the hazardous waste management provisions of KRS Chapter 224.

(1) No waste disposal site or facility shall:

(a) Restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(b) Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.

(c) Result in the destruction or adverse modification of the critical habitat of endangered or theatened species as identified in the Endangered Species Act and subsequent regulations.

(d) Cause a discharge of pollutants into waters of the Commonwealth that is in violation of the requirements of KRS Chapter 224.

(e) Cause a discharge of dredged material or fill material to waters of the Commonwealth that is in violation of the requirements under Section 404 of the Clean Water Act, as amended.

(f) Cause non-point source pollution of waters of the Commonwealth that violates applicable legal requirements established to implement an areawide or statewide water quality management plan that has been approved by the department.

(g) Contaminate an underground drinking water source beyond the waste boundary. The maximum contaminant levels for this paragraph are contained in Section 7 of this regulation.

(h) Exist or occur which applies solid waste or special waste to within three (3) feet (one (1) meter) of the surface of land used for the production of food-chain crops unless in compliance with all the requirements of subparagraphs 1, 2, 3 or with all the requirements of subparagraphs 6, 7, 8, and 9 of this paragraph:

1. The pH of the solid waste or special waste and soil mixture is 6.5 or greater at the time of each solid waste or special waste application, except for solid waste or special waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

2. And the annual application of cadmium from solid waste or special waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate does not exceed:

Time Period	*Annual Cd Application Rate (kg/ha)*
Present to June 30, 1984	*2.0*
July 1, 1984 to Dec. 31, 1986	*1.25*
Beginning Jan. 1, 1987	*0.5*

3. And the cumulative application of cadmium from the waste does not exceed the levels in either subparagraphs 4 or 5 of this paragraph:

4. Table.

Soil Cation Exchange Capacity (meg/100g)	*Maximum cumulative application (kg/ha) Background Soil pH <6.5*	*Background Soil pH ≥6.5*
<5	*5*	*5*
5-15	*5*	*10*
>15	*5*	*20*

5. For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the

levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food-chain crops are grown.

Soil Cation Exchange Capacity (meg/100g)	Maximum Cumulative Application (kg/ha)
<5	5
5-15	10
>15	20

6. The only food-chain crop produced is animal feed.

7. And the pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food-chain crops are grown.

8. And there is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

9. And future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food-chain crops should not be grown due to a possible health hazard.

(i) Exist or occur which applies solid waste or special waste containing concentrations of polychlorinated biphenyls (PCBs) equal to or greater than 10 mg/kg (dry weight) to within three (3) feet (one (1) meter) of the surface of land used for producing animal feed, including pasture crops for animals raised for milk. Incorporation of the solid waste or special waste into the soil is not required if it is assured that the PCB content is less than 0.2 mg/kg (actual weight) in animal feed or less than 1.5 mg/kg (fat basis) in milk.

(j) Exist or occur unless the on-site population of disease vectors is minimized through the periodic application of cover material or other techniques as appropriate so as to protect public health.

(k) Exist or occur which applies sewage sludge or septic tank pumpings to within three (3) feet (one (1) meter) of the surface of the land unless a method to reduce pathogens has been utilized.

(l) Engage in open burning solid waste, special waste or hazardous 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 clean-up operations, and ordinance.

(m) Violate applicable requirements developed under the state implementation plan approved or promulgated by the department pursuant to KRS Chapter 224.

(n) Exceed the concentration of explosive gases:

1. Twenty-five percent (25%) of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and

2. The lower explosive limit for the gases at the facility boundary.

(o) Pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with paragraphs (l) and (m) of this subsection through the periodic application of cover material or other techniques as appropriate.

(p) Allow uncontrolled public access so as to expose the public to potential health and safety hazards at the disposal site.

(2) In addition to the requirements of subsection (1) of this section, no hazardous waste disposal site or facility, except for facilities regulated pursuant to the interim status standards, shall cause a reasonable probability of adverse effects on groundwater quality, surface water quality, and air quality or cause a reasonable probability of adverse effects due to migration of waste constituents considering:

(a) The volume and physical and chemical characteristics of the waste in the facility, including its potential for migration through soil or through synthetic liner materials and its potential for volatilization and wind dispersal;

(b) The hydrogeological and geological characteristics of the facility and surrounding land, including the topography of the area around the facility;

(c) The quantity, quality and directions of groundwater flow;

(d) The proximity and withdrawal rates of groundwater users;

(e) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater;

(f) The potential for health risks caused by human exposure to waste constituents;

(g) The potential damage to wildlife, crops, vegetation and physical structures caused by exposure to waste constituents;

(h) The persistence and permanence of the potential adverse effects;

(i) The patterns of rainfall in the region;

(j) The proximity of the facility to surface waters;

(k) The uses of nearby surface waters and any water quality standards established for those surface waters;

(l) The existing quality of surface water, including other sources of contamination and their cumulative impact on surface water;

(m) The potential for migration of waste constituents into sub-surface physical structures; and

(n) The potential for migration of waste constituents into the root zone of food-chain crops and other vegetation.

Section 7. Maximum Groundwater Contaminant Levels. The maximum contaminant levels promulgated herein are for use in determining whether solid waste disposal activities comply with the groundwater criteria of Section 6(1)(g). Analytical methods for these contaminants may be found in 40 CFR 141 which should be consulted in its entirety.

(1) Maximum contaminant levels for inorganic chemicals. The following are the maximum levels of inorganic chemicals other than fluoride:

Contaminant	Level (milligrams per liter)
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chronium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.0
Selenium	0.01
Silver	0.05

The maximum contaminant levels for fluoride are:

Temperature[1] Degrees Fahrenheit	Degrees Celsius	Level (milligrams per liter)
53.7 and below	12 and below	2.4
53.8 to 58.3	12.1 to 14.6	2.2
58.4 to 63.8	14.7 to 17.6	2.0
63.9 to 70.6	17.7 to 21.4	1.8
70.7 to 79.2	21.5 to 26.2	1.6
79.3 to 90.5	26.3 to 32.5	1.4

[1] *Annual average of the maximum daily air temperature.*

(2) Maximum contaminant levels for organic chemicals. The following are the maximum contaminant levels for organic chemicals:

Level (milligrams per liter

(a) Chlorinated hydrocarbons:
Endrin (1,2,3,4,10,10-Hexachloro-6, 7-epoxy-1,4,4a, 5,6,7,8,8a-octahydro-1,4-endo,endo-5,8-dimethano naphthalene 0.0002
Lindane (1,2,3,4,5,6-Hexachlorocyclohexane, gamma isomer 0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenyl) ethane) 0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67 to 69 percent chlorine 0.005

(b) Chlorophenoxys:
2,4-D (2,4-Dichlorophenoxyacetic acid) 0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid) 0.001

(3) Maximum microbiological contaminant levels. The maximum contaminant level for coliform bacteria from any one (1) well is as follows:

(a) Using the membrane filter technique:

1. Four (4) coliform bacteria per 100 milliliters if one (1) sample is taken; or

2. Four (4) coliform bacteria per 100 milliliters in more than one (1) sample of all the samples analyzed in one (1) month.

(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical recommendations set forth in "Standard Methods for Examination of Water and Waste Water," American Public Health Association, 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) portions in any of five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.

(4) Maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity. The following are the maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity:

(a) Combined radium-226 and radium-228-5 pCi/l:

(b) Gross alpha particle activity (including radium-226 but excluding radon and uranium)-15 pCi/l.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:090. Solid waste disposal permit process.

RELATES TO: KRS 224.255, 224.855, 224.880, 224.884
PURSUANT TO: KRS 13.082, 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.855 specifies minimum requisites for issuance of waste disposal permits, and KRS 224.255 and 224.880 prohibit use or operation of a waste disposal site or facility without first obtaining a permit from the department. This regulation specifies the general requirements for all solid waste disposal permits.

Section 1. General Requirements for Permitting. (1) No person or state or federal agency shall engage in the disposal of solid waste without having first obtained a permit, [interim] permit *by rule* or a variance from the department.

(2) A permit shall authorize the owner/operator to engage in the disposal of solid waste in a manner prescribed by the department for a period of not more than *five (5) years* [one (1) year] from the date of issuance or renewal. [Interim permits or permit-by-rule shall be perpetual until modified, revoked or suspended by the department.]

(3) The permit shall confer upon the owner/operator a qualified right to dispose of solid waste, but shall not relieve the owner/operator of responsibility to comply with all applicable federal, state and local laws and regulations, including but not limited to the Clean Water Act (33 U.S.C. 1251), the Safe Drinking Water Act (42 U.S.C. 7041), the Occupational Safety and Health Act (29 U.S.C. 651) and the Endangered Species Act (16 U.S.C. 1530), as amended.

(4) The permit shall be issued in the name of the applicant, and shall be non-transferable without written approval by the department. Any successor operator prior to the final closure of the facility whether by sale, assignment, lease or otherwise may be required to submit an application or independently provide financial responsibility for closure or both.

(5) *Disposers* [Disposal] of *certain* [large volume] industrial waste by a practice common to the industry *are presumed to hold a permit and can* [may be deemed by the department to] operate pursuant to *this* [an interim permit (] permit[-]by[-]rule[)] *provided* [if] the operation is not in violation of *the* applicable "Environmental performance standards" *of 401 KAR 2:055 Section 6(1) or does not present a threat of imminent hazard to the public health or substantial environmental impact.*

(a) A permit by rule is hereby granted for the following disposal facilities or practices: [These disposal practices include spray irrigation, quarry waste fills,]

1. Sawdust piles. [,]

2. Disposal of ashpalt residue. [fills,]

3. Oil production brine pits, *and* gas and oil drilling mud pits. [,]

4. Disposal of septic tank pumpings *by a properly registered septic tank pumping hauler.* [, utility waste pits,]

5. Disposal of waste from the mining, processing or primary benefication of ores and minerals. [, volume reduction by incineration,]

6. Operation of a solid waste incinerator excluding the disposal of the residue from the incinerator. [agricultural waste disposal,]

7. Junkyards. [, and]

8. Pits, ponds *and* [or] lagoons *permitted by other environmental programs in the department* for the disposal of residual waste from pollution control devices[, water treatment facilities, or sewage treatment facilities].

9. One (1) time construction material fills at the place of generation.

10. Benefical reuse or recycling of solid waste except for sludges regulated by 401 KAR 2:101.

11. Inert disposal site of less than one (1) acre.

12. Disposal of demolition waste on the property where demolition occurred.

13. Disposal of land clearing debris on the property where clearing occurred.

(b) A permit by rule can be granted by the department for the disposal of insignificant amounts of a specific industrial waste. Any request for a permit by rule may be granted after evaluation by the department of the following criteria:

1. Size of the disposal site or facility.

2. Potential for adverse effects on health and the environment as identified in the "Environmental performance standards," 401 KAR 2:055, Section 6.

3. Quantity of waste generated.

4. Chemical and physical characterics of the waste including reactivity and explosivity.

5. Hydrogeological and geologic characterics of the facility including the topography of the area and the proximity to surface waters.

6. Method of disposal.

Section 2. Issuance of Permit. (1) The department *shall* [may] issue a construction permit upon finding that the person or state or federal agency desiring the permit has met all the requirements for application *and the requirements of KRS 224.855,* and has the ability to meet the operational and closure requirements of the solid waste regulations. An application for a permit may be denied or an active permit revoked for failure to comply with applicable state statutes or regulations, including but not limited to any failure to provide or maintain adequate financial responsibility.

(2) No construction permit shall be issued until at least *thirty (30)* [forty-five (45)] days have expired following publication of a notice of application as required under KRS 224.855. A verified affidavit from the publisher of the notice, establishing the date of publication, shall be received by the department before a construction permit is issued. This publication shall be made after the owner/operator receives written notice that the department has received a complete application.

(3) An operational permit shall be issued by the department when:

(a) The applicant notifies the department, in writing, that construction has been completed;

(b) A departmental representative inspects the site and verifies in writing that the site has been developed according to plans and that necessary equipment is available to the site; and

(c) The required financial responsibility for closure has been established, by posting a bond or establishing an escrow account as required by KRS 224.884 in an amount of $10,000 or greater if so determined by an approved closure plan and cost estimate. The approved cost estimate for closure and corresponding bond shall be reviewed and adjusted at least once every five (5) years.

(4) The department shall make a determination whether an application is complete within thirty (30) days of receipt. The department shall act on the complete permit application within ninety (90) days of receipt or shall, within that time period, inform the applicant of a projected schedule for review.

(5) The department may issue a permit subject to special conditions which include but are not limited to types of wastes which may be accepted or disposed, special operating conditions, schedules for compliance for corrective actions, and the issuance of other applicable departmental permits.

Section *3.* [4.] Copies and Display of Permits and Application. (1) The applicant shall submit one (1) copy of all information required for review of the permit application to the department.

(2) When review is complete the applicant shall provide the department with at least three (3) copies of the final application for formal certification and issuance of the permit document.

(3) One (1) copy shall be returned to the permittee and the permit with all applicable conditions shall be conspicuously displayed at the solid waste site or facility for the duration of the permit. A copy of the approved application including plans shall be reasonably available *at* [to] the site.

Section *4.* [3.] Termination and Renewal of Permit. (1) A permit shall automatically terminate at the end of *five (5) years* [one (1) year]. A shorter period may be specified. [An interim permit or] Permit[-]by[-]rule shall be perpetual until modified, revoked, or suspended by the department.

(2) A permit may be renewed. Renewal requests shall be made in writing to the department not less than sixty (60) days prior to the permit expiration date and shall include any changes or modifications in the approved plan of operation for the facility.

(3) The department, in issuing a renewal, shall consider whether all conditions of the original permit and modifications of permit conditions by agreed order or otherwise are being met. The department may request updated information necessary for re-evaluating the permit's suitability for reissuance and impose additional or modified permit conditions if deemed appropriate.

Section 5. Modification of Operating Methods or Proposed Closure by Owner/Operator. (1) The owner/operator shall submit in writing to the department for preliminary review any proposed change in the approved closure and other plans or any proposed change in the operating methods. "Any change" includes but is not limited to any additional wastes not listed at the time of the original permit issuance or any other request for a variance from existing permit requirements.

(2) Permit modifications for specific waste streams may be granted upon proper request made by either the disposal facility or the waste generator.

(3) [(2)] The department shall notify the owner within thirty (30) days if the modification will require prior administrative analysis and review and the payment of a fee, or if further information is required before the modification, change, or variance can be approved or denied. The department will respond to the request within thirty (30) days of receipt of all applicable fees and information with a letter of acknowledgement, issuance of a variance or issuance of a permit modification as appropriate.

(4) [(3)] The owner/operator shall not proceed with the proposed closure or change in operating methods without written approval of the department.

Section 6. Repealer and Effective Dates. (1) 401 KAR 2:090 through 401 KAR 2:110 supersede solid waste regulation 401 KAR 2:010, and 401 KAR 2:010 is hereby repealed.

(2) *Existing permitted solid waste disposal sites classified as landfills under 401 KAR 2:010 will be classified as inert landfills upon the effective date of this regulation. Existing permitted solid waste disposal sites classified as sanitary landfills under 401 KAR 2:010 will be classified as residential landfills upon the effective date of this regulation. Existing facilities thus classified will not be required to meet the design, location and construction standards of 401 KAR 2:095 provided that they are in compliance with the "Environmental performance standards" of 401 KAR 2:055, Section 6(1). Those existing facilities desiring to request a different classification will be required to meet the changed requirements for location, design or construction before the modification in classification is approved by the department.* [All persons subject to the solid waste regulations with existing permits shall meet the changed requirements relating to design and construction upon application for annual permit renewal, or enter into a compliance schedule with the department for purposes of meeting the changed requirements.]

(3) All persons subject to the solid waste regulations shall meet the changed solid waste facility operating standards within *180* [ninety (90)] days of the effective date of the regulations.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:095. Application, design and operating standards for sanitary landfills.

RELATES TO: KRS 224.255, 224.855, 224.880
PURSUANT TO: KRS 13.082, 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.033 and the waste management provisions of KRS Chapter 224 require the department to adopt regulations for the management of solid waste. This regulation sets forth the permit application requirements and general design and operating requirements for sanitary landfills. *Sections 1, 2 and 3 apply to inert landfills. Sections 1 thru 6 apply to residential landfills. Sections 1 thru 9 apply to contained landfills. Sections 10 thru 12 apply to residual landfills.*

Section 1. Contents of Permit Applications *for Inert Landfills.* A person or state or federal agency desiring a landfill permit shall submit a complete application to the department. The application shall be on a form and presented in a manner as prescribed by the department, and shall include, but not be limited to, the following:

(1) Name, address, and phone number of the applicant. If the applicant is a government agency, corporation, company or partnership, include the name and address and phone number of the process agent or other contact individual.

(2) Written certification from the county judge/executive or chairman of the local planning and zoning board that the site meets all local planning and zoning requirements.

(3) Approval of the local KRS Chapter 109 District Board (if one exists for the county in which the site is proposed).

(4) Name, address and phone number of the landowner.

(5) A copy of the deed to the property and a copy of a lease showing a two (2) year right of re-entry following final closure of the facility if the landowner is not the applicant.

(6) A geological report of the site including but not limited to:

(a) A description of all soils at the site, in detail, including their suitability for the proposed site;

(b) A description of the surface and subsurface geology of the site, including an assessment of such geologic hazards as seismic activity, stability, and karstic weathering; and

(c) A description of the hydrologic characteristics of the site, including surface and groundwater current use, potential use and flow.

[(6)A soils analysis (similar to a U.S. Soil Conservation Service Soils analysis) interpreted for landfill usage.]

(7) An original current U.S.G.S. topographic map that has the boundaries of the site clearly and accurately marked *thereon.*

(8) Plans drawn to scale for the site which shall bear the seal of a professional engineer registered in Kentucky, and shall include the following:

(a) Initial and proposed final contour intervals sufficient to reveal the character of the site.

(b) Existing roads, surface drainage, buildings and other man-made features, on-site fire protection equipment, and property lines.

(c) A buffer zone between the property line and the outer limits of the fill area, and a buffer zone between the fill and any existing residence or blue-line streams.

(d) The location of all-weather on-site roads sufficient to handle anticipated traffic.

(e) Site access controls including lockable entrance ways.

(f) Appropriate cross-sections and baseline profiles which shall include: existing surface, bedrock, seasonal high water table, limits of excavation, final waste cells, final surface elevations, and other subsurface and surface features including but not limited to shafts, roads and drainage.

(g) A typical lift cross-section showing details of the final cover, length and depth of cells, width of cell walls, and depth of waste.

(h) A diagram illustrating the sequence of the areas to be filled (with methods to be used).

(i) A typical section detail of site roadways, showing base, wearing surface, side slopes, drainage, width, and other information relevant to roadway design.

(9) The complete application narrative which shall include:

(a) A written description of the location of the site using roads or highways.

(b) A description of the sequence of operation.

(c) A list of all types of wastes which will be disposed at the landfill, the sources which generate the waste, the chemical and physical characteristics of industrial or

special wastes, and the anticipated volume of each category of waste.

(d) The source and availability of equipment including back-up equipment and fire protection equipment.

(e) An engineering statement of the site flood frequency exposure.

(f) The number of acres to be filled and the total number of acres to be permitted, including buffer zone.

(g) A brief safety and communication plan, including certification of fire protection from the appropriate fire marshal or local official and method of emergency communication.

(h) A description of the access controls.

(i) A description of the covering program including frequency of cover, *total* volume and source of borrow material available, and total estimated volume and source of cover required (final, daily and interim).

(j) The proposed revegetation program, including provisions for liming, fertilization, seed types and *seeding* schedule, erosion control during early growth period, and interim cover vegetation program.

(k) A final cover maintenance program covering the entire site and lasting two (2) years beyond closure, to include erosion control, reseeding, refertilization and growth control.

(l) A detailed plan for closure of the landfill in accordance with KRS 224.884 along with an estimate of closure costs.

(m) The estimated life of the site in volume and number of years.

(n) A description of the method to be used for compaction of waste and cover material including the placement of waste and direction of compaction, the placement of cover material and direction of compaction, and the ground pressure developed by the equipment used for compaction.

(o) Such additional information as the department deems necessary for a determination regarding issuance of the permit.

Section 2. General Design Requirements *for Inert Landfills.* (1) Landfills in the 100-year floodplain shall be designed and operated to prevent the washout of wastes. Further, they shall not restrict the flow of the 100-year flood or significantly reduce the temporary water storage capacity of the floodplain. Where available, empirical data shall be used to determine the frequency of flood exposure. Where data is not available, the frequency of flood exposure shall be established by the unit hydrograph technique.

(2) Landfills subject to a high seasonal water table shall be restricted to sites which provide greater than two (2) feet of compacted earth between deposited waste and the maximum water table, and include measures to prevent contamination of groundwater.

(3) The bottom of the waste in the landfill shall be at least two (2) feet above bedrock, sand or gravel, *excluding any sand or gravel used in a leachate collection system.*

(4) Landfill locations shall conform to applicable local zoning laws pursuant to KRS Chapter 100.

(5) Surface contours shall minimize surface water running onto or through the operational or completed fill area. Surface storm water features shall be designed for the maximum flows occuring up to a 100-year, twenty-four (24) hour storm flows. Surface water sediment basins shall be designed to detain ten (10) year, twenty-four (24) hour storms with emergency spillway flows of 100-year, twenty-four (24) hour storms.

(6) Disposal of wastes presenting special handling problems shall be separately considered in design of the landfill.

(7) A 100-foot minimum buffer zone between the fill area and the property line, a 200-foot minimum buffer zone between the fill and a blue-line stream, and a 250-foot minimum buffer zone between the fill and existing residences shall be provided.

(8) Adequate cover material shall be available to cover solid wastes at intervals sufficient to prevent fire hazards, unsightly appearance, disease vectors and for interim and final cover.

(9) Sufficient equipment shall be available to comply with the requirements of this regulation. This equipment is not required on-site at all times.

(10) Other requirements may be stipulated by the department.

Section 3. General Operating Requirements *for Inert Landfills.* (1) The owner/operator of a landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and the regulations promulgated pursuant thereto, the conditions of the solid waste facility permit issued by the department, and the approved operational plan filed with the department.

(2) Landfill operators shall not permit or engage in open burning of waste. Any open burning shall be immediately extinguished. Wastes which are burning or smoldering shall not be deposited in the fill. Such materials shall be deposited at a location safely removed from the normal fill area.

(3) No liquids or hazardous wastes shall be discharged to or placed in a landfill without obtaining a permit modification or a written variance from the department.

(4) The grounds in and about a landfill shall not be allowed to become a nuisance. When necessary, interior fences may be required to prevent litter from blowing from the landfill. The permitted area shall be policed on a routine basis to collect all scattered material.

(5) Scavenging is prohibited. Salvage and recycling operations shall not be allowed in conjunction with a landfill unless conducted in a sanitary manner.

(6) Landfill operators shall not allow uncontrolled public access which would expose the public to potential health and safety hazards. Days and time of operation shall be clearly posted.

(7) Landfill operators shall not allow a discharge of fill material, erosion sediment, leachate or other pollutants into waters of the Commonwealth that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under Section 402 of the Clean Water Act or that exceeds the water quality standards for surface waters established in 401 KAR 5:031.

(8) Final cover and closure.

(a) Those areas of a landfill that will receive no additional deposits of solid waste shall receive final cover within a time period specified by the department not to exceed one (1) year. A minimum final cover of two (2) feet shall be required in addition to any daily and interim cover required.

(b) Before earth-moving equipment is removed from the site, an inspection of the entire site shall be made by an authorized representative of the department to determine compliance with approved plans and specifications. The owner/operator shall submit a closure schedule based on the approved closure plan thirty (30) days prior to the last intended use of a solid waste facility.

(c) Final cover shall be graded as provided in the ap-

proved closure plan in a manner to prevent ponding. For a period of two (2) years, the surface of final cover shall be maintained at the proper elevation.

(d) Final cover shall be revegetated. After grading, final cover shall be fertilized, as necessary, seeded, and/or planted with legumes, perennial grasses or other vegetation according to the approved closure plan. The owner/operator may be required to repeat this process until adequate vegetation is obtained to insure soil stabilization.

(e) Other necessary corrective work required by the department, if any, shall be performed before the landfill is accepted as closed and financial responsibility funds released.

Section 4. Additonal Contents of Permit Application for a Residential Landfill. In addition to the requirements of Section 1 of this regulation, the complete application for residential landfills shall include but not be limited to the following additional information:

(1) A leachate contingency plan and specifications for collecting and treating or other control of leachate generated at the site.

(2) A methane gas contingency control plan and specifications shall be given for all sites within 500 feet of a residential, farm, commercial or industrial building.

(3) The plans shall include grades for proper drainage of each lift and a typical cross-section of each lift. Identical lift plans need not be repeated.

(4) The site plan shall show locations of personnel structures, toilet facilities, equipment maintenance areas, emergency communication devices, and all other structures within 1000 feet of the site.

(5) Groundwater monitoring plan to include location and specifications of wells, and monitoring parameters and schedule may be required by the department upon examination of geological aspects and other relevant factors. *The monitoring system shall be capable of detecting any contamination of the uppermost aquifer beneath the site.*

Section 5. Residential Landfill Design Requirements. In addition to the requirements in Section 2 of this regulation, residential landfills shall meet the following design requirements:

(1) Residential landfills shall not be located in the ten (10) year floodplain.

(2) A personnel shelter shall be designed to provide all-weather protection for site operating personnel.

(3) Leachate and methane gas contingency plans shall contain long-term plans for post-closure maintenance if not self-maintaining by design. If long-term maintenance is necessary, a performance bond may be required by the department before the release of financial responsibility closure funds can be approved.

(4) Groundwater monitoring, if required, shall contain a minimum of one (1) upgradient monitoring well and two (2) downgradient wells designed to detect the influence of the site on *underground drinking water sources* [usable groundwater aquifers].

(5) The concentration of methane generated by a *residential* [sanitary]landfill shall not exceed twenty-five percent (25%) of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components), and shall not exceed the lower explosive limit for methane at the property boundary.

(6) Residential landfills shall be designed to keep surface water flows and leachate separate.

(7) A minimum of four (4) soil boring holes for the first ten (10) acres, and one (1) for each five (5) additional acres shall be required. The "K" test results from a falling head permeability test or other approved permeability test shall be shown on the boring records. *There shall be available sufficient material to provide a layer of at least twelve (12) inches of 1 x 10^{-7} cm/sec. permeability or its equivalent under the waste and to provide a cap above the completed waste cells of six (6) inches of 1 x 10^{-7} cm/sec. permeability or its equivalent during final closure. An artificial liner or a greater thickness of more permeable material may be judged "equivalent" to twelve (12) inches of 1 x 10^{-7} cm/sec.* [The site must have at least twelve (12) inches of 1 times 10^{-7} cm/sec. material or equivalent under the waste, and six (6) inches of similarly impermeable material over the solid waste.]

Section 6. Residential Landfill Operating Requirements. In addition to the requirements in Section 3 of this regulation, residential landfills shall meet the following operating requirements:

(1) The following improvements shall be made before a residential landfill site is placed in operation.

(a) All-weather roads shall be provided within the site for vehicular movement. Separate areas within the site may be provided to allow for wet or dry weather operation and access. When necessary to prevent a dust nuisance, roads within the site shall be surfaced or treated.

(b) A shelter shall be provided which is accessible to operating personnel. The shelter shall be screened and provided with heating facilities and adequate lighting. Safe drinking water, sanitary handwashing and toilet facilities shall be available at or near the site.

(c) Arrangements shall be made for fire protection services. A fire protection district or other public fire protection service is acceptable. When such a service is not available, alternate arrangements shall be made.

(d) Adequate communication facilities shall be provided for emergency purposes.

(e) Operating equipment shall be on-site, capable of spreading and compacting the volume of waste received at the site, and capable of handling the daily and interim earthwork requirements. Backup equipment shall be available within twenty-four (24) hours of primary equipment breakdown.

(2) Residential landfill operations shall be in accordance with approved plans and the following additional requirements:

(a) Access to the site shall be permitted only when operating personnel are on the site.

(b) Dumping of solid waste on the site shall be confined to the smallest practical area.

(c) Unloading shall be supervised.

(d) Disease vector control measures in addition to daily cover shall be required by the department when necessary.

(e) Solid waste shall be spread within two (2) hours of depositing at the site, in shallow layers not to exceed two (2) feet in depth and compacted with appropriate equipment to the maximum practical density. The completed cell shall consist of the solid waste admitted and compacted during one (1) working day, regardless of overall height and volume. Unless excluded from the site, large bulky items shall be deposited in a manner approved by the department.

(f) A compacted layer of at least six (6) inches of soil shall be used to cover all exposed solid waste at the end of each working day. Surfaces that will not receive an additional depth of refuse or final cover within sixty (60) days

shall receive an interim layer of compacted cover of at least one (1) foot total. All daily and interim cover depths shall be maintained until the landfill is closed.

(g) The entire site including the area of the landfill being actively worked shall be maintained as necessary to prevent erosion or washing of the fill, and graded as necessary to drain rain water from the fill area and to prevent standing water. No surface water shall drain to the fill area.

(3) The owner/operator of a residential landfill must record a notice that will in perpetuity notify any potential purchaser of the property of the location and time of operation of the facility, and a statement that future disturbance of this area should only occur after an examination of potential gas or leachate migration problems. Such notice shall be recorded in accordance with state property law prior to acceptance of final closure of the landfill.

Section 7. Additional Contents of Permit Applications for Contained Landfills. In addition to the contents of Sections 1 and 4 of this regulation, the complete application for a contained landfill shall include but not be limited to the following:

(1) A description and specifications of an in-place groundwater monitoring system shall be given in the site plan and the narrative.

(2) A description and details of an in-place leachate collection and treatment system shall be given in the site plan and the narrative.

Section 8. Contained Landfill Design Requirements. In addition to the requirements in Sections 2 and 5 of this regulation, contained landfills shall meet the following requirements:

(1) A groundwater monitoring system approved by the department shall be in place. The monitoring plan shall consist of a minimum of one (1) upgradient and three (3) downgradient wells, and a monitoring schedule.

(2) A leachate collection and treatment or other control system approved by the department shall be in place.

(3) The design and specifications for special areas, if any, which will receive exempt hazardous waste, spill residues and other sludges and residual solid waste shall be approved by the department.

Section 9. Contained Landfill Operating Requirements. In addition to the requirements in Sections 3 and 6 of this regulation, contained landfills shall meet the following operation standards:

(1) The owner/operator of a contained landfill shall keep permanent records of the source, amount, characteristics and disposal location of any spill residues or small generator exclusion waste, and records as to the source and quantity of all other wastes disposed of at the contained landfill. This record shall be available for departmental inspection and shall be summarized in *a* [an annual] report[.] *and* [This annual report shall be] submitted *to the department* with the request for permit renewal.

(2) Receipt of exempt hazardous waste shall be limited to those wastes which meet the characteristics for hazardous waste but are not regulated by the state hazardous waste program because they are generated in small quantities (or otherwise exempted) having been determined as not harmful to public health or the environment consistent with the federal Resource Conservation and Recovery Act, as amended.

Section 10. Contents of Permit Application for Residual Landfills. This section applies to owners and operators of residual landfills that require solid waste site or facility permits. A person or state or federal agency desiring a residual landfill permit shall submit a complete application to the department. The application shall be on a form and presented in a manner as prescribed by the department, and shall include but not be limited to the following:

(1) Name, address, and phone number of applicant. If applicant is a government agency, corporation, company or partnership, include the name and address and phone number of process agent or other contact individual.

(2) Written certification from the County Judge/Executive or chairman of the local planning and zoning board that the site meets all local planning and zoning requirements.

(3) Approval of the local KRS 109 District Board (if one exists for the county in which the site is proposed).

(4) Name, address and phone number of the land owner.

(5) A copy of the deed to the property or copy of a lease showing a two (2) year right of re-entry following final closure of the facility if the landowner is not the applicant.

(6) A geological report of the site including but not limited to:

(a) A description of all soils at the site, in detail, including their suitability for the proposed site;

(b) A description of the surface and subsurface geology of the site, including an assessment of such geologic hazards as: seismic activity, stability, and karstic weathering; and

(c) A description of the hydrologic characteristics of the site, including surface and groundwater current use, potential use and flow.

(7) An original current U.S.G.S. topographic map that has the boundaries of the site clearly and accurately marked.

(8) The plans drawn to scale including a closure plan for the site which shall bear the seal of a professional engineer registered in Kentucky.

(9) The complete application narrative which shall include:

(a) A written description of the location of the site.

(b) A description of the sequence of operation.

(c) A list of all types of wastes which will be disposed at the landfill, the sources which generate the waste, the chemical and physical characteristics of industrial or special wastes, and the anticipated volume of each category of waste.

(d) The number of acres to be filled and the total number of acres to be permitted.

(e) A closure plan.

(10) Draft permit conditions for the duration of the facility to assurance compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1).

Section 11. Residual Landfill Design Requirement. Residual landfills shall meet the following design requirements:

(1) The engineering design must demonstrate compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1) and reflect a consideration of:

(a) The physical and chemical characteristics of the waste, including compatability, to be disposed of at the facility;

(b) Volume of waste;

(c) The climatic conditions in the area;
(d) The permeability of the liner material;
(e) The properties of the soil underlying the facility;
(f) Hydrogeological characteristics of the facility including quality, quantity, current use and direction of groundwater flow;
(g) The design of the facility leachate control system, runoff control system, and gas migration control, if required, must consider the physical and chemical characteristics of the waste. The climatic condition of the specific location, the volume of leachate or contaminated runoff that could be produced and available options for managing leachate or contaminated runoff collected at the facility; and
(f) The proximity to surface water.
(2) Residual landfill locations shall conform to applicable local zoning laws pursuant to KRS Chapter 100.
(3) The closure plan shall specify the function and design of the final cover for the facility. The closure design should assure compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1) and must reflect consideration of:
(a) The type and amount of waste in the facility;
(b) The mobility and expected rates of migration of the waste;
(c) The site location, topography and surrounding land use, and final site use;
(d) The climatic conditions in the area;
(e) The characteristics of the cover material including erodability, slope stability, final surface contours, thickness, porosity, permeability, slope, length of run of slope, and type of vegetation on the cover; and
(f) The geological and soil profiles and surface and subsurface hydrology of the site.

Section 12. Residual Landfill Operating Requirements. Residual landfills shall meet the following operational standards:
(1) The owner/operator of a residual landfill shall operate the facility in accordance with the requirements of KRS Chapter 224 and the regulations promulgated pursuant thereto, the conditions of the facility permit issued by the department, and the operational plan filed with and approved by the department.
(2) The owner/operator of a residual landfill shall operate the facility in such a manner as to assure compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1).
(3) The owner/operator of the facility must inspect the site and operation at a sufficient frequency to assure compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1).
(4) Closure of the residual landfill.
(a) A residual landfill must be closed in a manner that will assure compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1). The closure shall include the placement of a final cover over the facility as specified in the approved design of the site.
(b) Any necessary corrective work required by the department shall be performed before the residual landfill is accepted as closed and financial responsibility funds released.
(c) The owner/operator of a residual landfill must record a notice that will in perpetuity notify any potential purchaser of the property of the location, and time of the operation of the facility and nature of the waste placed in the site and a caution against future disturbance of the area. Such notice shall be recorded in accordance with state property law prior to acceptance of final closure of the landfill.
(5) Post-closure maintenance. A residual landfill shall be maintained for two (2) years following the closure of the site in a manner that complies with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1), and in accordance with any approved post-closure monitoring and maintenance plan approved by the department.
(6) The department may place additional requirements on the owner/operator of a residual landfill in addition to those stated where necessary to insure compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1).

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:101. Standards for landfarming facilities.

RELATES TO: KRS 224.255. 224.855, 224.880
PURSUANT TO: KRS 13.082, 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.017 and the waste management provisions of KRS Chapter 224 require the department to adopt regulations for the disposal of solid waste. This regulation sets forth the permit application requirements and general design and operating requirements for landfarming facilities.

Section 1. Contents of Permit Applications. A person or state or federal agency desiring a landfarming facility permit shall submit a complete application to the department. Such applications shall be on a form and presented in a manner prescribed by the department, and shall include, but not be limited to the following:
(1) Names, addresses and telephone numbers of the landowner, applicant and waste sources. If the applicant is a government agency, corporation, company or partnership, include the name and address of process agent or other contact individual.
(2) Location and address of the proposed landfarming site.
(3) A copy of the deed to the property and a copy of the proposed lease if the landowner is not the applicant.
(4) Written certification from the county judge/executive or chairman of the local planning and zoning board that the site meets all local planning and zoning requirements.
(5) A soils analysis interpreted for landspreading including:
(a) A physical description of the soil including type, texture, series, erodibility, and permeability in the most restrictive layer within five (5) feet of the surface.
(b) A chemical analysis of the soil including pH, cation exchange capacity (CEC), and *an analysis for fertilizer recommendations* [a fertilizer analysis].

(c) Written recommendation of the county agricultural extension agent or comparable authority for fertilizer requirements of the proposed site based on soil tests.

(6) A physical and chemical analysis of the waste to be disposed at the site including moisture content, nutrient levels, pH, heavy metals content, polychlorinated biphenyls (PCB's) present, and any other toxic organics.

(7) A U.S. Soils Conservation Service soils map or the equivalent, an original, current U.S.G.S. topographic map showing location of the permit area; and an enlarged, current U.S.G.S. topographic map at a minimum scale of one (1) inch to 400 feet showing the following:

(a) Property lines and boundaries of the proposed site to be covered by the permit.

(b) Buffer zones and proposed application area.

(c) Access and proposed or existing internal roads.

(d) Surface water within 1000 feet of the proposed site boundary including boundaries of the 100-year floodplain.

(e) All existing man-made features within 1000 feet of the proposed site boundary including structures, public roads, utilities and water wells.

(f) Proposed structures including storage buildings or facilities, sheds and sanitary facilities.

(g) Proposed run-off/run-on, and erosion control.

(h) Existing or proposed access control.

(8) The complete application narrative which shall include:

(a) Source and total estimated quantity of sludge or other residual waste to be disposed at the proposed facility.

(b) Projected capacity including number of acres to be permitted and estimated life of the facility and projected application period in years.

(c) A brief description of the waste including origin, method of stabilization, composition and any other pertinent information.

(d) Application method(s) including a description of the process, equipment to be used, labor required and waste storage holding provisions during adverse weather conditions or equipment breakdown.

(e) Application rates and schedules, including depth to which waste will be spread or quantity to be injected, in terms of quantity per acre per year, and *maximum* [a] liquid application rate in terms of volume per unit area per hour.

(f) Site description including pervious waste applications to the site, future use of the land, proposed crops or vegetation, slopes, proximity of surface waters, water wells and man-made features.

(g) Geology of the proposed site including depth to bedrock, names and descriptions of geologic formations and geologic characteristics including karst features.

(h) Description of run-off and run-on control provisions, access control provisions and proposed soil amendments, if necessary.

(i) Proposed monitoring program for waste, soil, groundwater and surface water quality.

[(j) The proposed revegetation program, including provisions for liming, fertilization, seed types and schedule, erosion control during early growth period and interim cover vegetation program.]

(j) [(k)] A detailed plan for closure of the site including closure cost estimates.

Section 2. General Design Requirements. (1) Facility locations shall conform to applicable local zoning laws pursuant to KRS Chapter 100.

(2) Facilities in the 100-year floodplain shall be designed and operated to prevent the washout of wastes. Further, they shall not restrict the flow of the 100-year floodplain or reduce the temporary water storage capacity of the floodplain or increase the likelihood of flooding [downstream from the site]. Where available, empirical data shall be used to determine the frequency of flood exposure. Where data is not available, the frequency of flood exposure shall be established by the unit hydrograph technique.

(3) Surface contours shall minimize run-off/run-on onto or through the operational or completed area of the facility. Surface storm water features shall be designed for 100-year twenty-four (24) hour storm flows.

(4) The applicant shall provide such additional information as the department deems necessary for a determination regarding the issuance of a permit.

(5) Other requirements may be stipulated according to the "Guidelines for Landspreading of Solid Waste" published by the department *in order to ensure compliance with the "Environmental performance standards" in 401 KAR 2:055, Section 6(1).*

Section 3. General Operating Requirements. (1) The facility operation shall be under the direction of a permitted operator who shall be on the site during operating hours.

(2) No hazardous wastes shall be discharged to or placed in a landfarming facility.

(3) Facilities shall not allow access which might expose the public to potential health and safety hazards. All facilities shall be restricted access and have an entrance gate that shall be locked during closing hours and whenever an attendant is not present. Suitable warning signs shall be posted near public access points indicating the type of operation and hazards associated with it, along with the name and address of a contact person.

(4) Wastes shall not be landspread on frozen, ice-covered, or water-saturated soil.

(5) Facilities at which food-chain crops are or will be grown shall comply with the cadmium and PCB application limits in *the "Environmental performance standards" in 401 KAR 2:055, Section 6(1)(h) and (i)* ["Application to land used for the production of food-chain crops," 40 CFR 257.3-5, incorporated herein by reference], and other heavy metal limits as prescribed by the department.

(6) No raw or unstabilized *biologically treated* sludge shall be landspread.

(7) Facilities which accept sewage sludge and/or septic tank pumpings shall comply with *paragraphs (a), (b) and (c):* ["Sewage sludge and septic tank pumpings," 40 CFR 257.3-6(b), incorporated herein by reference.]

(a) Sewage sludge that is applied to the land surface or is incorporated into the soil is treated by a Process to Significantly Reduce Pathogens (as described in the Guidelines for Landspreading Solid Waste) prior to application or incorporation. Public access to the facility is controlled for at least twelve (12) months, and grazing by animals whose products are consumed by humans is prevented for at least one (1) month. (These provisions do not apply to sewage sludge disposed of by a trenching or burial operation.)

(b) Septic tank pumpings that are applied to the land surface or incorporated into the soil are treated by a Process to Significantly Reduced Pathogens prior to application or incorporation, unless public access to the facility is controlled for at least twelve (12) months and unless grazing by animals whose products are consumed by humans is prevented for at least one (1) month. (These provisions do

not apply to septic tank pumpings disposed of by a trenching or burial operation.)

(c) Sewage sludge or septic tank pumpings that are applied to the land surface or are incorporated into the soil are treated by a Process to Further Reduce Pathogens prior to application or incorporation. Such treatment is not required if there is no contact between the waste and the edible portion of the crop; however, in this case the waste is treated by a Process to Significantly Reduce Pathogens prior to application; public access to the facility is controlled for at least twelve (12) months; and grazing by animals whose products are consumed by humans is prevented for at least one (1) month. If crops for direct human consumption are grown within eighteen (18) months subsequent to application or the solid waste and the edible portion of the crop; however, in this case the solid waste is treated by a Process to Significantly Reduce Pathogens prior to application; public access to the facility is controlled for at least twelve (12) months; and grazing by animals whose products are consumed by humans is prevented for at least one (1) month. If crops for direct human consumption are not grown within eighteen (18) months of application or incorporation, the requirements of paragraphs (a) and (b) of this section apply.

(8) Schedules and rates of waste application and schedules of soil and waste monitoring shall be approved by the department.

(9) Landspreading facilities shall not cause a discharge of leachate or pollutants into waters of the Commonwealth that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under Section 402 of the Clean Water Act, as amended, or that exceeds the water quality standards for surface waters established in 401 KAR 5:031.

(10) The owner/operator shall maintain records of schedules and rates of waste application, all testing and monitoring records, and any other pertinent information as required by the department.

(11) Other requirements may be stipulated according to the "Guidelines for Landspreading of Solid Waste" published by the department *in order to ensure compliance with "Environmental performance standards" in 401 KAR 2:055, Section 6(1).*

Section 4. Applicability of Landfarming Facility Permit. *(1) Operators of existing landfarming facilities shall register their intent to apply for a landfarming permit within ninety (90) days of the effective date of this regulation on a form as prescribed by the department containing but not limited to:*

(a) Name, address and phone number of applicant;

(b) Location of existing facility; and

(c) Source(s) of sludge.

(2) Operators of existing landfarming facilities shall submit a complete application to the department within 180 days of the effective date of these regulations.

(3) Existing landfarming facilities registered with the department are hereby granted a permit by rule to operate for a period not to exceed one (1) year from the effective date of these regulations.

(4) [(1)] Permits shall be issued to the operator and are not necessarily limited to apply to one (1) site. Additional sites may be added through permit modification procedures *if the modification does not exceed fifty (50) percent of the previously permitted acreage.*

(5) [(2)] Landspreading of limited quantities of waste *determined by the department* [deemed] to constitute beneficial reuse for agricultural purposes may occur without a permit if, upon request, a variance is granted by the department.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:105. Solid waste disposal fees.

RELATES TO: KRS 224.855, 224.884
PURSUANT TO: KRS 13.082, 224.033(20)
NECESSITY AND FUNCTION: KRS 224.033(20) states that the department may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. The purpose of this regulation is to establish a fee schedule for the issuance and modification of solid waste disposal permits or variances.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each solid waste site or facility required to apply for a permit, permit renewal or exemption except publicly-owned facilities.

Section 2. Filing Fees. (1) Any owner or operator may submit a preliminary application for a solid waste facility permit, permit modification, or variance for initial review without payment of any fee.

(2) Any owner or operator who submits an application for a permit to construct shall include with the application a [certified] check or money order in the amount of $1,000 payable to the Kentucky State Treasurer. *This fee does not apply to landfarming applications.*

(3) Any owner or operator who submits an application for a permit to operate shall include with the application a [certified] check or money order in the amount of the filing fee, assessed in accordance with the provisions set forth in subsection (4) of this section, payable to the Kentucky State Treasurer.

(4) Filing fee for *the original* permit to operate shall be determined by the following schedule:

Solid Waste Facility Type	Fee
Contained landfill	$800
Residual landfill	*$500*
Residential landfill	$500
Land farming facility	$500
Inert landfill	$200

(5) Any owner or operator who submits an application for solid waste facility permit exemption, variance, major modification or renewal shall include with the application a [certified] check or money order in the amount of $250 payable to the Kentucky State Treasurer. Any request for permit modification or issuance of a variance that does not require prior administrative review and analysis before ap-

proval can be granted will receive a letter of acknowledgement and will not require the payment of a fee.

(6) Filing fees are not refundable if a permit or exemption is denied or an application is withdrawn *after the review is initiated.*

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
Amended After Hearing

401 KAR 2:111. Certification for operators of solid waste disposal facilities.

RELATES TO: KRS 224.880, 224.882
PURSUANT TO: KRS 13.082, 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.882 requires the department to promulgate regulations that establish standards and a certification program for operators of waste disposal sites or facilities. These standards provide programs for education, testing, and certification of facility operators of sanitary landfills.

Section 1. Definitions. The following are definitions as used in this regulation: (1) *"Category of sanitary landfill" means inert, residual, residential or contained landfills and does not include landfarming.* ["Classification" means the grading of operator levels by type of primary responsibility for purposes of training, testing and certifying by the department.]

(2) "Certificate" means a certificate of competency issued by the department stating that the operator has met all requirements for certification [for the specific operator classification].

(3) *"Landfill operator" means the individual or individuals having primary responsibility for the management and operational decisions about the daily operation of a sanitary landfill.* ["Operator" means the person having the primary responsibility for the operation of a sanitary landfill or any person with whom rests ultimate decision-making authority for any activity which may significantly affect the operation of the solid waste site or facility.]

[Section 2. Operator Classifications. Two (2) operator classifications are established for purpose of this regulation as follows: (1) The "equipment operator" shall be the individual or individuals having primary responsibility for the physical operation of equipment at the sanitary landfill which is used for excavation, earth moving, spreading, compacting or landspreading of wastes and application of daily cover; as well as equipment used for processing waste on site prior to final disposal.]

[(2) The "site operator" shall be the individual who has primary responsibility for the management and operational decisions pertaining to the day-to-day operation of a sanitary landfill.]

Section *2.* [3.] General Provisions. (1) Each *residential and contained* [sanitary] landfill shall have *at least one (1)* [a certified equipment operator and a] certified *landfill* [site] operator. [One (1) operator can satisfy this requirement if that operator is certified as both a site operator and an equipment operator.]

(2) The department may require a certified landfill operator at inert or residual landfills as a permit condition. The decision to require this permit condition will be based on the characteristics of the waste stream, and the experience and qualifications of the landfill operator.

(3) [(2)] In the event the certified *landfill* [site] operator is not physically at the facility during operating hours, the operator must leave adequate notice of how contact can be made and be reasonably available.

[(3) Certified equipment operators who desire to become certified site operators must first satisfactorily complete the requirements for the site operator classification before a new certificate is issued.]

(4) In carrying out its responsibilities the department will examine the qualifications of applicants for certification and maintain records of [operator qualifications,] certification and a register of certified operators.

Section *3.* [4.] Application for Certification. (1) An operator desiring to be certified shall file an application on a form provided by the department at least thirty (30) days before beginning training for a scheduled examination.

(2) The department shall assemble all information needed to determine eligibility of the applicant for examination and certification.

(3) The department shall review applications and supporting documents, determine the eligibility of the applicant for examination and notify the applicant of the notification.

(4) No person shall be eligible for examination or certification unless that person completes the appropriate training class or classes provided by the department, unless an alternative training program is accepted by the department.

Section *4.* [5.] Training Classes and Examinations. (1) The department will provide training classes *for the landfill operator* [applicable to each operator classification].

(2) Training sessions will be held at least annually at places and times set by the department. The last day of each training session will be set aside for the purpose of examinations to determine the knowledge and ability of the applicant.

(3) Certification shall be conditioned on successful passage of a written examination, unless an alternative examination process is accepted by the department.

(4) Separate examinations will be prepared to cover basic differences in the duties and responsibilities for *the operation of each category of sanitary landfill* [each operator classification].

(5) Applicants who fail to pass an examination may reapply for the examination at a regularly scheduled examination or by appointment with the department.

(6) In the event an applicant fails to meet the requirements for certification, he may petition the department for a one (1) time only "temporary hardship certification." The department will then conduct an informal hearing at which evidence shall be presented by the applicant to support his hardship request. Each temporary hardship certification request shall be considered on a case-by-case basis under the following guidelines:

(a) Failure of the applicant to receive certification would

leave a significant area of the state without adequate waste disposal service.

(b) The applicant has shown a good faith effort by attending all required training sessions and met all requirements except the examination requirement.

(c) The applicant has shown, through departmental inspections, a capability for satisfactory operation of the solid waste site or facility.

Section *5.* [6.] Issuance of Certificates. (1) Upon passage of the examination the department will issue a certificate to the applicant designating competency. This certificate will indicate the *category of sanitary landfill* [classification] for which the operator is qualified.

(2) *Landfill* [Equipment] operators shall be recertified every five (5) years[, and shall renew the certification annually].

[(3) Site operators shall be recertified every two (2) years and shall renew the certification in the intervening year.]

[(4) Certificates of operators in good standing will be renewed annually, upon making a written application to the department.]

(3) [(5)] Certificates will be issued to holders of certificates of another state if the training requirements of the issuing state are deemed comparable and if the operator passes the departmental examination.

(4) [(6)] Certificates shall be valid only so long as the holder uses reasonable care and judgment in the performance of an operator's duties. No certificate will be valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

(5) [(7)] The certificates of operators who terminate their employment at a sanitary landfill will remain valid if [renewed and] recertified.

(6) [(8)] Certificates will be of such size and nature that they may be carried in a billfold and shall be carried on the person of each certified operator during working hours at the facility.

(7) [(9)] Certification of all current operators shall be accomplished *within twelve (12) months of the effective date of these regulations* [by July 1, 1982], and certification of operators who are hired after the effective date of this regulation shall be accomplished within one (1) year of assuming *the* [primary] responsibility *of landfill operator.*

Section *6.* [7.] Revocation of Certificate. The department may revoke the certificate of an operator, following a departmental hearing, when it determines that the operator has practiced fraud or deception, or that the operator is incompetent to perform an operator's duties.

Section *7.* [8.] Operator Qualifications: [Experience,] Education and Equivalencies. (1) Operators shall be examined by the department as to education[, experience,] and knowledge as related to the appropriate *category of sanitary landfill* [classification].

(2) [Equipment operators shall have completed one (1) year of acceptable operational experience at a sanitary landfill:] *Landfill* [site] operators shall have completed high school (by graduation or by obtaining an equivalency certificate) [and a minimum of two (2) years of acceptable experience in management of or primary responsibility for the operation of a sanitary landfill].

(3) *If a landfill operator does not meet the requirements of subsection (2) of this section the department may consider the number of years of experience in managing a category of sanitary landfill in determining eligibility for examination.* [Alternate formulations combining education and experience may be accepted by the department if deemed to be equivalent to the established standard. In evaluating qualification of operators and experience/education equivalencies, the department will be guided by the following:]

[(a) Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the department or other agencies having appropriate responsibilities for supervising solid waste management facilities.]

[(b) Partial credit may be given for operating experience in related fields.]

[(c) Where applicable, education may be substituted for a portion of experience requirements. One (1) year of college work (limited to approved curricula in environmental engineering, environmental technology or related scientific fields) may be considered as equivalent to a maximum of two (2) years of experience in management of or primary responsibility for the operation of a solid waste site or facility.]

[(d) Where applicable experience in excess of the experience requirement may be substituted for education. One (1) year's experience may be considered as equivalent to a maximum of two (2) years of high school.]

Section *8.* [9.] Permit Condition. Every sanitary landfill requiring a permit shall be operated by an operator(s) certified pursuant to this regulation. *Pursuant to Section 2 of this regulation,* maintaining certified operator(s) shall be considered a permit condition, and the landfill permit may be revoked, or penalties for permit violations sought as appropriate, upon violation of the requirements and duties established by this regulation.

Section *9.* [10.] Fees. (1) Fees for certification [or recertification] shall be thirty dollars ($30).

[(2) Fees for annual renewal of certification shall be five dollars ($5).]

(2) [(3)]Fees shall accompany applications and wil not be returned to those who do not qualify for a certificate.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:010. Definitions.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation provides for the defining of certain essential terms used in Title 405, Chapter 30.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 405, Chapter 30 shall have the meanings given in this regulation.

(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned oil shale mines, waste disposal areas, and reclamation operations or from other affected areas.

(2) "Acid-forming materials" means earth materials that *have a pH of less than 4.5 or that* contain sulfide minerals or other materials which, if exposed to air, water, weathering, or *microbiological* [biological] processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish and wildlife, vegetation soils, or other resources protected by KRS Chapter 350 may be adversely impacted by an oil shale operation.

(4) "Affected area" means any land or water upon which surface oil shale operations are conducted or located, and the land or water which is located above or *within* [below] underground mine workings.

(5) "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(6) "Applicant" means any person seeking a permit from the department to conduct oil shale operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the department for a permit.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water *in sufficient quantities for a specific use.*

(9) "Atmospheric water" means water that has traveled back to the atmosphere through evaporation from surfaces and transpiration through the porous outer barriers of plants and animals.

(10) [(9)] "Barrel" means the unit of liquid volume for the petroleum and related products equal to forty-two (42) gallons (158.9 liters).

(11) [(10)] "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event will result in contributions of suspended solids in excess of requirements set by applicable Kentucky or federal laws; and minimize, to the extent possible, disturbances and adverse impact on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with applicable laws and regulations. The department shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and Chapter 224 and regulations promulgated pursuant thereto.

[(11) "Capital assets" means those assets such as land, buildings and equipment held for use in the production or sale of other assets or services.]

(12) "Borehole" means a narrow, cylindrical hole drilled into the ground, usually for the purpose of geological or hydrological investigation and for placement of charges for blasting operations.

(13) "Casing" means a metal pipe or tube used as lining for water, oil or gas wells.

(14) [(12)] "Combustible material" means material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(15) [(13)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(16) [(14)] "Complete application" means an application for a permit, which contains all information required under Title 405, Chapter 30.

(17) "Corehole" means a cylindrical sample of rock or other strata obtained through the use of a hollow drill bit which cuts and retains a section of rock or other strata penetrated.

(18) [(15)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(19) [(16)] "Department" means the Department for Natural Resources and Environmental Protection.

(20) [(17)] "Deposit" means a consolidated or unconsolidated material that has accumulated by a natural process or agent.

(21) [(18)] "Developed water resources land" means land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, recreation, and water supply.

(22) [(19)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spent shale, and mining or processing waste is placed during oil shale operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by Title 405, Chapter 30 is released.

(23) [(20)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(24) [(21)] "Downslope" means the land surface below the projected outcrop of the lowest bench elevation from which oil shale is being mined.

(25) "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters.

(26) [(22)] "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(27) "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

or ice and which has a channel that is always above the local water table.

[(23) "Exploratory well" means a well drilled to assess oil or gas in an unproved area or to find new reserviors, resources or collect geological data.]

(28) [(24)] "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(29) [(25)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(30) [(26)] "Fragile lands" means geographic areas containing *significant* natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by oil shale operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, valuable habitats for fish and wildlife, critical habitats for endangered or threatened species of animals and plants, wetlands, environmental corridors containing concentrations of ecologic and aesthetic features, state-designated nature preserves and wild rivers, areas of recreational value due to high environmental quality, buffer zones around areas where oil shale operations are prohibited, and important, unique or highly productive soils or mineral resources.

(31) "Fragipan" is a loamy, brittle, subsurface horizon low in porosity and content of organic matter and low or moderate in clay but high in silt or very fine sand. A fragipan appears cemented and restricts roots. When dry, it is hard or very hard and has a higher bulk density than the horizon or horizons above. When moist, it tends to rupture suddenly under pressure rather than to deform slowly.

(32) [(27)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion or mechanical operations.

(33) "Government-financed construction" means construction funded fifty percent (50%) or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds equivalent, or in-kind payments.

(34) [(28)] "Grazing land" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(35) [(29)] "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(36) [(30)] "Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(37) [(31)] "Highwall" means the face of exposed overburden and/or oil shale in an open cut of a surface oil shale mining operation.

(38) [(32)] "Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed on a State or National Register of Historic Places, National Historic Landmarks, archaeological and paleontological sites, cultural or religious districts, places, or objects.

(39) [(33)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(40) [(34)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 and applicable regulations in an oil shale operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(41) "Impermeable" means materials which exhibit a coefficient of permeability (K) value less than 10-6 cm/sec.

(42) [(35)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(43) [(36)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to railroads, roads, and other transportation facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(44) [(37)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of oil shale. The term includes, but is not limited to, in situ gasification, in situ leaching, solution mining, borehole mining, and fluid recovery mining.

(45) [(38)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year, or;

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(46) [(39)] "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(47) [(40)] "Leaching" means the *removal of soluble*

constituents from a solid substance by the action of a percolating liquid [dissolving, by liquid solvent of soluble material, from its mixture with an insoluble solid].

(48) [(41)] "Leachate" means the liquid that has passed through or emerged from any *solid* [waste] and contains soluble, suspended or miscible materials removed from such *solids* [wastes].

(49) [(42)] "Logging" means the measurement of physical properties of the strata penetrated by a borehole; accomplished by lowering instruments down the hole and recording measurements at the surface.

(50) [(43)] "Monitoring" means the collection of environmental, scientific, or engineering data by either continuous or periodic sampling methods.

(51) [(44)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(52) [(45)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of oil shale operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(53) [(46)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(54) [(47)] "Occupied dwelling" means any building that is being used on a regular or temporary basis for human habitation at the time of application for permit.

(55) [(48)] "Oil shale" *is a laminated, sedimentary rock which contains refractory, insoluble organic material (kerogen) that can be treated by pyrolysis to yield liquid fuels* [means any argillaceous, carbonate or siliceous sedimentary rock which, through distillation chemical processes, other methods or means will yield shale oil or other substances].

(56) [(49)] "Oil shale exploration" means the field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality, quantity, and composition of overburden and oil shale of an area.

(57) [(50)] "Operations" means oil shale extraction experimentation, exploration, processing, waste disposal and reclamation activities, all of the premises, facilities, roads and equipment used in the mining and processing of oil shale from a designated area, or removing overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit or the activity to facilitate or accomplish the extraction or removal of oil shale.

(58) [(51)] "Operator" means any person, partnership, or corporation engaged in oil shale extraction, exploration, processing, waste disposal, reclamation or related operations which includes but is not limited to those who remove or intend to remove oil shale or shale oil from the earth, or who remove overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit, or those who engage in oil shale processing. *Government-financed construction activities in which oil shale is incidentally extracted are excluded from this definition.*

(59) [(52)] "Outslope" means the face of the spoil, waste, or embankment sloping downward from the highest elevation to the toe.

(60) [(53)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies an oil shale deposit, excluding topsoil and vegetation.

(61) [(54)] "Pastureland/hayland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(62) [(55)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(63) [(56)] "Permanent diversion" means a diversion remaining after oil shale mining, processing, waste disposal, reclamation or related operations are completed which has been approved for retention by the department and other appropriate Kentucky and federal agencies.

(64) [(57)] "Permit" means written approval issued by the department to conduct oil shale operations.

(65) [(58)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by any oil shale operations under a particular permit.

(66) [(59)] "Permittee" means any person, partnership, or corporation engaged in oil shale extraction, exploration, processing, waste disposal, reclamation or related operations which includes, but is not limited to, those who remove or intend to remove oil shale or shale oil from the earth, or who remove overburden for the purpose of determining the location, quality or quantity of a natural oil shale deposit or those who engage in oil shale processing. In all cases a permittee shall be considered an operator.

(67) [(60)] "Person" means an individual, partnership, association, society, joint venture, joint stock company, firm, company, *government agency, utility,* corporation, or other business organization.

(68) [(61)] "pH" means *the negative logarithm (base 10) of the hydrogen ion concentration of a solution and is* a measure of the acidity or alkalinity of a solution.

[(62) "Pilot project" means any oil shale extraction or processing operation which disturbs less than twenty-five (25) acres annually or has a shale oil production capacity equal to or less than 1,000 barrels per day, whichever is smaller.]

(69) [(63)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a specified period of time.

(70) [(64)] "Processing" means the crushing, preparation, distillation, refining, upgrading, *retorting,* or any other operation used in the extraction of shale oil or other products from oil shale.

(71) [(65)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(72) [(66)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(73) [(67)] "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(74) [(68)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(75) [(69)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and

runoff to infiltrate and reach the zone of saturation[, water table or an aquifer].

(76) [(70)] "Reclamation" means the reconditioning and restoration of areas affected by any oil shale operation as required by KRS Chapter 350, Chapter 224 and all regulations promulgated pursuant thereto under a plan approved by the department.

(77) [(71)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, hunting, and other undeveloped recreational uses.

(78) [(72)] "Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(79) [(73)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(80) [(74)] "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(81) [(75)] "Residential land" means tracts used for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities which is adjacent to or an integral part of these operations such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(82) [(76)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(83) [(77)] "Sedimentation *pond* [structure]" means a primary sediment control *area* [structure] designed, constructed and maintained in accordance with 405 KAR 30:330 and including but not limited to a barrier, dam, excavation or diversion which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(84) [(78)] "Shale fines" means those shale particles which have been produced through handling, crushing, transporting, and other associated processes [and because of their size are not utilized for resource recovery].

(85) [(79)] "Shale oil" *is a volatile and condensible crude-oil-like material produced upon pyrolysis or oil shale or kerogen from oil shale* [means the liquid hydrocarbon obtained from the distillation or other processing methods of kerogen in oil shale].

(86) [(80)] "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the department's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(87) [(81)] "Slurry" means a suspension of pulverized solid in a liquid.

(88) [(82)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(89) [(83)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

(a) "A horizon." The uppermost soil layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "B horizon." The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(90) [(84)] "Soil survey" means a field and other investigation resulting in a map showing the geographic distribution of different kinds of soil and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(91) [(85)] "Spent shale" means the solid waste material after oil shale has been subjected to a process (chemical, mechanical, or thermal) to recover the oil and gas contained in the raw material.

(92) [(86)] "Spoil" means overburden that has been removed during oil shale operations.

(93) [(87)] "Stabilize" means to control movement of soil, spoil piles, spent shale, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as providing a protective surface coating.

(94) "Surber" is a method of taking quantitative bottom samples of streams. The surber covers one (1) square foot and is designed for use in flowing waters of shallow streams and cannot be used satisfactorily in fast water over eighteen (18) inches in depth or in bottoms where the substrata is composed of large rubble and boulders.

(95) "Surface water" means water, either flowing or standing, on the surface of the earth.

(96) [(88)] "Suspended solids" [or nonfilterable residue], expressed as milligrams per liter, means organic or inorganic materials carried or held *in the liquid phase* in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses.

(97) [(89)] "Temporary diversion" means a diversion of a stream or overland flow which is used during oil shale operations and not approved by the department to remain after reclamation as part of the approved postmining land use.

(98) [(90)] "Topsoil" means the A horizon soil layer.

(99) [(91)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(100) [(92)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by oil shale operations, which contains a substance that through chemical or *microbiological* [biological] action, or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(101) [(93)] "Undeveloped land" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(102) [(94)] "Valley fill" means a fill structure consisting of any material [other than hazardous waste and organic material] that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(103) [(95)] "Waste" means:

(a) "Mining waste" means those wastes which are generated during and incident to the mining and extraction of oil shale and related overburden from the earth. Such wastes shall include, but not be limited to, woody vegetation, spoil, lean shale, grease, lubricants, paints, flammable liquids, garbage, abandoned machinery, and lumber resultant to the mining operation.

(b) "Processing wastes" means any solid, liquid, semisolid, slurry or sludge material (excluding spent shale) produced by any physical, chemical, mechanical, or thermal process which is considered of low economic value. Such wastes shall include but not be limited to raw shale fines, scrubber sludges, tank bottoms, filter cakes, and spent catalysts.

(c) "Spent shale" means the solid waste material left after oil shale has been subjected to processing (chemical, mechanical, or thermal) to remove the oil and gas contained in the raw material.

(104) [(96)] "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

JACKIE A. SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:020. General provisions.

RELATES TO: KRS 151.250, 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation set forth general provisions which apply in this chapter with regard to applicability, conflicting provisions, severability, obligations of permittees, technology assessment, reporting requirements, *and* hearings[, provisions for citizen suits, and petitions for rulemaking].

Section 1. Applicability. The regulations in Chapter 30 of Title 405 shall apply to any oil shale operation conducted on or after the effective date of these regulations on land containing oil shale deposits and any other lands used, disturbed, or redisturbed in connection with or to facilitate such operations *or to comply with the requirements of KRS Chapter 350 and the requirements of this chapter except:* [or any other activity related to oil shale development. The extraction of oil shale by a land owner for his own agricultural related use from land owned or leased by him is exempt from the requirements of this chapter.]

(1) The extraction of oil shale by a land owner for his own noncommercial use on land owned or leased by him; and

(2) The extraction of oil shale as an incidental part of government-financed construction. Provided, however, that any person extracting oil shale incidental to government financed construction shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Section 2. Conflicting Provisions. The provisions of Chapter 30 of Title 405 are to be construed as being campatible with and complimentary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 3. Severability. In the event that any provision or regulation in Chapter 30 of Title 405 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. Obligations of Persons Engaged in Oil Shale Operations. (1) General obligations:

(a) No person shall engage in an oil shale operation or related activity without having obtained from the department a valid permit covering the area of land to be affected.

(b) A person engaged in any oil shale operation shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, shale, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to Chapter 30 of Title 405, or place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to this chapter.

(c) A person engaged in an oil shale operation shall not engage in any activities which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(d) A person engaged in an oil shale operation shall not

engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(e) Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in an oil shale operation shall immediately notify the person or persons whose life, health, or property are so threatened, shall take any and all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the department, to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in an oil shale operation pursuant to this paragraph shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(f) Compliance with the requirements of this chapter does not relieve any person engaged in an oil shale operation from compliance with other applicable regulations of the department.

(2) Sedimentation structures:

(a) The responsible design engineer shall determine the structure hazard classification of all sedimentation structures whether new or proposed reconstructed structures according to the classification descriptions in paragraph (b). For structures classified (B)—moderate hazard or (C)—high hazard, the person engaged in an oil shale operation shall obtain a permit from the department, Division of Water, pursuant to KRS 151.250, and regulations adopted pursuant thereto, prior to construction or reconstruction.

(b) Structure hazard classifications are as follows:

1. The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

a. Class (A); low hazard: Structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

b. Class (B); moderate hazard: Structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruption of use or service of relatively important public utilities.

c. Class (C); high hazard: Structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

2. The responsible engineer shall determine the classification of the structure after considering the characteristics at the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria may be exceeded as determined by the department. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the drawings.

3. When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of *the upstream* [each] structure.

[Section 5.Maps and Reports. (1) Map. Any person engaged in an oil shale operation shall include in the permit application an accurate map of the permit area at a scale of 1:6000 or larger. The detail of information on the map shall be as specified by the department.]

Section 5. [(2)] Reports. A person engaged in an oil shale operation shall submit such data, reports, documentation, certifications, or other information as the department may require, or as may be required by KRS Chapter 350 and regulations adopted pursuant thereto. The department may impose any monitoring or data collection requirements upon the permittee as are deemed necessary for the department to adequately assess the possible adverse environmental impacts of such activities. Such information shall be submitted at intervals and in a format specified by the department.

[Section 6. Extraction and Processing Operations. (1) Any person engaged in an oil shale operation shall demonstrate to the department utilizing necessary technical, scientific, and engineering data the impacts their operation will have on the environment. Such data used in the justification shall have been generated on eastern shales having comparable characteristics to the shales in the location of the proposed project area.]

[(2) In the event the applicant cannot demonstrate to the department's satisfaction the extent and magnitude of possible adverse environmental impacts of the facility, its size shall be limited to a total annual surface disturbance of twenty-five (25) acres or a production capacity of 1000 barrels per day whichever is smaller. Total surface disturbance shall include, but not be limited to, areas upon which mining activities occur or where such activities disturb the natural land surface, lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site and for haulage, lands accommodating conveyor systems, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, spent shale banks, spent shale disposal sites, dumps, stockpiles, overburden piles, spoil piles, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.]

[(3) The applicant shall monitor the operation of such projects and collect such data as the department may require pursuant to 405 KAR 30:160.]

[(4) Data or information submitted to the department by a person engaged in an oil shale operation shall be submitted on a schedule and in a format specified by the department.]

Section *6.* [7.] Nothing in this chapter shall be construed to relieve the permittee of any responsibility for any of the obligations of 405 KAR Chapter 30.

Section 7. Hearings. (1) The provisions of KRS 224.081

shall apply to any departmental order or determination made pursuant to 405 KAR Chapter 30.

(2) Hearings shall be conducted pursuant to KRS 224.083 and appeals may be taken from any final order of the department as allowed by KRS 224.085.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:040. Amount and duration of performance bonds.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth specified criteria upon which to base determination of bond amounts and requires certain periods of liability during which bonds must remain in effect.

Section 1. Determination of Bond Amounts. The standard applied by the department in determining the amount of performance bond shall be the estimated cost to the department if it had to perform the reclamation, restoration and abatement work required of a person who conducts oil shale operations under KRS Chapter 350, all other applicable statutes, and the regulations promulgated pursuant thereto, as well as such additional work as would be required to achieve compliance with the standards for revegetation under these oil shale regulations. The amount of bond shall be further based on, but not be limited to, such other cost information as may be required by or available to the department. In calculating the initial amount of the performance bond, the department shall take into consideration the three (3) phases of reclamation and the percentages to be released upon completion of each phase. The three (3) phases of reclamation and the percentages to be released upon completion of each phase are set forth in 405 KAR 30:070 entitled Procedures, Criteria and Schedule for Release of Performance Bonds.

Section 2. Minimum Amount. [The minimum amount of bond for exploration permits involving drilling and coring shall be $2,000.] For [all other] oil shale operation permits the minimum amount of bond [per acre] shall be [$5,000 but in no event shall such a bond be less than] $20,000.

Section 3. Period of Liability. (1) Liability under performance bonds applicable to a permit shall continue until completion of all reclamation work required of persons who conduct oil shale operations under the requirements of these oil shale regulations and the conditions of the permit have been completed.

(2) In addition to the period necessary to achieve compliance with the requirements of all applicable statutes and regulations and the conditions of the permit, the period of liability under performance bonds shall continue for a period of seven (7) years beginning with the last year of substantially augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever substantially augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. A portion of a bonded area requiring extended liability because of substantial augmentation may be separated from the original area and bonded separately upon approval by the department; provided, however, that such separation comes only following a good faith attempt to reclaim the entire permit area. The original bond amount shall apply to the area which has not required substantial augmentation. A new bond, in an amount determined by the department, shall be posted for the area which has been substantially augmented. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such area portion:

(a) Is not significant in extent in relation to the entire area under bond; and

(b) Is limited to a distinguishable contiguous portion of the bonded area.

(3) If the department approves a long-term intensive agricultural postmining land use, pursuant to these oil shale regulations, the seven (7) year period of liability shall commence at the date of initial planting for such long-term intensive argicultural land use. Such approval shall not constitute a grant of an exception to the bond-liability periods of this section.

(4) If an area is separated under subsection (2) of this section, that portion shall be bonded separately and the period of liability shall commence anew. The period of liability for the remaining area shall continue in effect without extension. The amount of bond on the original bonded area may be adjusted in accordance with the following section.

Section 4. Adjustment of Amount. (1) The amount of the bond shall be reviewed and may be adjusted at any time during the life of a permit. The amount of the performance bond liability applicable to a permit shall be adjusted by the department as the acreage in the permit area is increased or when the department determines that the cost of future reclamation, restoration or abatement work has changed substantially. It shall be the obligation of the permittee to secure any additional bond that the department determines is necessary. *An increase in bond liability shall not affect the previously existing obligations of sureties.*

(2) A permittee may request reduction of the required performance bond amount at any time if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the department to complete the reclamation responsibilities; provided, however, that under no circumstances will the bond amount be reduced where such a reduction will decrease the bond amount to a level less than that necessary for full reclamation.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:060. Form, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.033 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth minimum bonding and insurance standards. [The regulation sets forth under what conditions bonds should be forfeited.] The regulation specifies the types, terms, and conditions of liability insurance.

Section 1. Types of Performance Bond. (1) The form for the performance bond shall be prescribed by the department.

(2) The performance bond shall be either:

(a) A surety bond;

(b) A *collateral* [cash] bond, which [may] includes *cash, negotiable* certificates of deposit, *or an irrevocable* letter[s] of credit *of any bank organized and authorized to transact business in the United States* [, and acceptable escrow accounts]; or

(c) A combination of these bonding methods as approved by the department.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the department.

(2) The performance bond shall be payable to the department and not subject to cancellation by anyone until released by the department.

(3) The performance bond shall be conditioned upon the faithful performance of all of the requirements of the applicable statutes and regulations and the conditions of the reclamation plan and permit.

(4) The surety, by certified mail, will give prompt notice to the permittee and the department of any notice received or action filed alleging any violations of state or federal regulatory requirements which could result in suspension or revocation of the surety's license to do business.

(a) In the event that the surety becomes unable to fulfill its obligations under the bond for any reason, written notice shall be given promptly to the permittee and the department by certified mail.

(b) Upon the incapacity of a surety for any reason whatsoever, including but not limited to bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage. *The department shall issue a notice of noncompliance against any permittee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the department shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit.* [in violation of these regulations and shall immediately secure replacement bond coverage or cease operations; provided, however, that bona fide reclamation activity may continue as approved by the department.]

(5) *Collateral* [Cash] bonds, except for letters of credit, shall be subject to the following conditions:

(a) The department shall obtain possession of all *collateral* [cash] bonds which shall be kept in an appropriate account. Possession will be maintained until authorized for release or replacement.

(b) The department shall require that certificates of deposit be assigned to the department and the issuing bank in writing.

(c) The department shall not accept an individual certificate of deposit for denomination in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

(d) The department shall require the issuer of the certificates of deposit to waive all rights of set-off or liens which it might have had against the certificates. [The issuer of the certificates of deposit shall give the right of priority to the department.]

(e) The department shall accept only those certificates of deposit that are automatically renewable.

(f) The cash value of any instrument pledged as collateral shall be at least equal to the bond amount.

(6) Letters of credit shall be subject to the following conditions:

(a) *The letter of credit shall be irrevocable.* Only a bank authorized to do business in the United States may issue a letter of credit.

(b) The letter of credit, by its express terms, must be payable in full to the department upon receipt from the department of a Notice of Forfeiture.

(c) The letter of credit shall provide that in the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice, by certified mail, shall be given immediately to the permittee and the department.

Section 3. Substitution of Bonds. (1) Substitution of bonds shall be in the discretion of the department.

(2) In effecting a requested substitution of bonds, the department shall not release the existing prior performance bond until the permittee has submitted and the department has approved acceptable substitute performance bonds.

Section *4.* [6.] Terms and Conditions for Liability Insurance. (1) The department shall require the applicant to submit at the time of permit application proof that the applicant has a public liability insurance policy in full force and effect for the oil shale operation for which the permit is sought. The public liability insurance policy shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of oil shale operations, including such injury or damage by use of explosives and injury or damage to water wells. Minimum insurance coverage for bodily injury shall be $300,000 for each occurrence and $500,000 aggregate; and minimum insurance coverage for property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(2) The public liability insurance policy shall be maintained in full force during the term of the permit or any renewal thereof, and until completion of all reclamation operations under these oil shale regulations.

(3) The policy shall include a clause requiring that the insurer notify the department whenever any change what-

soever is made in the policy, including any termination of a policy or failure to renew the policy.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:070. Procedures, criteria and schedule for release of performance bond.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.003, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the procedures, criteria, and schedule for release of performance bonds.

Section 1. Procedures for Seeking Release of Performance Bond. (1) The permittee, or any person authorized in writing to act on his behalf, may file an application on a form provided by the department for a release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a particular reclamation phase, as defined by these oil shale regulation, has been completed on the entire permit area.

(a) Bond release applications will be considered at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(b) The application for bond release shall include copies of notices sent to the surface owners and adjoining property owners, notifying them of the permittee's intention to seek release of performance bonds. These notices shall be sent to the persons listed above before the permittee files the application for release with the department.

(c) Within thirty (30) days after filing the application for release the permittee shall submit proof of publication of the advertisement required by subsection (2) of this section. Such proof of publication shall be considered part of the bond release application.

(2) At the time of filing an application under this section for a bond release, the permittee shall advertise pursuant to KRS 424.110 through 424.130. The advertisement shall:

(a) List the name of the permittee, including the number and date of issuance and/or renewal of the permit;

(b) Describe the precise location and the number of acres of the lands subject to the application;

(c) List the total amount of bond in effect for the permit area, the type of release sought, and the amount for which release is sought;

(d) Be filed with the department and made a part of the complete permit application; and

(e) State that written comments, objections, and requests for a hearing pursuant to these oil shale regulations must be submitted within thirty (30) days of the last publication date, provide the appropriate address of the department, and the closing date by which comments, objections, and requests must be received.

(3) Written objections to the proposed bond release and requests for a hearing may be filed with the department by any person having an interest which is or may be adversely affected by the proposed bond release. Such written objection must be filed within thirty (30) days of the date of the last advertisement of the filing for the bond release application.

(4) The department shall inspect and evaluate the reclamation work allegedly performed by the permittee. Such inspection shall be completed within thirty (30) days after receiving a proper application for bond release, or as soon thereafter as weather conditions permit; provided however, that the bond release application is filed during a time or season that allows the department to properly evaluate the reclamation operations.

(5) (a) If a hearing is held it shall be pursuant to KRS 224.083.

(b) The notice of the decision by the department shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to seek administrative or judicial review of the decision.

(6) Procedures for bond credit in cumulative bonding.

(a) Application. The permittee or any person authorized to act on his or her behalf may file an application with the department to receive bond credit for completion of all reclamation, restorations, and abatement work in a reclamation phase on a sectional area approved under 405 KAR 30:030, Section 4, for cumulative bonding. Bond credit applications may only be filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed. The application shall be of such form and content as the department may require and shall include, but not be limited to:

1. The name of the permittee, the permit number, and the date of issuance or renewal of the permit;

2. The location, identification, and acreage of the section(s) for which credit is sought and the section(s) to which the credit is requested to be applied;

3. The total bond amount in effect for the entire permit area and the bond amounts originally calculated for the section(s) identified under subparagraph 2 of this paragraph, and any credits previously given for such section(s); and

4. A description of the reclamation, restoration, and abatement work completed on the section(s) for which credit is sought.

(b) Inspection and evaluation. The department shall inspect and evaluate the reclamation work on the section(s) involved within thirty (30) days after receiving a completed application for bond credit, or as soon thereafter as weather conditions permit.

(c) Notice of decision. The department shall, within thirty (30) days after its inspection and evaluation, notify the permittee of its decision to grant or deny the requested bond credit. The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the bond credit, and notify the permittee of his or her right to request within thirty (30) days of notice a public hearing.

(d) Hearing. In the event that a public hearing has been requested pursuant to paragraph (c) of this subsection, the department shall inform the permittee of the time, date,

and place of the hearing and publish notice of the hearing in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county in which the permit area is located once a week for two (2) consecutive weeks before the hearing. The hearing shall be held pursuant to 405 KAR 30:020, Section 7, within sixty (60) days of the department's decision, in the locality of the permit area, or the central office of the department in Frankfort, Kentucky, at the option of the permittee.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) There shall be no release of performance bonds until the permittee has met the requirements of the applicable reclamation phases as defined in subsection (4) of this section. The department may release portions of the liability under performance bonds applicable to a permit *or increment* following completion of reclamation phases on the entire permit area *or sections designated in the permit plan.*

(2) There shall be three (3) phases of reclamation and release of performance bonds shall be calculated under the following percentages:

(a) Sixty percent (60%) of the bond shall be released if reclamation phase one (1) is completed on the acreage; and

(b) An additional twenty-five percent (25%) of the bond amount shall be released if reclamation phase two (2) is completed on the acreage; and

(c) The remaining fifteen percent (15%) of the bond amount shall be released if reclamation phase three (3) is completed on the acreage.

(3) The department shall not release any liability under performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the department to complete the approved reclamation plan, achieve compliance with the requirements of all applicable statutes and regulations, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area. Where the permit includes an alternative postmining land use plan approved by the department, the department shall retain a sufficient amount of bond in order for the department to complete any additional work which would be required to achieve compliance with the general standards for revegetation set forth in these oil shale regulations in the event the permittee fails to implement the approved alternative postmining land use plan within the period of time required by these oil shale regulations.

(4) For the purposes of this section:

(a) Reclamation phase one (1) shall be deemed to have been completed when the permittee completes backfilling, regrading, topsoil replacement, drainage control including soil preparation, seeding, planting and mulching in accordance with the approved reclamation plan, and a planting report for the area has been submitted to the department; and

(b) Reclamation phase two (2) shall be deemed to have been completed when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. All water quality performance standards and parameters are met, drainage control is satisfactory to the department, the affected area is not contributing suspended solids to stream flow, runoff outside the permit area is not in excess of the requirements of applicable laws and regulations, and excess suspended solids are not contributed to stream flow or runoff outside the permit area.

3. With respect to prime farmlands, soil productivity has been restored as required by these oil shale regulations and the plan approved pursuant to the permit; and

4. The provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department.

(c) Reclamation phase three (3) will be deemed to have been completed when the permittee has successfully completed all oil shale operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved by the department, and the permittee has achieved compliance with the requirements of these oil shale regulations and the applicable liability period.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:090. General provisions for inspection and enforcement.

RELATES TO: KRS 350.600, 350.990
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600, 350.990
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation sets forth an enforcement and inspection policy for the department. This regulation directs that inspections be made periodically and without need of a warrant or prior notice to the operator.

Section 1. Applicability. The provisions of this regulation shall apply to all oil shale operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this regulation, the department shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence which will ensure that oil shale operations are conducted in accordance with the provisions of all applicable statutes and regulations, and all terms and conditions of the permit.

Section 3. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized employees of the department shall have unrestricted right of entry and access to all parts of the oil shale operation for any purpose associated with their proper duties pursuant to this Title, including but not limited to, making inspections and delivering documents or information of any kind to per-

sons associated with the operation or receiving documents or information from persons associated with the operation.

(2) Prior notice. The department shall have no obligation to give prior notice that an inspection will be conducted.

(3) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the department deems such inspections necessary to properly monitor compliance with all applicable laws and regulations.

(4) Frequency of inspections. The department shall conduct periodic inspections of all oil shale operations.

Section 4. Penalties and Sanctions. Any person who violates any provision of KRS 350.600, any provision of this Title, any other applicable statutes or regulations, or any permit condition, or who fails to perform the duties imposed by such provisions, or who fails to comply with a determination or order of the department pursuant to such provisions, shall be subject to civil penalties as set forth in KRS 350.990(6) or any other applicable provision of law. Violations by any person conducting oil shale operations on behalf of the permittee shall be attributed to the permittee.

Section 5. Public Participation. Any person having an interest which is or may be adversely affected by an oil shale operation shall have the opportunity to cause an inspection and to participate in enforcement actions of the department as provided in *405 KAR 30:110* [this Title].

Section 6. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action by filing a request for hearing, within thirty (30) days after receiving notice of the action. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination or vacation thereof.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:100. Enforcement.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth various kins of notices and orders to be issued by authorized representatives of the department. The regulation requires that a notice of noncompliance and order for remedial measures be issued for violations of KRS 350.600, the regulations promulgated pursuant thereto, any permit condition, or any other applicable statute or regulation. The regulation sets forth the general form of the notices, and hearing procedures.

Section 1. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized employee of the department shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he finds a violation of KRS 350.600, the regulations promulgated pursuant thereto, any permit condition, or any other applicable statute or regulation.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps, if appropriate; and

(d) A reasonable description of the portion of the oil shale operation to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 3.

(4) Extension. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued. The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice, *except upon a showing by the permittee that it is not feasible to abate the violation within ninety (90) days.*

(5) Modification *and termination.* An authorized employee may modify *or terminate* an order for remedial measures for good cause.

Section 2. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized employee issues a notice of noncompliance and order for remedial measures he shall reinspect the permit area on or soon after the date given in the notice or order for completion of remedial measures. At the time of this reinspection, the authorized representative shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspeciton of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed.

(3) Service. Service of a notice of inspection of noncompliance shall be in the manner set forth in Section 3.

(4) The correction of a violation shall not affect the right of the department to assess civil penalties for that violation pursuant to this Title or to impose any other applicable sanctions as authorized by law.

Section 3. Service of Notices and Orders. (1) Any notice

of noncompliance and order for remedial measures, any notice of inspection of noncompliance, and any other order of the department shall be served on the person to whom it is issued, in person or by mailing it to the permanent on the permit and application; or by hand to the designated agent or to the individual who, based upon reasonable inquiry by the authorized employee, appears to be in charge at the site of the oil shale operation. [If the individual in charge cannot be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued.] Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. If no person is present at the site of the operation, service by mail upon the permittee shall by itself be sufficient notice.

(2) Designation by any person of an agent for service of notices and orders shall be made a part of the permit application. Such person shall continue as agent for service of process until such time as written revision of the permit is made which designates another person as agent.

(3) The department may furnish copies of notices and orders to any person having an interest in the oil shale operation.

Section 4. Suspension or Revocation of Mining Permits and Exploration Permits. (1) The department may, after hearing pursuant to KRS Chapter 224, suspend or revoke a permit if the department determines that a pattern of violations of any requirement of KRS 350.600, the regulations promulgated pursuant thereto, any other applicable statutes or regulations, or any permit condition, exists or has existed.

(2) The department may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area after considering the circumstances, including:

(a) The number of violations cited on more than one (1) occasion as to same or related requirements of KRS 350.600, the regulations promulgated pursuant thereto, any other applicable statutes or regulations, or permit conditions;

(b) The number of violations, cited on more than one (1) occasion as to different requirements of KRS 350.600, the regulations promulgated pursuant thereto, any other applicable statutes and regulations, or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) If the department revokes or suspends the permit, the permittee shall immediately cease oil shale operations on the permit area and shall:

(a) If the permit is revoked, complete reclamation within the time specified in the order; or

(b) If the permit is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:130. Oil shale operation permits.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the requirements for obtaining an oil shale mining permit.

Section 1. Applicability. The provisions of this regulation shall apply to permits for all oil shale operations except for oil shale exploration operations.

Section 2. Permit Required. No person shall engage in oil shale operations without first having obtained a permit from the department.

as amended

[Section 3. Term of Permits. [(1) Except for pilot projects,] An oil shale mining permit shall be valid for five (5) years from the date of issuance. A permit shall terminate, if the permittee has not substantially commenced the oil shale operation covered by the permit within three (3) years of the issuance of the permit.]

[(2) Pilot projects. A permit for a pilot project shall be valid for a term of two (2) years from the date of issuance.]

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the department the necessary preliminary application as prescribed by the department. The preliminary application shall contain pertinent information including, but not limited to, a U.S. Geological Survey seven and one-half (7½) minute topographic map and a 1:6000 map marked to show the boundaries of the area of land to be affected, and the location of the oil shale deposits to be mined, access roads, haul roads, spoil disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the department. Personnel of the department shall conduct, within thirty (30) days after filing, an on-site examination of the area with the person or his representatives after which the person may submit a permit application.

Section 5. Publication of Notice of Intention to Mine. (1) An applicant for a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition of KRS 424.110 to 424.120, in the county or counties wherein the proposed oil shale operation is to be located.

(2) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the first advertisement being published not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Conduct Oil Shale Mining" and shall be in a manner and form prescribed by the department and shall include, but not be limited to, the following:

(a) The name and address of the applicant;
(b) The permit application number;
(c) A description which shall:
1. Clearly describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
2. Clearly describe the exact location and boundaries of the proposed permit area; and
3. State the name(s) of the U.S. Geological Survey seven and one-half (7½) minute quadrangle map(s) which contains the area shown or described.
(d) A description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed operation;
(e) The address of the department to which interested persons may submit written comments on the application; and
(f) The location where a copy of the application is available for public inspection.
(4) The applicant for a permit required under this regulation shall establish the date and place at which the "Notice of Intention to Conduct Oil Shale Mining" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.
(5) Public inspection of the application. The applicant shall make a full copy of the complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the department at the courthouse of the county where the mining is proposed to occur.
(6) Any person with an interest which is or may be adversely affected shall have the right to file with the department written comments on the application within thirty (30) days of the final notice of the application in the newspaper.

Section 6. Contents of the Permit Application. (1) A person desiring a permit shall submit the necessary application as prescribed by the department. The application shall be on forms provided by the department, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the department with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the department may require.
(2) The application shall include the following information:
(a) Each application shall contain the names and addresses of:
1. The permit applicant, including his or her telephone number;
2. Every owner of the surface of the area of land to be affected by the permit;
3. The owners of record of all surface areas contiguous to any part of the proposed permit area;
4. Every owner of the oil shale to be mined;
5. The holders of any leasehold interest in the property to be mined;
6. The contractor or other person, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his telephone number; and
7. The resident agent of the applicant who will accept service of process, including his telephone number.

(b) Each application shall contain the following information:
1. A detailed description of the location and area of land to be affected by the operation, specifying the permit boundaries;
2. A description of access to the site from the nearest public highway;
3. The source of the applicant's legal right to mine oil shale on the land affected by the permit;
4. A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 5 of this regulation;
5. The name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if applicable;
6. Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the authority to represent the applicant in the permit matter;
7. Whether or not the applicant, any subsidiary, or affiliate; or any officer, partner, or director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, holds or has held any other federal or state oil shale or any surface coal mining permit issued by the department and the identification of such permits.

(c) Each application shall contain the following compliance information:
1. A statement of whether the applicant, any subsidiary, or affiliate; or any officer, partner, director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, has:
a. Had an oil shale or surface coal mining permit of the United States or any state suspended or revoked; or,
b. Forfeited an oil shale or surface coal mining performance bond or similar security deposited in lieu of bond.
2. If any such suspension, revocation, or forfeiture has occurred, the application shall contain a statement of the facts involved, including:
a. Identification number and date of issuance of the permit, and date and amount of bond or similar security;
b. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;
c. The current status of the permit, bond, or similar security involved;
d. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
e. The current status and results of these proceedings.
3. Each application shall contain a list of each violation notice pertaining to federal oil shale mining laws and the regulations promulgated pursuant thereto, and oil shale mining laws and applicable regulations of any state, received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. The application shall contain a statement of the facts involved, including:
a. The date of issuance and identity of the issuing regulatory authority, department, or agency;
b. A brief description of the particular violation alleged in the notice;

c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation; and

d. The current status and results of these proceedings.

(3) Maps. The application shall include *one (1) copy* [five (5) copies] of a United State Geological Survey seven and one-half (7½) minute topographic map or other such map acceptable to the department on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include *one (1) copy* [five (5) copies] of an enlarged United States Geological Survey seven and one-half (7½) minute topographic map or other such map enlarged to a scale of 1:6000 or larger acceptable to the department and meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the oil shale mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested;

[(b) Identify the area of land to be affected to correspond with the application;]

(b) [(c)] Show adjacent surface, underground, and in situ mining operations and the boundaries of surface properties and names of owners of the affected area and owners of properties contiguous to any part of the affected area;

(c) [(d)] Be of a scale between 400 feet to the inch and 600 feet to the inch;

(d) [(e)] Show the names and locations of all streams, lakes, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, public parks, public property, and utility lines on the area of land affected within 1,000 feet of such area;

(e) [(f)] Show by appropriate markings the boundaries of the area of land to be affected, the deposit of oil shale to be mined, and the total number of acres involved in the area of land to be affected;

(f) [(g)] Show the date on which the map was prepared, the north point and the quadrangle name; and

(g) [(h)] Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

[(5) Transportation plan. The application shall include a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Department of Transportation) which shall set forth the portions of the public road system, if any, over which the applicant will transport oil shale or any product related to the oil shale mining operation.]

[(a) The plan shall specify the legal weight limits for each portion of any road or bridge over which the applicant proposes to transport oil shale or any product related to the oil shale operation.]

[(b) The plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any road or bridge.]

[(c) The plan shall contain a certification by a duly authorized official of the Kentucky Department of Transportation attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on such roads and bridges.]

(5) [(6)] Prime farmland. If the area to be mined has been designated as prime farmland, the application shall include a plan for the mining and restoration of prime farmland consistent with the requirements of 405 KAR 30:280.

(6) [(7)] Postmining land use plan. The application shall include a plan for postmining land use which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:220 regarding postmining land use.

(7) [(8)] Use of explosives plan. The application shall include a plan for use of explosives which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:250 with regard to use of explosives.

(8) [(9)] Topsoil handling and restoration plan. The application shall include a plan for the handling and restoration of topsoil which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:290 with regard to topsoil handling.

(9) [(10)] Backfilling and grading plan. The application shall include a plan for backfilling and grading which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:390 with regard to backfilling and grading.

(10) [(11)] Revegetation Plan. The application shall include a plan for the revegetation of all disturbed areas which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:400 with regard to revegetation.

(11) [(12)] Spoil disposal plan. The application shall include a plan for the disposal of spoil in excess of that required to meet the backfilling and grading requirements of 405 KAR 30:390 [which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:370 with regard to disposal of spoil].

(12) [(13)] Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming and toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of *applicable laws and regulations* [405 KAR 30:360 with regard to disposal of wastes other than excess spoil material].

(13) [(14)] Surface water control and monitoring plan. The application shall contain a plan for the control and monitoring of surface water, which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of:

(a) 405 KAR 30:300 with regard to protection of the hydrologic system;

(b) 405 KAR 30:320 with regard to water quality standards and surface water monitoring;

(c) 405 KAR 30:330 with regard to sediment control measures; and

(d) 405 KAR 30:310 with regard to diversions of surface flows and water withdrawal.

(14) [(15)] Ground water control and monitoring plan. The application shall include a plan for the control and monitoring of ground water, which shall demonstrate to

the satisfaction of the department that the operation will comply with the requirements of:

(a) 405 KAR 30:300 with regard to protection of the hydrologic system;

(b) 405 KAR 30:320 with regard to ground water; and

(c) 405 KAR 30:310 with regard to diversion of underground flows.

(15) [(16)] Air resources protection plan. The application shall include an air resources protection plan which shall demonstrate to the satisfaction of the department that the proposed operation will comply with the requirements of 405 KAR 30:230 with regard to air resources protection.

(16) [(17)] Fish and wildlife plan. The application shall include a fish and wildlife plan which shall demonstrate to the satisfaction of the department that the operation will comply with the requirements of 405 KAR 30:240 with regard to fish and wildlife.

(17) [(18)] In the required operational plans specified in subsections (5) through (15) of this section and in the other requirements of this section, the department may require all such supporting documentation as the department may deem necessary to ensure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and monitoring and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(18) [(19)] The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of $500, plus fifty dollars ($50) for each acre or fraction thereof of the area to be affected by the operation. No permit application will be processed unless such fees have been paid.

Section 7. Procedures for Processing of Application. (1) Five (5) separate copies of the complete application shall be submitted to the department at the location and address prescribed by the department. The department will provide written acknowledgement of receipt of the application.

(2) Within twenty-one (21) days of receipt of an application for a permit to conduct oil shale operations, the department shall provide written notification to the applicant as to the completeness of the application. A determination by the department that the application is complete shall not be construed to mean that the application is technically sufficient.

(3) The department shall act upon a complete application within 120 days after the filing of the complete application.

(4) The department shall approve a complete application filed in accordance with this regulation, if it finds, in writing, that the applicant has demonstrated that the oil shale operation described in the application:

(a) Will be conducted in accordance with applicable statutes and regulations;

(b) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(c) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the department and the agency with management responsibility over such areas.

Section 8. Notice and Hearing. (1) The department shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(2) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to paragraph (1) of this section, shall have the opportunity for administrative and judicial review.

Section 9. Compliance. (1) Permit conditions. Permits issued by the department may contain certain conditions necessary to ensure that the oil shale operation will be conducted in compliance with all applicable statutes and regulations.

(2) All oil shale operations shall be conducted in accordance with all applicable statutes and regulations and any conditions imposed by the department on the permit.

Section 10. Department Review of Outstanding Permits. (1) The department shall review each permit issued and outstanding under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term.

(2) After this review, the department may, by order, require revision or modification of the permit provisions or may increase the amount of the bond to ensure compliance with all applicable statutes and regulations.

(3) Copies of the decision of the department shall be sent to the permittee.

(4) Any order of the department which requires revision or modification of the permit or increases the amount of the bond shall be based upon written findings and shall be subject to the provisions for administrative and judicial review.

Section 11. Permit Revisions. (1) A revision to a permit shall be obtained:

(a) For changes in the oil shale operation described in the original application and approved under the original permit;

(b) When required by an order issued under Section 10; or

(c) When there is an increase of the area under the permit.

(2) The application for a revision shall be filed with the department sixty (60) days prior to the date on which the permittee expects to revise the oil shale operation. The term of a permit shall remain unchanged by a revision.

(3) Application for changes in the method of operation or when required by an order issued under Section 10:

(a) An application for a revision under subsections (1)(a) or (b) of this section shall meet the following requirements:

1. The application for revision shall be submitted in the form prescribed by the department.

2. The permittee shall submit, in the manner prescribed by the department, all revised or updated information required by the department. Such information shall include, but not be limited to, an updated operational plan current to the date of the request for the revision, showing the status and extent of all oil shale operations on the existing permit.

3. The permittee shall provide evidence of any additional bond which the department might require.

4. The permittee shall provide public notice as required under Section 5 of this regulation.

(b) The revision shall be granted provided that:
1. The permittee is in compliance with the terms and conditions of the existing permit.
2. The present oil shale mining and reclamation operation is in compliance with all applicable statutes and regulations.
(c) The permit for the revision may contain conditions necessary to ensure compliance with all applicable statutes and regulations.
(4) Application for a revision to increase the area under permit. Upon application by the operator, the department may amend a valid existing permit so as to increase the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.
(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under this regulation.
(b) Fees. The application shall be accompanied by a cashier's check or money order payable to the Kentucky State Treasurer in the amount of $500, plus fifty dollars ($50) for each acre or fraction thereof of the increased area. No application for a revision will be processed unless such fees have been paid.
(c) The operator shall file with the department a supplemental bond in an amount to be determined as provided under 405 KAR 30:040 for each acre or fraction of an acre of the increased area.
(5) Notice and hearing. (a) The department shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.
(b) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to paragraph (1) of this section shall have the opportunity for administrative and judicial review.

Section 12. Permit Renewals. (1) Any valid permit issued pursuant to KRS 350.600 and the regulations promulgated pursuant thereto shall carry with it the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be available only for those areas specifically within the boundaries of the existing permit.
(2) Any permit renewal shall be for a term not to exceed the period of the original permit.
(3) An application for renewal of a permit shall be filed with the department at least sixty (60) days before the expiration date of the permit.
(4) If an application for renewal of a valid existing permit includes a proposal to extend the operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to a new application pursuant to KRS 350.600 and the regulations promulgated pursuant thereto, and a new and original application shall be required for such areas.
(5) The permit renewal shall be issued provided that the requirements of paragraphs (a) through (f) of this subsection are met.
(a) The application for renewal shall be submitted in the form prescribed by the department.
(b) The operator shall submit all revised or updated information required by the department. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all oil shale operations on the existing permit.
(c) The permittee is in compliance with the terms and conditions of the existing permit.
(d) The present oil shale operation is in compliance with all applicable statutes and regulations.
(e) The permittee shall provide evidence of any additional bond which the department might require.
(f) The permittee shall provide public notice as provided for under Section 5 of this regulation.
(6) Notice and hearing. (a) The department shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.
(b) Any person with an interest which is or may be adversely affected by a decision of the department pursuant to this section shall have the opportunity for administrative and judicial review.

Section 13. Criteria for Permit Approval and Denial. No application for a permit and no oil shale operation shall be approved or allowed, unless the application affirmatively demonstrates and the department determines on the basis of information set forth in the application, and other available information as necessary, that:
(1) The permit application is accurate, complete and that all requirements of KRS Chapters 151, 224, and 350 and the regulations promulgated pursuant thereto have been complied with.
(2) The oil shale operations proposed can be carried out under the method of operation contained in the application in a manner that will satisfy all requirements of KRS Chapters 151, 224, and 350, and the regulations promulgated pursuant thereto.
(3) The oil shale operations proposed have been designed to minimize adverse effects to the hydrologic balance.
(4) The proposed operation will not constitute a hazard to, or do physical damage to life, to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, their real and personal property. All necessary measures shall be included in the method of operation in order to eliminate such hazard or damage. If it is not technologically feasible to eliminate such hazard or damage by adopting specifications in the method of operation, then that part of the operation which constitutes the cause of the hazard or damage shall be deleted from the application.
(5) The proposed operation will not adversely affect fragile lands, natural hazard lands, a wild river established pursuant to KRS Chapter 146, or the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or result in the destruction or adverse modifications of the habitat of such a species.
(6) The applicant has with respect to prime farmland obtained either a negative determination or satisfied the requirements of Section 6(6) of this regulation and 405 KAR 30:280.
[(7) The applicant has demonstrated the environmental impacts of the proposed operation as required by 405 KAR 30:020, Section 6(1). If the applicant cannot demonstrate to the satisfaction of the department the extent and magnitude of the environmental impacts of the proposed

operation then the limitations of 405 KAR 30:020, Section 6(2) shall apply.]

(7) [(8)] The proposed operation will not be inconsistent with other oil shale operations anticipated to be performed in areas adjacent to the proposed permit area.

(8) [(9)] The proposed permit area is:

(a) Not included within an area designated unsuitable for oil shale operations under 405 KAR 30:190 and 405 KAR 30:200;

(b) Not included within an area under study for designation as unsuitable for oil shale operations in an administrative proceeding begun under 405 KAR 30:190 and 405 KAR 30:200;

(c) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act [(16 U.S.C. 1276(a))], and the National Recreation Areas designated by Act of Congress;

(d) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(e) Not included within 100 feet, measured horizontally, of a cemetery;

(f) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way. The department may permit such roads to be relocated or, in the area affected, to lie within 100 feet of such road, if the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road and if after public notice and opportunity for public hearing a written finding is made by the department that the interest of the public and the landowner affected thereby will be protected. The public notice required shall be published in the counties of the affected area in the newspaper(s) of largest bona fide circulation according to the definition in KRS Chapter 424;

(g) Not within 300 feet, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written waiver from the owner of the dwelling consenting to such an operation within a closer distance of the dwelling specified in the waiver. The waiver must be knowingly and intelligently given and be separate from a lease or deed unless the lease or deed contains an explicit waiver; and

(h) Not within 100 feet of an intermittent or perennial stream unless the department specifically authorizes operations at a closer distance to, or through, the stream. Such authorization shall not be given unless the applicant demonstrates to the satisfaction of the department that such authorization is environmentally sound and that all other applicable laws and regulations have been complied with.

Section 14. Denial of Permit for Past Violations. (1) An operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated until he shall have complied with all the requirements of KRS Chapter 350 with respect to all permits issued him.

(2) An operator or person who has forfeited any bond shall not be eligible to receive another permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the department finds is adequate to reclaim such lands.

(3) If the applicant, operator, any subcontractor of the applicant, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of KRS Chapter 350 or has repeatedly been in non-compliance of KRS Chapter 350, then the application should be denied; provided nothing contained herein shall be construed as to relieve a permittee of responsibility with respect to any permit issued to him.

(4) If the department determines that any activity regulated pursuant to KRS Chapter 350 which is owned or controlled by the applicant is currently in violation of any environmental law or regulation of the Commonwealth, then the department shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the department that the violation:

1. Has been corrected, or
2. Is in the process of being corrected in good faith; or

(b) Establish to the satisfaction of the department that the applicant has filed and is presently pursuing a good faith administrative or judicial appeal to contest the validity of the violation.

(5) If the applicant submits the proof specified in either subparagraph 2 of subsection (4)(a) or subsection (4)(b) of this section, then the department may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that, if the applicant loses his action contesting the violation, such violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(6) If the applicant disagrees with the department's determination under this section then the applicant has the right to request an administrative hearing pursuant to KRS 224.081(2).

JACKIE A. SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

404 KAR 30:170. Citizen demands for enforcement.

RELATES TO: KRS 224.091, 350.250, 350.600
PURSUANT TO: KRS 13.082, 224.033, 224.091, 350.028, 350,050, 350.250, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations as to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation pertains to demands by citizens upon the department to enforce the statutes and regulations pertaining to oil shale operations. This regulation also delineates the procedural requirements of such demands.

Section 1. Citizen Demands for Enforcement. Any citizen of this Commonwealth having knowledge that any of the statutes and regulations pertaining to oil shale operations are willfully and deliberately not being enforced may bring such failure to enforce to the attention of the department according to the provisions of this regulation.

Section 2. Procedure. (1) All demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law with sufficient information to identify the statutory provision, regulation, order, or permit condition allegedly violated and the act or omission alleged to constitute a violation.

(2) The demand shall state the name, address and telephone number of the person making the demand.

(3) The demand shall state the name, address and telephone number of legal counsel, if any, of the person making the demand.

(4) The *knowing statement* [stating] of false facts and charges in such affidavit shall constitute perjury and shall subject the affiant to penalties under the law of perjury.

(5) The department shall investigate the allegations made in the demand and respond, in writing, to the person making such demand. The response shall specifically state the results of the investigation and the action, if any, the department has taken or intends to take.

Section 3. Citizen Suits. If the department neglects or refuses for any unreasonable time but in no event longer than sixty (60) days after demand to enforce such provision, any such citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the operation which relates to the alleged lack of enforcement is being conducted. However, such action may be brought immediately after a demand for enforcement when the violation or order complained of constitutes an imminent threat to the health or safety of the complaining citizen or would immediately affect a legal interest of the complaining citizen.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:190. Process and criteria for designating lands unsuitable for oil shale operations.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 146.270, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations as to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth procedures and criteria for reviewing petitions seeking designations of lands as unsuitable for all or certain types of oil shale operations and for the termination of such designations.

Section 1. General. The following procedures and criteria establish a process enabling objective decisions to be made on which land areas, if any, are unsuitable for all or certain types of oil shale operations. These decisions shall be based on the best available, scientifically sound data and other relevant information.

Section 2. Lands Exempt From Designation. Petitions for designating lands as unsuitable for all or certain oil shale operations will not be considered for lands covered by a permit issued under KRS Chapter 350 or a permit application for which the public comment period has closed according to Section 3(5).

Section 3. Initial Processing of Petitions. (1) Within thirty (30) days of the receipt of a petition to designate or terminate, the department shall notify the petitioner by certified mail whether or not the petition is complete.

(2) If the department determines that the petition is incomplete, the department shall so notify the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(3) The department shall determine whether any identified oil shale resources exist in the area described in the petition. Should the department find that there are not identified oil shale resources in that area, the department shall so notify the petitioner.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the department shall determine if the new petition presents new and substantial allegations of facts and supporting evidence. If the petition does not contain new and substantial allegations of facts, the department shall so notify the petitioner with a statement of its findings and a reference to the record of the previous designation proceedings.

(5) Petitions received after the public comment period on a permit application relating to the same area shall not prevent the department from issuing a decision on the permit application. The department shall notify the petitioner with a statement of why the department will not consider the petition. For the purposes of this regulation, close of the public comment period shall mean at the close of the period for filing written comments and objections in response to an applicant's advertisement of intent to conduct oil shale operations.

Section 4. Notification and Request for Information. (1) The department shall notify the petitioner of applications for a permit received which proposes to include any area covered by the petition. The department shall also notify permit applicants of petitions received which prepare to designate an area covered by the application as unsuitable for all or certain types of oil shale operations. The department shall begin this notification procedure only after it has determined that the petition is complete and has so notified the petitioner.

(2) Within twenty-one (21) days after the determination that a petition is complete, the department shall notify by newspaper advertisment the general public of the receipt of the petition and request submissions of relevant information. The advertisement shall be placed once a week for two (2) consecutive weeks and shall be published in the newspaper of largest bona fide circulation, according to

the definition in KRS Chapter 424 in the county of the area covered by the petition.

(3) A person may intervene at the discretion of the hearing officer in the preceeding by filing:

(a) The intervenor's name, address, and telephone number;

(b) Identification of the intervenor's interest which is or may be adversely affected;

(c) A short statement identifying the petition; and

(d) Allegations of fact and supporting evidence which would tend to establish or dispute the allegations found in the petition.

Section 5. Hearing Requirements. (1) After receipt of a complete petition, the department shall hold a public hearing. *The hearing shall be held within ten (10) months after receipt of a complete petition provided that when a permit application is pending before the department and such application involves an area in a petition, the department shall hold the hearing on the petition within ninety (90) days of its receipt.* If all petitioners and intervenors agree, the hearing need not be held. A verbatim record of the hearing shall be kept.

(2) The department shall give reasonable notice of the date, time, and location of the hearing to the petitioner and all intervenors.

(3) The department shall notify the general public of the date, time, and location of the hearing by placing an advertisement in the newspaper of largest circulation according to the definition in KRS Chapter 424 in the county of the area covered by the petition at least once two (2) weeks prior to the scheduled date of the public hearing. In the event a continuance is necessary, notice of the date and place where the hearing will be held shall be posted at the place and on the date where the original hearing was scheduled.

(4) The department may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(5) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, and should the interest of justice be further served, the petition may be withdrawn from consideration.

Section 6. Criteria and Decision. (1) The department shall designate an area as unsuitable for all or certain types of oil shale operations if, upon petition, it determines that such operations cannot be carried out in a manner consistent with all applicable statutes and regulations.

(2) The department may designate an area as unsuitable for all or certain types of oil shale operations if, upon petition, it is determined that the oil shale operations will:

(a) Affect fragile or historic lands in which the oil shale operations could result in significant damage to important historic, cultural, scientific, aesthetic values and natural systems;

(b) Affect renewable resource lands in which the oil shale operations would result in substantial loss or reduction of the long-range availability of water supplies;

(c) Affect renewable resource lands in which the oil shale operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; or

(d) Affect natural hazard lands in which the oil shale operations could substantially endanger life and property.

(3) Prior to designating any land areas as unsuitable for oil shale operations, the department shall prepare a detailed statement, using existing and available information, on the potential oil shale resources of the area, the effect of the action on demand for, and supply of, Kentucky oil shale, and the environmental and economic impacts of designation.

(4) In reaching a decision, the secretary shall use all relevant information including:

(a) Relevant information provided by other governmental agencies; and

(b) Any other relevant information or analysis submitted during the comment period and public hearing.

(5) A final written decision shall be issued by the secretary including a statement of reasons, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The department shall send the decision by certified mail to the petitioner and all intervenors.

(6) If the department does not designate a petitioned area under subsection (2) of this section, the Secretary may direct that any future permits issued for the area contain specific requirements for minimizing the impact of oil shale operations on the feature that was the subject of the petition.

Section 7. Map. The department shall maintain a map of areas designated as unsuitable for all or certain types of oil shale operations *at the central office in Frankfort. Copies of such maps will be available for inspection and copying as prescribed in the Open Records Act, KRS 61.870 to 61.884.*

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:210. Signs and markers.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements relating to the use of signs and markers at oil shale extraction and processing operations.

Section 1. General. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of *a durable material* [metal]. Signs and other markers shall be maintained by the permittee during all operations to which they pertain and shall be kept legible and visible and shall conform to all local ordinances

and codes. The department may establish standards for construction of signs and markers as necessary to accomplish the purposes of this regulation.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall clearly identify the name, business address, and telephone number of the permittee and identification numbers of current oil shale operation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds. Failure to post such signs shall be grounds for revocation of the permit.

(2) Signs constructed pursuant to this section shall be constructed of *a durable material* [metal], with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 3. Perimeter Markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers. Perimeter markers shall have permit numbers permanently affixed and, except on heavily vegetative areas, shall be located so that adjacent markers are clearly visible.

Section 4. Buffer Zone Markers. Land areas *as determined in 405 KAR 30:310, Section 3(1),* [within 100 feet of perennial and intermittent streams] shall not be disturbed unless specifically authorized by the department. Such areas to be undisturbed are to be designated as buffer zones and shall be marked along the interior boundary of the buffer zone in a manner consistent with perimeter markers.

Section 5. Blasting Signs. If blasting is necessary to conduct oil shale extraction operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

Section 6. Topsoil Markers. Both stockpiles and areas where topsoil or other vegetation-supporting material are segregated shall be marked. Each soil horizon stockpile shall have a separate and appropriately marked sign. Placement and quantity of markers shall be sufficient to clearly define such stockpiles. Markers shall remain in place until the material is removed.

Section 7. Monuments Marking Permit Areas. The permittee shall place a monument along the exterior permit area at each point where the boundary changes bearing. Such monument shall consist of a metal pipe, at least three (3) inches in diameter, which shall be permanently fixed by the operator to protrude at least three (3) feet above the surface of the ground. The permit number shall be placed on the monument.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:280. Prime farmland.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation specifies definition, determination and special requirements for the removal, stockpiling *and* [,] replacement *of soil,* and revegetation of prime farmland to assure its productivity for the production of food and fiber.

Section 1. Prime Farmland Definition. The criteria used by the United States Department of Agriculture, Soil Conservation Service for identification of prime farmland published in the Federal Register on August 23, 1977, is the basis of the definition for prime farmland to be used in these regulations. The definition is based on soil characteristics and the terms used are defined in United States Department of Agriculture publications: Soil Taxonomy Agricultural Handbook 436; Soil Survey Manual, Agricultural Handbook 18; Rainfall-Erosion Losses from Cropland, Agricultural Handbook 282. [Prime farmland in Kentucky must meet the following criteria:]

[(1) Soils that have a udic moisture regime and sufficient available water capacity within a depth of forty (40) inches or in the rooting zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots). If the rooting zone is less than forty (40) inches deep, sufficient available water capacity must have been able to produce the adapted crop varieties seven (7) or more years out of ten (10);]

[(2) Soils that have a mesic or thermic temperature regime. These are soils that have a mean annual temperature of forty-seven degrees (47°) Fahrenheit or higher but lower than seventy-two degrees (72°) Fahrenheit and the difference between mean summer and mean winter temperature is more that nine degrees (9°) Fahrenheit at a depth of twenty (20 inches or at a lithic or paralithic contact, whichever is shallower;]

[(3) Soils that have a pH between 4.5 and 8.4 in all horizons within a depth of forty (40) inches or in the rooting zone if the rooting zone is less than forty (40) inches;]

[(4) Soils that either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage and oil seed crops adapted to the area;]

[(5) Soils that are not flooded frequently during the growing season (less often than once in two (2) years);]

[(6) Soils that have a product of K factor (erodibility factor) X percent slope of less than two (2);]

[(7) Soils that have a permeability rate of at least six hundredths (0.06) inches per hour in the upper twenty (20) inches and the mean annual soil temperature at a depth of twenty (20) inches is less than fifty-nine degrees (59°) Fahrenheit; the permeability rate is not a limiting factor if the mean annual soil temperature is fifty-nine degrees (59°) Fahrenheit or higher; and]

[(8) Less than ten percent (10%) of the surface layer (upper six (6) inches) in these soils consists of rock fragments coarser than three (3) inches in size.]

Section 2. Prime Farmland Determination. The applicant shall before making a permit application investigate the proposed permit area to determine whether lands within the area may be prime farmland. [Prime farmland shall be identified on the basis of soil surveys and conducted according to standards of the National Cooperative Soil Survey set forth in Soil Taxonomy, Agricultural Handbook 436; and Soil Survey Manual, Agricultural Handbook 18.]

(1) Land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(a) The slope of the land is ten (10) percent or greater;

(b) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(c) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. Soil Conservation Service.

(2) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is sought meets one (1) of the criteria of subsection (1) of this section.

(3) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If a soil survey exists, the applicant shall file for a positive or negative determination of prime farmland on the bases of the soil survey characteristics as interpreted in the U.S. Department of Agriculture publications referenced in Section 1.

(4) A soil survey may be conducted by either soil scientists from the United States Department of Agriculture, Soil Conservation Service or the Kentucky Department for Natural Resources and Environmental Protection, Division of Conservation, who have experience and knowledge in conducting soil surveys in accordance with the standards and procedures of the National Cooperative Soil Survey program. *If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.*

(5) [(1)] Soil survey for prime farmland determination shall include the following and any other data deemed necessary by the department:

(a) Location of permit boundaries, flood frequency data, water table, erosion characteristics, permeability and other information needed to make the prime farmland determination in accordance with the prime farmland definition in Section 1;

(b) The map must also delineate the exact location and extent of prime farmland;

(c) A detailed description of each soil mapping unit in the permit area; and

(d) A detailed soil description of the representative soil of each soil mapping unit in the permit area.

(6) [(2)] Positive prime farmland determination. When a soil survey of the acreage within the proposed permit area contains soil mapping units which have been designated as prime farmlands [and the area has been in agricultural use as defined in this regulation], the applicant shall submit an application, in accordance with 405 KAR 30:130, Section 6(6) for such designated land and must meet the requirements of Sections 3 through 9 of this regulation.

(7) [(3)] Negative prime farmland determination. When a soil survey of the acreage within the proposed permit area contains soil mapping units which have not been designated as prime farmland after review by either the United States Department of Agriculture, Soil Conservation Service or Kentucky Department for Natural Resources and Environmental Protection, Division of Conservation soil scientist, the applicant shall submit with the permit application a request for negative determination. The applicant shall then submit an application, in accordance with 405 KAR 30:130, Section 6(9) for such nondesignated prime farmland permits and must meet the requirements of 405 KAR 30:290 and 405 KAR 30:400.

Section 3. Restoration Plan for Prime Farmland Areas. The applicant shall submit to the department a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the department in judging the technological capability of the applicant to restore prime farmlands. The plan shall include the following and any other data required by the department:

(1) Information contained in the soil survey as required in Section 2;

(2) A description of the original undisturbed soil profile, as determined from the soil survey of the permit area, showing the depth and thickness of each of the soil horizons to be removed, stored, and replaced in accordance with Sections 6, 7, and 8;

(3) The location of areas to be used for the separate stockpiling of the soil horizons and plans for soil stabilization during stockpiling;

(4) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil;

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first twelve (12) months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Separate small areas of prime farmland located in the permit boundary may be combined and restored as one larger manageable prime farmland area upon the approval of the department. The number of prime farmland acres restored must be at least equal the number of prime farmland acres disturbed.

Section 4. Restoration Plan Approval and Consultation. The department will evaluate each proposed prime farmland mining restoration plan to assure the following:

(1) The applicant has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(2) Will achieve compliance with the standards of Section 5 of this regulation.

(3) Before any permit is issued for areas that include prime farmlands, the department shall consult with the

United States Soil Conservation Service and Kentucky Division of Conservation or other agencies to provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration.

Section 5. Special Requirements. Oil shale operations conducted on prime farmland areas shall meet the following requirements:

(1) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 6 and handled in a manner that prevents mixing, compacting, or contaminating these materials with less desirable materials. Where removal of soil materials results in erosion or increased stormwater runoff that may cause air and water pollution, the permittee shall take appropriate action as approved by the department to control erosion or stormwater runoff from *freshly exposed soil materials* [exposed overburden].

(2) Soil productivity will be restored to support equivalent or higher levels of yield as equally managed nonmined prime farmland of the same soil type in the surrounding area.

Section 6. Soil Removal. Oil Shale operations on prime farmland shall be conducted to:

(1) Remove separately the entire A horizon, B horizon, C horizon, a combination of B horizon and underlying C horizon, or other favorable soil material which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.

(2) The minimum depth of soil and soil material (A horizon, B horizon, C horizon, a combination of B horizon and underlying C horizon, or other favorable soil materials) to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacements standards in Section 8.

Section 7. Soil Stockpiling. If not utilized immediately, the A horizon, B horizon, or other suitable soil materials specified in Section 6 shall be stored separately from each other and from soil. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than thirty (30) days shall be protected. Measures to accomplish this can be either of the following:

(1) An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or other methods demonstrated to and approved by the department to provide equal protection.

(2) Stockpiling of separate soil horizons shall also meet the requirements of 405 KAR 30:290, Section 3, with regard to storage of topsoil.

(3) Unless approved by the department, stockpiled soil and other materials shall not be moved until required for redistribution on a regraded area.

Section 8. Soil Replacement. Oil shale operations on prime farmland shall be conducted according to the following:

(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The department shall specify a depth greater than forty-eight (48) inches wherever necessary to restore productive capacity due to favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and can be proven to have little or no beneficial effect on soil productive capacity. However, in the case of a fragipan, if it can be shown that destruction of the fragipan material during soil removal proves beneficial and as a result is beneficial to plant growth, *fragipan destruction will be allowed* [the material can be required to be restored].

(2) Replace soil material only on land which has first been returned to final grade and scarified according to 405 KAR 30:390, unless site-specific evidence is provided and approved by the department showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(3) Soil replacement starts with those soil horizons in the reverse order in which they were removed and stockpiled. The replacement of each soil horizon or other suitable soil material shall be done in such a manner that avoids excessive compaction.

(a) Replace the C horizon material or other suitable material approved for use as specified in paragraphs (a) and (b) of Section 6(1) to the thickness needed to meet the requirements of subsection (1) of this section.

(b) Replace the B horizon material or other suitable material approved for use as specified in paragraphs (a) and (b) of Section 6(1) to the thickness needed to meet the requirements of subsection (1) of this section.

(c) Replace the A horizon material or other suitable materials approved for use as specified in paragraphs (a) and (b) of Section 6(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil A horizon.

(4) The replacement of all soil horizons shall be done in a manner which prevents excessive compaction of the soil. *Permeability shall not be less than the permeability rate existing in the original soil* or [reduces the permeability to] less than six hundredths (0.06) inches per hour in the upper twenty (20) inches of the reconstructed soil profile, *whichever permeability rate is lower.*

(5) After the reconstruction of the soil profile is complete the soil shall be protected in such a manner to prevent erosion from wind and water before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

Section 9. Revegetation. Each permittee who conducts oil shale operations on prime farmland shall meet the following revegetation requirements during reclamation:

(1) Following soil replacement, the permittee shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the department under Section 3, and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 405 KAR 30:400, Sections 3 and 4 shall be met.

(2) The period of liability under the performance bond for prime farmland areas shall be for not less than seven (7) years. The liability period begins at the last time of substantially augmented seeding necessary to ensure successful revegetation.

(a) For the purposes of erosion control and soil

reconstruction, during the first two (2) or three (3) growing seasons grasses and legumes will be allowed upon the approval of the department.

(b) If crop comparisons are to be used to demonstrate successful restoration of prime farmland, the remaining four (4) or five (5) years must be used for crops commonly grown, such as corn, soybeans, grain, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. Crops may be grown in rotation with hay or pasture crops as long as the crop shows equal or higher yields as compared to other rotation crops on surrounding prime farmland.

(c) If a soil survey is to be used to demonstrate successful restoration of prime farmland, the prime farmland area should be maintained in vegetation in accordance with 405 KAR 30:400, until the department has determined if the prime farmland has been restored successfully under subsection (3)(a) of this section.

(3) Success of prime farmland restoration. Soil productivity shall be restored to support equivalent or higher levels of yield as nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. Successful restoration of soil productivity shall be demonstrated by either:

(a) A soil survey of the restored permit area. The soil survey must meet the standards of and be conducted by an individual with experience and knowledge of the standards and procedures of the National Cooperative Soil Survey and in accordance with the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). In addition, the department may require other chemical and physical data, laboratory test and information to evaluate soil productivity of the permit area. The department shall make the determination on the success of restoration of prime farmland areas after consultation with United States Soil Conservation Service, Kentucky Division of Conservation, and other appropriate agencies; or

(b) A comparison of actual average annual crop production on the restored area for three (3) consecutive years prior to bond release, with predetermined estimated average annual yields (target yields) of similar crops on nonmined prime farmland of the same soil type in the surrounding area under equivalent levels of management. The department, in consultation with other appropriate agencies, shall develop the predetermined target yields for prime farmland soils for the area, in which crop comparison shall be evaluated to determine that the soil productivity has been restored.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:290. Topsoil.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation sets forth requirements for the removal, storage and redistribution of topsoil, and requirements for substitution of other materials for topsoil.

Section 1. General. (1) The applicant shall before making a permit application investigate the proposed permit area to determine whether lands within the area may be prime farmland according to 405 KAR 30:280, Section 2.

(2) The applicant shall before making a permit application have soil survey data prepared for the proposed permit area if survey data is not available from the U.S. Soil Conservation Service. The soil survey data shall include:

(a) Location of permit boundaries, flood frequency data, water table, erosion characteristics, permeability, and other information needed to characterize existing topsoil conditions.

(b) A description of the existing soil profile showing the depth and thickness of each of the soil horizons to be removed, stored, and replaced in accordance with Sections 2, 3, and 4 of this regulation.

(c) A detailed soil description of the representative soil of each soil mapping unit in the permit area.

(3) [(2) Before disturbance of an area begins,] Topsoil *removal shall be as specified in* [and subsoils materials to be saved under] Section 2, *storage as specified in Section 3, and replacement as specified in Section 4* [shall be separately removed and segregated from other material].

[(3) After removal, topsoil shall either be immediately redistributed as required under Section 4 or stockpiled pending redistribution as required under Section 3.]

(4) For surface areas which are without suitable topsoil, [as a result of previous oil shale operations,] the department shall approve and/or specify, on a site-specific basis, alternative practices designed to utilize those available materials which are most suitable for supporting successful revegetation. The department requires the application of nutrients and soil amendments as necessary for supporting successful revegetation.

(5) Topsoil handling and restoration plan. The applicant shall submit to the department a plan for the handling and restoration of topsoil material within the proposed permit boundaries. This plan shall be used by the department in judging the technological capability of the applicant to restore topsoil material. The plan shall include the following and any other data required by the department:

(a) Information contained in the soil survey as required in Section 1*(2)*;

(b) A description of amount and source of proposed soil amendments, overburden materials or topsoil borrow areas proposed as substitutes for existing topsoil;

[(b) A description of the original undisturbed soil profile, as determined from the soil survey of the permit area,

showing the depth and thickness of each of the soil horizons to be removed, stored, and replaced in accordance with Sections 2, 3, and 4;]

(c) The location of areas to be used for the separate stockpiling of the soil horizons and plans for soil stabilization during stockpiling;

(d) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil;

(e) Plans for reclaiming the final graded mine land and the conservation practices to control erosion and sedimentation during the first twelve (12) months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(f) Before any permit is issued the department may consult with the United States Soil Conservation Service and Kentucky Division of Conservation or other agencies to provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration.

Section 2. Removal. (1) Topsoil shall be removed from areas to be disturbed, after vegetative cover that would interfere with the use of the topsoil is cleared from those areas, but before any drilling, blasting, mining, or other surface disturbance of those areas. The minimum depth of topsoil and subsoil material or topsoil substitute material to be restored on non-prime farmland areas shall be twenty-four (24) inches, in accordance with Section 4.

(2) All topsoil and subsoil material shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the department in accordance with subsection (6) of this section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(3) A soil survey providing an inventory of the topsoil on the permit area will assist in determining the type of removal and handling required for the topsoil material.

(4) The A horizon as identified by the soil survey shall be removed as provided in this section and then replaced on disturbed areas as the surface soil layer.

(a) If the A horizon is less than six (6) inches, a six (6) inch layer that includes the A horizon and the necessary subsoil or unconsolidated material immediately below the A horizon as required to meet the twenty-four (24) inch minimum (or all unconsolidated material if the total available is less than six (6) inches and the necessary substitute material to meet the twenty-four (24) inch minimum), shall be removed and the mixture segregated and redistributed as the surface soil layer at a total minimum depth of twenty-four (24) inches.

(b) If the A horizon is more than six (6) inches, all of the A horizon and necessary subsoil shall be removed separately and restored to meet the twenty-four (24) inch minimum depth.

(5) The department shall require that a portion or all of the subsoil (B and C horizons) or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as necessary to obtain the minimum twenty-four (24) inch requirement or to obtain productivity consistent with the approved postmining land use.

(6) (a) Selected overburden materials or soil amendment may be substituted for or used as a supplement to, topsoil, if the department determines that the substitute material would be equal to or more suitable for sustaining vegetation than is the available topsoil or subsoil and the substitute material is the best available material in the permit area to support revegetation. This determination shall be based on:

1. The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of *active soil* pH, *lime requirements from a SMP buffer or other potential acidity test* [net acidity or alkalinity], phosphorus, potassium, texture class, and other analyses as required by the department. The department may also require field-site trials, greenhouse tests or other demonstrations by the applicant to establish the feasibility of using these overburden materials.

2. Results of analyses, trials, and tests shall be submitted to the department. Certification of trials and tests shall be made by a laboratory approved by the department, stating that: the proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil; the substitute material is the best available material to support the vegetation; and the trials and tests were conducted using approved standard testing procedures.

3. Consultation. Before any permit is approved for substitute materials, the department shall consult with the United States Soil Conservation Service and the Kentucky Division of Conservation or other appropriate agencies to provide a review of the proposed substitute material and comment on possible revisions that will result in a more favorable substitute material within the permit area to support revegetation.

(b) Substituted or supplemental overburden material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this Section.

(7) Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution:

(a) The size of the area from which topsoil is removed at any one time shall be limited;

(b) The soil horizons or substitute material shall be redistributed during favorable conditions in which temporary or permanent vegetative cover can be established to minimize erosion and protect the physical and chemical properties of the material; and

(c) Such other measures shall be taken as the department may approve or require to control erosion.

Section 3. Storage. (1) Topsoil and other materials removed under Section 2 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished by:

1. An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

2. Other methods demonstrated to and approved by the department to provide equal protection.

(b) Unless approved by the department, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

Section 4. Redistribution. (1) After final grading and before the replacement of topsoil and other materials segregated in accordance with Section 2, regraded land

shall be scarified or otherwise treated as required by the department to eliminate slippage surfaces and to promote root penetration. If the permittee shows, through appropriate tests, and the department approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(2) Topsoil and other materials shall be redistributed in a manner that:

(a) Soil replacement starts with those soil horizons in the reverse order in which they were removed or substitute and overburden materials replaced first with topsoil material last. The minimum depth of material to be redistributed is twenty-four (24) inches, in accordance with Section 2.

(b) Achieves an approximate uniform stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system;

(c) Prevents excess compaction of the topsoil; and

(d) Protects the topsoil from wind and water erosion before and after it is seeded and planted.

Section 5. Nutrients and Soil Amendments. Nutrients and soil amendments in the amounts determined by soils tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of 405 KAR 30:400. All soil tests shall be performed by a qualified laboratory using standard methods approved by the department.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:310. Diversion of flows and water withdrawal.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and environment of the Commonwealth. This regulation sets forth requirements for design and construction of temporary and permanent diversions of overland flow, shallow ground water flow, ephemeral streams, and intermittent and perennial streams and water withdrawals.

Section 1. Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the department as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:

(1) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the department.

(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a *ten (10) year* [100-year] recurrence interval, or a larger event as specified by the department. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the department to prevent seepage or to provide stability.

(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(4) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the department.

(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with 405 KAR 30:290, 405 KAR 30:390, and 405 KAR 30:400.

(6) Diversion design shall incorporate the following:

(a) Channel lining shall be designed using standard engineering practices to pass safely the design velocities.

(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the department, the design freeboard may be increased.

(c) Energy dissipators shall be installed, when necessary, at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with *the plan approved by the department and submitted under 405 KAR 30:130, Section 6(13)* [405 KAR 30:360].

(e) Topsoil shall be handled in compliance with 405 KAR 30:290.

Section 2. Stream Channel Diversions. (1) Flow from perennial and intermittent streams within the permit area may be diverted, [except as provided in 405 KAR 30:380,] if the diversions:

(a) Comply with applicable local, state, and federal statutes and regulations;

(b) Pass the design flow (100 year storm) without causing an increase of more than one (1) foot over existing flood heights *or an increase in potential flood hazard to life and/or property*; and

(c) Pass the design velocities without causing any significant increase in flow velocities.

(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial roughness structures shall be used in diversions only when approved by the department as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(b) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a 100-year, twenty-four (24) hour precipitation event for permanent diversions, with drainage areas less than 200 acres, or larger events specified by the department for drainage areas greater than 200 acres. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(3) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 405 KAR 30:290, 405 KAR 30:390, and 405 KAR 30:400. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintenance of a water treatment facility otherwise required under this Title or the permit.

(4) When permanent diversions are constructed or stream channels restored, after temporary diversions, the permittee shall:

(a) Restore, enhance where practicable, or maintain natural raparian vegetation on the banks of the stream;

(b) Establish or restore the stream to an environmentally acceptable meandering shape and gradient, as determined by the department; and

(c) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

Section 3. Stream Buffer Zones. (1) No land within 100 feet of a perennial stream or a stream with a biological community determined according to subsection (3) of this section shall be disturbed by oil shale operations unless the department specifically authorizes such activities closer to or through such a stream under the following conditions.

(a) Any temporary or permanent diversion shall comply with all provisions of this regulation and shall be constructed prior to any disturbance of the buffer zone;

(b) That the original stream channel will be restored or relocated in a manner satisfactory to the department; and

(c) During and after the mining, the water quantity and quality from the stream section within 100 feet of the surface mining activities shall not be adversely affected.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in 405 KAR 30:210.

(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are:

(a) Adapted to flowing water for all or part of their life cycle;

(b) Dependent upon a flowing water habitat;

(c) Reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(d) Longer than two (2) millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

Section 4. *Water Withdrawals, Transfers or Diversions.* Water withdrawals, *transfers or diversions* from public water [supplies] shall comply with requirements set forth in KRS 151.140, KRS 151.150, KRS 151.160, KRS 151.170, *KRS 151.200* and 401 KAR 4:010.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:320. Water quality standards, effluent limitations, and monitoring.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth water quality standards and monitoring requirements.

Section 1. Water Quality Standards. (1) For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches or roads are installed and the upstream area is not otherwise disturbed by the oil shale operations. All sedimentation ponds required shall be constructed in accordance with this chapter and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the department.

(2) The discharges from areas disturbed by oil shale operations must meet all applicable federal and state laws and regulations and at a minimum in the numerical limitations in Appendix A of this regulation. As sufficient data becomes available, the department may establish effluent limitations for other parameters.

(3) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state laws or regulations or the effluent limitations listed in Appendix A of this regulation.

(4) If the pH of waters discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the department shall be installed, operated, and maintained. If the department finds that small and infrequent treatments are required to meet effluent limitations and do not necessitate use of an automatic neutralization process, the department may approve the use of a manual system if the department finds that consistent and timely treatment can be assured by the permittee.

Section 2. Surface Water Monitoring. (1) A surface water monitoring program which meets the requirements of this section shall be prepared and submitted with the permit application, and this program shall be subject to the approval of the department. The program shall:

(a) Provide adequate monitoring to characterize all discharges from the disturbed area;

(b) The frequency of sampling shall *be twice a month or as deemed necessary by* [meet the approval of] the department;

(c) Provide adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area to the satisfaction of the department;

(d) Provide monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations;

(e) Provide an analytical quality control system including standard methods of analysis as specified in 40 CFR 136; and

(f) Provide a regular *quarterly* report of all measurements and analyses to the department [within sixty (60) days of sample collection], unless violations of permit conditions occur in which case the department shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251-1378) a copy of the reporting form supplied to meet the permit requirements may be submitted to the department to satisfy the reporting requirements of this regulation if the data meet the sampling frequency and other requirements of this section.

(2) After disturbed areas have been regraded and stabilized in accordance with the provisions of these regulations, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirements of this chapter to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data shall provide a basis for approval by the department for removal of water quality or flow control systems and for determining when the requirements of this regulation are met. The department shall approve the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to adequately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required *as determined by the department.*

Section 3. Recharge Capacity of Reclaimed Lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity shall be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance to the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to Section 5 of this regulation to ensure that operations conform to this requirement.

Section 4. Ground Water Systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to Section 5 of this regulation to ensure that operations conform to this requirement.

Section 5. Ground Water Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of oil shale operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can accurately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as infiltration tests, and aquifer tests, must be undertaken by the permittee to demonstrate compliance with Sections 3 and 4 of this regulation.

Appendix A of 405 KAR 30:320

Effluent Limitations, in Milligrams per Liter (mg/l, except for pH)

Effluent characteristics[1]	Maximum allowable[2]	Average of daily values for 30 consecutive discharge days[2]
Iron, total[5]	7.0	3.5
Manganese, total[3]	4.0	2.0
Total suspended solids	70.0	35.0
pH[4]	Within the range 6.0 to 9.0	

1 To be determined according to collection and analytical procedures adopted by Environmental Protection Agency's regulations for wastewater analyses (40 CFR 136).

2 Based on representative sampling.

3 The manganese limitation shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

4 Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the department may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0 in order that the manganese limitations will be achieved.

5 Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to 6.0 mg./l (maximum allowable) and 3.0 mg./l (average of daily values for thirty (30) consecutive discharge days).

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:330. Sediment control measures.

RELATES TO: KRS 151.250, 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for sediment control measures.

Section 1. Sediment Control Required. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law.

(1) Sediment control measures include practices carried out within and adjacent to the disturbed area. For the purpose of this regulation, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed and the upstream area is not otherwise disturbed by the mining operation. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:

(a) Disturbing the smallest practicable area *for good site management* [at any one time] during the mining operation through progressive backfilling and grading, and timely revegetation;

(b) Consistent with the requirements of this chapter, shaping the backfill material to promote a reduction of the rate and of runoff;

(c) Retention of sediment within the pit and disturbed area;

(d) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;

(e) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or entrap sediment; and

(f) Sedimentation ponds.

(2) Maximum utilization shall be made of onsite sediment control practices.

(3) All surface drainage from the disturbed area including disturbed areas which have been graded, seeded, or planted shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements and the revegetation requirements of these regulations have been met. All sedimentation ponds required shall be constructed in accordance with this chapter and in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water. Sedimentation ponds shall be certified by a qualified registered engineer as having been constructed as designed and as approved by the department. Sedimentation ponds may be used individually or in series, and should be located as near as possible to the disturbed area and where possible out of major stream courses.

(4) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with 405 KAR 30:290.

(5) All sediment ponds shall be designed by a registered professional engineer and at a minimum shall meet the following:

(a) Sediment ponds shall be designed, constructed, and maintained to prevent short-circuiting.

(b) Sediment ponds shall provide a detention period such that discharges from the pond resulting from the water inflow or runoff entering the pond from a ten (10) year, twenty-four (24) hour precipitation event and lesser events shall meet the effluent limitations of Appendix A of 405 KAR 30:320.

(c) There shall be no outflow through the emergency spillway during the passage through the sedimentation pond of the inflow or runoff resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events.

(d) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the department. The elevation of the crest of the emergency spillway shall be a minimum of one (1) foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the department.

(e) Sediment control structures having an embankment that is more than twenty-five (25) feet in height, as measured from the natural bed of the stream or intercourse of the downstream toe of the embankment to the low point in the top of the embankment or a maximum impounding capacity of fifty (50) acre-feet or more shall be designed, constructed, and maintained in accordance with KRS Chapter 151 and regulations promulgated pursuant thereto.

(f) All sediment control structures shall be designed and constructed to achieve a minimum static safety factor of 1.5 or larger if specified by the department.

(6) In the design of sedimentation ponds pursuant to this regulation, the responsible design engineer shall determine the structure hazard classification as set forth in 405 KAR 30:020 and the structure hazard classification shall be clearly shown on the first sheet of the design drawings.

(7) Sedimentation ponds classified (B)—moderate hazard or (C)—high hazard shall be approved by the department, designed, constructed and maintained according to the provisions of KRS 151.250 and regulations adopted pursuant thereto.

Section 2. The permittee shall forward a certified copy of "as built" engineering plans for all dams or structures which meet either of the following criteria to the Depart-

ment for Natural Resources and Environmental Protection, Division of Water, Frankfort, Kentucky 40601. Such plans shall be provided immediately after construction is completed.

(1) The embankment is twenty-five (25) feet or more in height measured from the natural bed of the stream or watercourse at the downstream toe of the fill to the low point in the top of the embankment; or

(2) The structure has an impounding capacity of fifty (50) acre-feet or more at the lowest point in the top of the embankment.

Section 3. The department may require other actions necessary to ensure that the provisions of this regulation are met.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:340. Leachate control.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for leachate control.

Section 1. General. The permittee shall, using the best technology currently available, control the quantity and quality of leachate produced at an oil shale operation.

Section 2. Preventive Measures. The permittee shall control the quantity of leachate by limiting the exposure of leachate-producing materials to contact with water utilizing, but not limited to, the following practices;

(1) Constructing diversion structures around sources of leachate. Such structures shall meet the provisions of 405 KAR 30:310, Section 1(2).

(2) Placing such materials on impermeable surfaces;

(3) Minimizing exposure to precipitation;

[(4) Avoiding excessive use of water to cool spent shale, control dust, and achieve optimum compaction;]

(4) [(5)] Protecting disposal areas from water by placing impermeable boundaries around leachate-producing materials; and

(5) [(6)] Construction of leachate containment structures.

Section 3. Leachate Containment Structures. Where deemed necessary by the department, leachate containment structures shall be constructed below sources of leachate not meeting water quality standards *as specified in 405 KAR 30:320.* Such structures shall, at a minimum, meet the following provisions:

(1) Leachate containment structures shall be sized to contain all leachate until such leachate can be treated to meet applicable standards or otherwise disposed of as approved by the department;

(2) Leachate containment structures shall be lined with an impermeable material to prevent seepage;

(3) Leachate containment structures shall be located as close as possible to the source;

(4) Leachate containment structures shall not be used for sediment control unless specifically approved by the department;

(5) Leachate containment structures shall be maintained in a manner approved by the department and retained until leachate meets applicable water quality standards;

(6) Leachate containment areas shall be marked by signs meeting the criteria in 405 KAR 30:210;

(7) Leachate containment areas shall be fenced to prevent entry of livestock, wildlife, and unauthorized persons.

Section 4. The department may approve other criteria upon adequate demonstration by the permittee based on sound engineering principals that the requirements of this regulation are met.

Section 5. All leachate shall be handled, treated, and disposed of in accordance with all applicable federal and state laws and regulations.

Section 6. All areas containing leachate-producing materials shall remain under bond until the leachate being produced meets all applicable water quality standards.

JACKIE A. SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:390. Backfilling and grading.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements relating to the backfilling and grading of areas affected by oil shale operations.

Section 1. Postmining final graded slopes need not be uniform nor does the mined area have to be backfilled to achieve the approximate original contour of the land surface.

Section 2. Wastes may be disposed of in the mined area *provided* [providing] it is demonstrated to the satisfaction of the department by hydrological means and chemical and physical analyses that these waste materials are suitable for use as fill material and that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards for public health and safety; and will not cause instability in the backfilled area.

Section 3. All processing wastes shall be handled and disposed of in accordance with the requirements of KRS Chapter 224 and regulations promulgated pursuant *thereto* [thereof] and all other applicable state and federal laws and regulations.

Section 4. Covering and Stabilizing. (1) Any acid-forming *or* [,] toxic-forming *materials*, combustible materials, or any other mining waste materials [identified by the department] that are exposed, used, or produced during mining shall be covered with a minimum of four (4) feet of non-toxic and *non-acid forming* [non-combustible] material; or, if necessary, treated [to neutralize toxicity] in order to prevent water pollution and sustained combustion, and the minimize adverse effects on plant growth and land uses. These four (4) feet of non-toxic, *non-acid forming* [non-combustible] material do not include the topsoil or topsoil substitute material required in 405 KAR 30:290 relating to topsoil and 405 KAR 30:280 covering prime farmland. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to pose a threat of water pollution or otherwise adversely affect the hydrologic balance. [Acid-forming or toxic-forming mining wastes shall not be disposed of with spent shale unless specifically authorized by the department.]

(2) Backfilled materials shall be selectively placed and compacted as necessary to prevent leaching of acid-forming and toxic-forming materials into surface or subsurface waters and wherever necessary to ensure the stability of the backfilled materials. The method of compacting backfill material and the design specifications shall be approved by the department before the acid-forming or toxic-forming materials are covered.

(3) Where highwalls are created during mining which contain various geologic zones with substantially different weathering rates, the permittee shall, at a minimum, backfill all zones which are overlain by a formation with a much slower weathering rate.

(4) All backfilling shall be placed and compacted to achieve a minimum static safety factor of 1.5 or higher if deemed necessary by the department based on specific site conditions.

(5) Spent shale shall be disposed of in mined areas in accordance with the *requirements of KRS Chapter 224 and regulations promulgated pursuant thereto and all other applicable state and federal laws and regulations* [provisions in 405 KAR 30:380, Section 3(1) through (12)].

Section 5. (1) Where deemed necessary by the department impervious liner(s) will be required in backfill areas to protect water quality, water flow, water quantity, and vegetation, and to prevent hazards to public health and safety.

(2) The department shall approve the type and order in which all materials are backfilled.

Section 6. Grading Along the Contour. All final grading, preparation of overburden before replacement of topsoil or topsoil substitute, and placement of topsoil, in accordance with the provisions of 405 KAR 30:290, shall be *conducted* [done along the contour unless such grading would be hazardous to equipment operators. In all cases, grading, preparation, or placement shall be conducted] in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Section 7. Regrading or Stabilizing Rills and Gullies. When rills or gullies deeper than nine (9) inches form in areas that have been regraded and the topsoil or topsoil substitute material replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas in accordance with 405 KAR 30:400 with regard to revegetation. The department shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Section 8. Small Depresssions. If approved by the department, small depressions may be constructed to minimize erosion, conserve soil moisture, or promote revegetation. The depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than one (1) cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard.

Section 9. Permanent Impoundments. If approved in the postmining land use plan, permanent impoundments may be retained on mined and reclaimed areas. No impoundments shall be constructed on top of areas in which mining and processing waste materials *or* [and] spent shale are deposited. Impoundments shall not be used to meet the requirements of Section 4 of this regulation with regard to covering of acid-forming and toxic-forming materials, spent shale or other waste materials.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement
Amended After Hearing

405 KAR 30:400. Revegetation.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for revegetation of areas

affected by oil shale operations, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stablilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1) Each permittee shall establish on all affected land a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the region or species that supports the approved postmining land use. For areas designated as prime farmland, the requirements of 405 KAR 30:280 shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 30:130, as approved by the department and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(a) All disturbed land, except water areas and surface areas of roads that are approved as a part of the postmining land use, and other small incidental areas related to the fulfillment of the postmining land use plan subject to approval by the department, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region.

(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(c) Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(d) If both the premining and postmining land uses are cropland, successful establishment of the crops normally grown will meet the requirements of paragraphs (a), (b) and (c) of this subsection.

(e) Subject to the approval of the department, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards where no adverse environmental impact will occur if the exemption is granted.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the department under the following conditions:

(1) The species are compatible with the natural plant and animal species of the region;

(2) The species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious; and

(3) (a) After appropriate field trials or other demonstrations or studies satisfactory to the department have shown that the introduced species, if proposed as the permanent vegetation, can establish an effective and permanent cover compatible with the vegetation on surrounding areas and compatible with the approved postmining land use; or

(b) The species are necessary to achieve a quick, temporary and stabilizing cover that aids in controlling erosion, and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 30:130.

(4) The department may require the use of particular species or mixtures when such species are determined to enhance fish and wildlife resources, to be more effective in controlling erosion, to be more effective in establishing permanent vegetation or to be more effective in achieving the approved postmining land use.

Section 3. Timing. Seeding and planting of a disturbed area shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as established by the department, for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable, within thirty (30) days of the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Mulching and Other Soil Stabilizing Practices. (1) Suitable mulch or other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture retention capacity of the soil. The department may, on a case-by-case basis, suspend the requirement for mulch, if the department finds that alternative procedures proposed by the permittee will achieve the requirements of Section 6 and do not cause or contribute to air or water pollution.

(2) When required by the department, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(3) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the department determines they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(4) Chemical soil stabilizers, alone or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

Section 5. Grazing. When the approved postmining land use is grazing or pasture land, the permittee may demonstrate successful revegetation by using the reclaimed land for livestock grazing at a grazing capacity approved by the department approximately equal to that for similar non-mined lands, for at least the last two (2) full years of liability required under Section 6(2), or by other appropriate demonstration approved by the department. It is recommended that grazing capacity be accomplished gradually so that over-grazing does not occur and damage the vegetation cover.

Section 6. Standards for Success. (1) Success of revegetation shall be measured by techniques approved by the department after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or other procedures approved by the department for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(2) (a) Ground cover and productivity of living plants on the revegetated area within the permit area shall be at least equal to the ground cover and productivity of living plants on the approved reference area, or to the standards in technical guides approved by the department. Ground cover and productivity shall equal the approved standard for the last three (3) consecutive years of the responsibility period.

(b) Except as provided in subsection (2)(c) of this sec-

tion, the period of extended responsibility under the performance bond requirements of this regulation begins at the last time of substantially augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation and continues for not less than seven (7) years.

(c) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety (90) percent of the ground cover and productivity of the reference area with ninety (90) percent statistical confidence, or with eighty (80) percent statistical confidence on shrublands, or ground cover and productivity are at least ninety (90) percent of the standards in a technical guide approved pursuant to paragraph (a) of this subsection. Exceptions may be authorized by the department under the following standards:

1. For areas to be developed for industrial or residential use within two (2) years after regrading is completed, the ground cover of living plants shall not be less than the department determines to be necessary to control erosion; and

2. For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to the approved reference areas or other approved technical guidance procedures. For the purposes of erosion control and for efforts to rebuild the organic content in the soils, the first two (2) years grasses and legumes will be allowed upon approval of the department. Crop production from the mined area shall be equal to or greater than that of the approved standard for at least two (2) consecutive growing seasons out of the remaining five (5) year liability period established in paragraph (b) of this subsection. Production shall not be considered equal if it is less than ninety (90) percent of the production of the approved standard with ninety (90) percent statistical confidence. The applicable seven (7) year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Within thirty (30) days of planting, the permittee shall notify the department that the initial planting of the crop has been completed. Promptly thereafter, the department shall inspect the area to verify that the initial planting has been completed.

3. On areas to be developed for fish and wildlife management or forestland, *success of* [successive] vegetation shall be determined on the basis of tree, shrub or half-shrub stocking and ground cover. The tree, shrub or half-shrub stocking shall meet the standards described in Section 7. The area seeded to a ground cover shall be considered acceptable if it is at least *seventy (70)* [eighty (80)] percent of the ground cover of the reference areas with ninety (90) percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the department. This subsection shall determine the responsibility period and the frequency of ground cover measurement.

(3) The permittee shall:

(a) Maintain any necessary fences and proper management practices; and

(b) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the department, to identify conditions during the applicable period of liability specified in subsection (2) of this section.

[(4) For permit areas forty (40) acres or less in size, the following performance standards, if approved by the department, may be used to measure success of revegetation on sites that are disturbed.]

[(a) Areas planted only in herbaceous species shall sustain a vegetative ground cover of eighty (80) percent for the last three (3) full consecutive years of the five (5) year period of liability.]

[(b) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of eighty (80) percent for the last three (3) full consecutive years of the five (5) year period of liability and survival rate of 400 woody plants per acre at the end of the seven (7) years. On steep slopes, the minimum survival rate of woody plants shall be 600 per acre.]

(4) [(5)] For purposes of this section, herbaceous species means grasses, legumes, and nonleguminous forbs; woody plants means woody shrubs, trees, and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

Section 7. Tree and Shrub Stocking. This section sets forth standards for revegetation of areas for which the approved postmining land use requires woody plants as the primary vegetation, to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or half-shrubs, sufficient for adequate use of available growing space, is established after mining activities.

(1) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs or half-shrubs.

(a) Root crown or root sprouts over one (1) foot in height shall count as one (1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

1. The tree or shrub shall be in place at least three (3) growing seasons;

2. The tree or shrub shall be alive and healthy; and

3. The tree or shrub shall have at least one-third (⅓) of its length in live crown.

(c) [Rock areas,] Permanent roads and surface water drainage ways on the revegetated area shall not require stocking.

(2) The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(a) The area shall have a minimum stocking of 450 trees or shrubs per acre.

(b) A minimum of seventy-five (75) percent of countable trees or shrubs shall be commercial trees species. and

(c) The number of trees or shrubs and the ground cover shall be determined using procedures described in Section 6(2)(c) and subsection (1) of this section and the sampling method approved by the department.

(d) Upon expiration of the seven (7) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the ground cover on the revegetated area satisfy subparagraph 3 of Section 6(2)(c) and this subsection.

(3) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(a) The stocking of trees, shrubs, half-shrubs, and the groundcover established on the revegetated area shall approximate the stocking and groundcover on the reference area, or shall approximate the stocking and groundcover as approved in the mining and reclamation plan as ap-

propriate for the approved postmining land use.

(b) Where a reference area is utilized, an inventory of trees, half-shrubs and shrubs shall be conducted on established reference areas according to methods approved by the department. This inventory shall contain but not be limited to:

1. Site quality;
2. Stand size;
3. Stand condition;
4. Site and species relations;
5. Appropriate forest land utilization considerations; and
6. Species types.

(c) Upon expiration of the seven (7) year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

1. The woody plants established on the revegetated site are equal to or greater than ninety (90) percent of the stocking of live woody plants of the same life form on the reference area or of the life form as approved in the permittee's mining and reclamation plan with eighty (80) percent statistical confidence; and
2. The ground cover on the revegetated area satisfies subparagraph 3 of Section 6(2)(c). Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

Section 8. Planting Report. Prior to, or simultaneously with, the submittal of an application for the initial bond release on an area, the permittee shall file a certified planting report with the department on a form prescribed and furnished by the department, giving the following information:

(1) Identification of the operation;
(2) Permit number;
(3) The type of planting or seeding, including mixtures and amounts;
(4) The date of planting or seeding;
(5) Fertilizer rates or amounts and types of other soil amendments applied;
(6) The area of land planted; and
(7) Such other relevant information as the department may require.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board
Amended After Hearing

902 KAR 20:008. Health faclities and health service; licensure and fee schedule.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the requirements for obtaining a license to operate a health facility or health service and establishes the fee schedule for a license.

Section 1. Licenses. (1) No person shall operate any health facility or health service in this Commonwealth without first obtaining the appropriate license therefor.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) All applications for licensure shall be filed with the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

(4) All applicants for licenses shall, as a condition precedent to licensure, be in compliance with the applicable regulations relating to the particular health facility or health service.

(5) All licenses shall expire on December 31 following the date of issuance unless otherwise expressly provided in the license certificate.

(6) Licenses may be renewed upon:

(a) Payment of the prescribed fee;

(b) Compliance with the applicable provisions of the Certificate of Need and Licensure Board's regulations; and

(c) Submission of reports *including* [of] health services provided, health manpower employed and utilization of health services *and any special reports* [as] required by the Board. *Commencing with the required reports for calendar year 1982, the data elements to be included in said reports will be circulated for notification at least sixty (60) days in advance of the requests.*

(7) Each license to operate shall be issued only for the person or persons and premises, including the number of beds (if applicable), named in the application and shall not be transferable. A new application shall be filed in the event of change of ownership. Change of ownership for licenses shall be defined as follows:

(a) Sole proprietorship: Where a health facility/service is owned by a single individual, a transfer of any part of the title to the facility/service to another person or firm shall constitute a change in ownership.

(b) Partnership: Where a health facility/service is owned by a partnership, the addition, deletion or the substitution of any individual or transfer of any part of the title to the facility/service to another person or firm shall constitute a change in ownership.

(c) Closely held corporation: Where a health facility/service is owned by a corporation of ten (10) or fewer stockholders, any change of shares of stock or transfer of any part of the title to the facility/service to another person or firm shall constitute a change in ownership.

(d) Proprietary corporation: Where the health facility/service is owned by a corporation of more than ten (10) stockholders, any transfer of any part of the title to the facility/service to another person or firm as well as any consolidation with another corporation or change of name or transfer of any part of the title to the facility/service shall constitute a change in ownership.

(e) Lease: Where any person or firm leases the health facility/service or any part thereof to another person or firm it shall constitute a change in ownership.

(8) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee will be charged for the remainder of the licensure period.

(9) There shall be full disclosure to the licensure board of the name and address (and any changes) of:

(a) Each person having (directly or indirectly) ownership interest of ten (10) percent or more in the facility;
(b) Each officer and director of the corporation, where a facility is organized as a corporation; and
(c) Each partner, where a facility is organized as a partnership.

Section 2. Fee Schedule. (1) Fees for review of plans and specifications for construction of health facilities shall be as follows:
(a) Hospitals' Plans and Specifications Review (initial through final): 25 per sq. ft. x $.001, $1,500 maximum;
(b) All other health facilities' Plans and Specifications Review (initial through final): 25 per sq. ft. x $.001, $800 maximum.
(2) Annual fees. The annual licensure fee (including renewals) for health services shall be as follows:
(a) Ambulatory surgicial center: $100;
(b) Community mental health and mental retardation center: $500 per catchment area;
(c) Day health care: $50;
(d) Emergency care ambulance service (per service): $50;
(e) Family care homes: $25;
(f) Group homes, mentally retarded/developmentally disabled: $50;
(g) Health maintenance organizations: $3 per each 100 patients;
(h) Home health agencies: $50;
(i) Homemaker: $50;
(j) Hospice: $10;
1. Accredited hospital: $3 per bed, $100 minimum, $1,000 maximum;
2. No-accredited hospital: $5 per bed, $100 minimum, $1,000 maximum;
(k) Intermediate care facilities: $5 per bed, $100 minimum, $1,000 maximum;
(l) Medical alcohol emergency detoxification services: $5 per bed;
(m) Nursing home: $5 per bed, $100 minimum, $1,000 maximum;
(n) Outpatient clinics and ambulatory care facilities: $100;
(o) Personal care home: $2 per bed, $50 minimum, $500 maximum;
(p) Primary care center: $100, $15 per satellite;
(q) Rehabilitation (outpatient): $50;
(r) Renal dialysis: $10 per station;
(s) Rural health clinics: $50;
(t) Skilled nursing facilities: $5 per bed, $100 minimum, $1,000 maximum.

Section 3. 902 KAR 20:007 and 902 KAR 20:007E, License and fee schedule, are hereby repealed.

FRANK W. BURKE, SR., Chairman
ADOPTED: December 8, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 4 p.m.

Proposed Amendments

PERSONNEL AND MANAGEMENT CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:010. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.702, 78.510 to 78.852
PURSUANT TO: KRS 13.082, 16.576, 16.640, 61.559, 61.645, 78.780
NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545, require the board to determine the employer contribution rate based on an actuarial valuation. KRS 61.552 requires the board to adopt a rate of interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the Kentucky Employes Retirement System (KERS), County Employes Retirement System (CERS) and State Police Retirement System (SPRS).

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation earned on or after July 1, *1982,* [1981] shall be as follows:

KRS 61.565 State Police Retirement System 18½%
KRS 61.656 Kentucky Employes Retirement System 7¼%
KRS 61.565 County Employes Retirement System ..... *6¼%* [7¼%]
KRS 61.592 Kentucky Employes Retirement System.. *18¼%* [19¼%]
KRS 61.592 County Employes Retirement System ..... *15%* [16%]

Section 2. The interest rate on a recontribution of refund as provided under KRS 61.552 shall be *as follows:*
(a) For time elapsed from date of refund through June 30, 1982, six (6) percent compounded annually.
(b) For time elapsed from July 1, 1982 (or date of refund if after July 1, 1982) seven and one-half (7½) percent compounded annually. [six (6) percent compounded annually, except that] The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board shall be at the rate of zero (0) percent, if the refund is recontributed within a reasonable period of time.

Section 3. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate of *six (6)* [three (3)] percent.

Section 4. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to Normal Retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, below, except:

(1) A [SPRS, or] KERS hazardous duty member who is age fifty (50) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if the employment had continued shall have his retirement benefit computed based on the appropriate factor as follows:

TABLE A

Years Required to Complete 30 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A *SPRS or* CERS hazardous duty member who is age fifty (50) or older and has attained twenty-five (25) years of service or would attain twenty-five (25) years of service *(for SPRS, fifteen (15) of which would be current service)* prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factor as follows:

TABLE B

Years Required to Complete 25 Years Service	Percentage Payable
0	100%
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(3) A KERS or CERS non-hazardous member who is age fifty-five (55) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 30 Years Service	Percentage Payable
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(4) A KERS or CERS non-hazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on [SPRS or] KERS hazardous early retirement eligibility, and would have attained thirty (30) or more years of service (fifteen (15) of which would be current service) on or before reaching his sixty-fifth (65th) birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table C based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

(5) A KERS or CERS non-hazardous member with *SPRS or* CERS Hazardous Service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on *SPRS or* CERS hazardous early retirement eligibility, and would have attained twenty-five (25) or more years of service *(for SPRS, fifteen (15) of which would be current service)* on or before reaching his sixty-fifth (65th) birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table E based on the number of years required to complete twenty-five (25) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE E

Years Required to Complete 25 Years Service	Percentage Payable
0	100%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(6) A [SPRS or] KERS hazardous member who dies prior to age fifty (50) and would have attained thirty (30) or more years of service (fifteen (15) or which would be current service) on or before reaching his fifty-fifth (55th) birthday, if employment were continued, shall have benefits payable as determined from Table C based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

(7) A *SPRS or* CERS hazardous member who dies prior to age fifty (50) and has attained twenty-five (25) years of service or would have attained twenty-five (25) or more years of service *(for SPRS, fifteen (15) of which would be current service)* on or before reaching his fifty-fifth (55th) birthday, if employment were continued, shall have

benefits payable as determined from Table E based on the number of years required to complete twenty-five (25) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time death.

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE G

Early Age	Normal Retirement Age	
	65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factors.

(8) Benefits paid in the event of death prior to retirement pursuant to subsections (1) through (7) of this section shall be reduced, as required by KRS 61.640 and as determined in "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors" incorporated herein by reference.

Section 5. Conversion factors to be applied to determine immediate annuity which could be purchased by $1,000 of contributions and interest after doubling as provided in KRS 16.576 and 61.559, *effective April 1, 1982.*

TABLE H

Non-Hazardous	*Age*	*Male*	*Female*
	65	*$ 9.92141*	*$ 8.57730*
	66	*$10.19723*	*$ 8.77301*
	67	*$10.49134*	*$ 8.98625*
	68	*$10.80397*	*$ 9.21964*
	69	*$11.13655*	*$ 9.47497*
	70	*$11.48855*	*$ 9.75310*
	71	*$11.85855*	*$10.05393*
	72	*$12.24723*	*$10.37652*
	73	*$12.65979*	*$10.72087*
	74	*$13.10404*	*$11.08806*
	75	*$13.58700*	*$11.47901*
	76	*$14.11350*	*$11.89596*
	77	*$14.68390*	*$12.34116*
	78	*$15.29153*	*$12.81648*
	79	*$15.93155*	*$13.32415*
	80	*$16.60395*	*$13.86536*
Hazardous	*50*	*$ 7.46966*	*$ 6.90106*
	51	*$ 7.56685*	*$ 6.96348*
	52	*$ 7.67007*	*$ 7.03073*
	53	*$ 7.77991*	*$ 7.10321*
	54	*$ 7.89699*	*$ 7.18139*
	55	*$ 8.02206*	*$ 7.26577*
	56	*$ 8.15598*	*$ 7.35689*
	57	*$ 8.29982*	*$ 7.45528*
	58	*$ 8.45481*	*$ 7.56147*
	59	*$ 8.62204*	*$ 7.67598*
	60	*$ 8.80177*	*$ 7.79939*
	61	*$ 8.99462*	*$ 7.93237*
	62	*$ 9.20156*	*$ 8.07563*
	63	*$ 9.42411*	*$ 8.23009*
	64	*$ 9.66376*	*$ 8.39690*
	65	*$ 9.92141*	*$ 8.57730*
	66	*$10.19723*	*$ 8.77301*
	67	*$10.49134*	*$ 8.98625*
	68	*$10.80397*	*$ 9.21964*
	69	*$11.13655*	*$ 9.47497*
	70	*$11.48855*	*$ 9.75310*
	71	*$11.85855*	*$10.05393*
	72	*$12.24723*	*$10.37652*
	73	*$12.65979*	*$10.72087*
	74	*$13.10404*	*$11.08806*
	75	*$13.58700*	*$11.47901*
	76	*$14.11350*	*$11.89596*
	77	*$14.68390*	*$12.34116*
	78	*$15.29153*	*$12.81648*
	79	*$15.93155*	*$13.32415*
	80	*$16.60395*	*$13.86536*

[TABLE H

	Age	Male	Female
Non-Hazardous	65	$ 8.229	$ 7.432
	66	$ 8.423	$ 7.596
	67	$ 8.628	$ 7.767
	68	$ 8.848	$ 7.951
	69	$ 9.087	$ 8.147
	70	$ 9.332	$ 8.355
	71	$ 9.605	$ 8.565
	72	$ 9.882	$ 8.796
	73	$10.180	$ 9.042
	74	$10.468	$ 9.304
	75	$10.792	$ 9.567
	76	$11.139	$ 9.848
	77	$11.510	$10.149
	78	$11.908	$10.450
	79	$12.286	$10.775
	80	$12.684	$11.121
Hazardous	55	$ 6.809	$ 6.257
	56	$ 6.899	$ 6.349
	57	$ 7.020	$ 6.449
	58	$ 7.150	$ 6.546
	59	$ 7.281	$ 6.635
	60	$ 7.419	$ 6.745
	61	$ 7.561	$ 6.870
	62	$ 7.692	$ 7.002
	63	$ 7.860	$ 7.138
	64	$ 8.039	$ 7.279
	65	$ 8.229	$ 7.432
	66	$ 8.423	$ 7.596
	67	$ 8.628	$ 7.767
	68	$ 8.848	$ 7.951
	69	$ 9.087	$ 8.147
	70	$ 9.332	$ 8.355
	71	$ 9.605	$ 8.565
	72	$ 9.882	$ 8.796
	73	$10.180	$ 9.042
	74	$10.468	$ 9.304
	75	$10.792	$ 9.567
	76	$11.139	$ 9.848
	77	$11.510	$10.149
	78	$11.908	$10.450
	79	$12.286	$10.775
	80	$12.684	$11.121]

CHARLES L. BRATTON, General Manager
ADOPTED: November 20, 1981
APPROVED: GEORGE E. FISCHER, Secretary
RECEIVED BY LRC: December 11, 1981 at 9:10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

PERSONNEL AND MANAGEMENT CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:040. Actuarial assumptions and tables.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852
PURSUANT TO: KRS 13.082, 16.640, 61.645, 61.670, 78.780
NECESSITY AND FUNCTION: KRS 16.645(3), 61.670 and 78.545(23) requires the Board to adopt actuarial tables for the adminstration of the County Employes Retirement System (CERS), Kentucky Employes Retirement System (KERS) and State Police Retirement System (SPRS) and for the annual determination of assets and liabilities of the systems. This regulation includes the actuarial assumptions adopted by the board and these assumptions establish the basis for all actuarial tables used in the administration of the three (3) retirement systems.

Section 1. The following actuarial assumptions are adopted by the Board of Trustees of the Kentucky Retirement Systems as required under KRS 61.670 and shall be used to determine actuarial tables as are necessary for the administration of the Kentucky Employes Retirement System as provided by KRS 61.510 to 61.692, the County Employes Retirement System under KRS 78.510 to 78.852 and the State Police Retirement System under KRS 16.505 to 16.652. These assumptions shall also be used for the annual actuarial valuation for determination of assets and liabilities of these retirement systems.

(1) Kentucky Employes Retirement System and County Employes Retirement System non-hazardous position members actuarial assumptions:

Interest: *Seven and one-half percent (7½%)* [Six percent (6%)].

Valuation of Investments: Book value [except the unrealized appreciation of investments is capitalized but only to the extent required to result in a total yield of 6% for the year from investment income and capitalized appreciation].

Mortality: Pre-retirement—*1971* [1951] Group Annuity Mortality Table [Projected by Scale C to 1960, without age adjustment for males, but set back one (1) year for females]. Post-retirement—Same as pre-retirement. Mortality *for* [of] members receiving disability allowances—*Social Security Administration Disability Mortality Rates—Actuarial Study No. 75* [1965 Disabled Annuitants Mortality Table of Railroad Retirement Board].

Turnover: Select and Ultimate Table as follows:

Age	Years of Service	Terminations per 1,000
All ages	0 to 1	350
All ages	1 to 2	*100* [200]
All ages	2 to 3	*80* [175]
All ages	3 to 4	*65* [125]
All ages	4 to 5	*50* [100]

5 OR MORE YEARS OF SERVICE

Age	Terminations per 1,000	Age	Terminations per 1,000
20	60	40	50
21	60	41	49
22	60	42	48
23	60	43	47
24	60	44	46
25	60	45	45
26	60	46	44
27	60	47	43
28	60	48	42
29	60	49	41
30	60	50	40
31	60	51	38
32	60	52	36
33	60	53	34
34	60	54	32
35	60	55	30
36	58	56	25
37	56	57	20
38	54	58	15
39	52	59	10
		60	5
		61 and over	0

Disability: Annual rates varying by age as follows:

KERS & CERS & SPRS
(Non-Duty & Duty)

Age	Rate	Age	Rate
20	0.00025	45	0.00173
21	0.00025	46	0.00194
22	0.00025	47	0.00215
23	0.00026	48	0.00261
24	0.00027	49	0.00307
25	0.00028	50	0.00353
26	0.00029	51	0.00399
27	0.00030	52	0.00445
28	0.00031	53	0.00517
29	0.00032	54	0.00589
30	0.00033	55	0.00661
31	0.00034	56	0.00733
32	0.00035	57	0.00805
33	0.00039	58	0.00924
34	0.00043	59	0.01043
35	0.00047	60	0.01162
36	0.00051	61	0.01281
37	0.00055	62	0.01400
38	0.00066	63	0.01519
39	0.00077	64	0.01638
40	0.00088	65	0.00000
41	0.00099		
42	0.00110		
43	0.00131		
44	0.00152		

Retirement Rates: Early Retirement—*At age 55-64, 25% are assumed to retire as soon as eligible for unreduced benefits* [Assumed 50% will retire as soon as eligible for unreduced benefits and balance would continue to normal retirement age]. *For other retirement rates, see table below.* [Normal Retirement—As soon as eligible.]

Retirement Rates

Age	*Retirement Rate*
55-61	*.05*
62	*.25*
63-64	*.20*
65	*.70*
66-67	*.35*
68	*.45*
69	*.60*
70 & over	*1.00*

[*] Salary Increase: *7½%* [5%] annually [to age 30, graduated to 4½% at age 40 and 4½% annually thereafter].

(2) State Police Retirement System, Kentucky Employes Retirement System and County Employes Retirement System hazardous members actuarial assumptions:

Interest: *Seven and one-half percent (7½%)* [Six percent (6%)].

Valuation of Investments: Book value [except that unrealized appreciation of investments is capitalized but only to the extent required to result in a total yield of 6% for the year from investment income and capitalized appreciation].

Mortality: Pre-retirement—*1971* [1951] Group Annuity Mortality Table [Projected to 1960, by Scale C], plus a duty death rate of 5 deaths per 10,000 *employes* per year. Post-retirement—*1971* [1951] Group Annuity Mortality Table [Projected to 1960]. Mortality of members receiving disability allowances— [,]*Social Security Administration Mortality Rates—Actuarial Study No. 75* [1965 Disabled Annuities Mortality Table of Railroad Retirement Board].

Turnover: Annual rates varying by age as follows:

Age	Rate	Age	Rate
20	0.0405	40	0.0200
21	0.0405	41	0.0180
22	0.0405	42	0.0160
23	0.0405	43	0.0140
24	0.0405	44	0.0120
25	0.0405	45	0.0100
26	0.0414	46	0.0080
27	0.0423	47	0.0060
28	0.0432	48	0.0040
29	0.0441	49	0.0020
30	0.0450	50	0.0000
31	0.0425	51	0.0000
32	0.0400	52	0.0000
33	0.0375	53	0.0000
34	0.0350	54	0.0000
35	0.0325	55	0.0000
36	0.0300		
37	0.0275		
38	0.0250		
39	0.0225		

Disability: Same as KERS-CERS non-hazardous.
Retirement Rates: SPRS—*Assumed 50% will retire upon completion of twenty-five (25) years of service; all others will retire upon completion of twenty-five (25) years of service and attainment of age 50, or upon attainment of age 55* [Normal Retirement as soon as eligible]. CERS Hazardous—*Assumed that 50% will retire as soon as eligible for unreduced benefits and balance will continue to age 55;* Normal Retirement as soon as eligible. KERS Hazardous—Assumed 50% will retire as soon as eligible for unreduced benefits and balance would continue until age 60.
[*] Salary Increase: *7½%* [5%] annually [to age 30, graduated to 4½% at age 40 and 4½% annually thereafter].
*The actuarial assumptions for salary increases is based on analysis of retirement system accounts for the period ended June 30, *1981* [1972] and is not to be construed as a policy of the Commonwealth of Kentucky or local government as to the rate of salary increases an employee may expect to receive.

CHARLES L. BRATTON, General Manager
ADOPTED: November 20, 1981
APPROVED: GEORGE E. FISCHER, Secretary
RECEIVED BY LRC: December 11, 1981 at 9:10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

DEPARTMENT OF AGRICULTURE
Board of Veterinary Examiners
(Proposed Amendment)

201 KAR 16:020. Examination for licensing; reciprocity; fees; *re-examinations.*

RELATES TO: KRS 321.220, 321.260, *321.270*
PURSUANT TO: KRS 321.240
NECESSITY AND FUNCTION: KRS 321.190 requires all persons engaging in the practice of veterinary medicine in the State of Kentucky to be licensed by the Kentucky Board of Veterinary Examiners. KRS 321.260 provides that each applicant shall submit to an examination conducted by the board, with the exception of those persons who may obtain a license by reciprocity pursuant to the provisions of KRS 321.220. This regulation sets out the procedures to be followed in obtaining an application, the fees to be charged and procedures relating to the obtaining of a license as a result of this state reciprocating with another state.

Section 1. (1) The board recognizes the following veterinary colleges as having those standards and requirements adequate to comply with the provisions of KRS 321.260. All of the following veterinary colleges have been recognized and approved by the *Kentucky Board of Veterinary Examiners* [American Veterinary Medical Association]. Those colleges are as follows:
(a) [Alabama Polytechnic Institute,] College of Veterinary Medicine, *Auburn University,* Auburn, Alabama.
(b) University of California, School of Veterinary Medicine, Davis, California.
(c) Colorado State *University* [College], Division of Veterinary Medicine, Fort Collins, Colorado.
(d) Cornell University, New York State Veterinary College, Ithaca, New York.
(e) University of Utrecht, the Netherlands.
(f) University of Florida, School of Veterinary Medicine, Gainesville, Florida.
(g) [(e)] University of Georgia, School of Veterinary Medicine, Athens, Georgia.
(h) [(f)] University of Geulph, Ontario Veterinary College, Guelph Ontario, Canada.
(i) [(g)] University of Illinois, School of Veterinary Medicine, Urbana, Illinois.
(j) [(h)] Iowa State *University* [College], Division of Veterinary Medicine, Ames, Iowa.
(k) [(i)] Kansas State *University* [College], School of Veterinary Medicine, Manhattan, Kansas.
(l) [(j)] Louisiana State University, Baton Rouge, Louisiana.
(m) [(k)] Michigan State College, Division of Veterinary Science, East Lansing, Michigan.
(n) [(l)] University of Minnesota, School of Veterinary Medicine, St. Paul, Minnesota.
(o) Mississippi State University, Starksville, Mississippi.
(p) [(m)] University of Missouri, School of Veterinary Medicine, Columbia, Missouri.
(q) [(n)] Ecole Medicine Veterinaire de ma Province de Quebec, Universite de Montreal, La Trappe, Quebec, Canada.
(r) [(o)] Ohio State University, College of Veterinary Medicine, Columbus, Ohio.
(s) [(p)] [University of] Oklahoma *State University,* School of Veterinary Medicine, Stillwater, Oklahoma.
(t) [(q)] University of Pennsylvania, School of Veterinary Medicine, Philadelphia, Pennsylvania.
(u) [(r)] Purdue University, School of Veterinary Science and Medicine, Lafayette, Indiana.
(v) [(s)] University of Saskatchewan, Western College of Veterinary Medicine, Saskatoon, Saskatchewan, Canada.
(w) University of Tennessee, College of Veterinary Medicine, Knoxville, Tennessee.
(x) [(t)] Texas Agricultural and Mechanical *University* [College], School of Veterinary Medicine, College Station, Texas.
(y) [(u)] Tuskegee Institute, School of Veterinary Medicine, Tuskegee Institute, Alabama.
(z) [(v)] [State College of] Washington *State University,* College of Veterinary Medicine, Pullman, Washington.
(2) All other veterinary colleges must have academic standards equivalent to the schools listed above in order to be recognized by this board. Evaluation of the academic standards, of veterinary courses and practices of these schools will be made after an applicaton for a license has been received.

Section 2. An application for examination for a license to practice veterinary medicine shall be submitted on an application form prescribed and provided by the board, accompanied by such evidence, statements, or documents as therein required, and shall be filed with the board at its principal office at least thirty (30) days, or in the case of graduates of veterinary colleges outside of the United States, at least ninety (90) days, before the date fixed for the examination. It will be necessary for an applicant to complete the application and forward it, along with the necessary enclosures, to the board's office, within the time

described above, whether he desires a license through examination or as a result of reciprocity proceedings.

Section 3. In addition to the examination fee of twenty-five dollars ($25), all applicants shall be required to pay the fee charged for examination materials furnished to this board. Applicants will be notified of the examination fee and the examination materials fee at the time the application is forwarded to the applicant. All sums payable to the board shall be paid by certified check, cashier's check or postal money order and be payable to the Kentucky State Treasurer.

Section 4. Examinations shall be held at such times and places as shall be determined by the board. A schedule of the date, time and place of the examination shall be mailed to each applicant whose application is accepted by the board.

Section 5. The board shall not refund either the examination fee or the fee for the examination materials, except where good and sufficient cause for refunding all or a portion of the fees is shown to the board within a reasonable time prior to the date of the examination.

Section 6. This state board reciprocates with the states of Illinois, Michigan, Missouri and Ohio. In order for applicant to obtain a license in this state, he must do the following:

(1) Obtain an application from this board;

(2) Complete the application and return it, along with the enclosures, to the board within the time specified herein;

(3) Show proof that he successfully passed the examination given by the reciprocating state and with which reciprocity is sought;

(4) Show proof that he has been actively engaged in clinical veterinary medical and/or surgical practice for at least one (1) year in the last preceding four (4) years in that state from which reciprocity is sought;

(5) [(3)] Have the reciprocating state board forward a letter or other documents stating that the applicant is licensed in that state by virtue of an examination, that his license is in good standing, and this board shall further be advised of any derogatory information which may be in that board's file concerning the applicant;

(6) Submit a letter of good standing from the state licensing boards in each and every state in which the applicant has been licensed, or if the applicant has permitted his license to lapse or for any reason is no longer licensed in any of those states, submit a letter from the state board explaining why he is no longer licensed therein;

(7) [(4)] Upon receipt of a satisfactory application and information from the reciprocating state board, the Kentucky Board of Veterinary Examiners will schedule a personal interview for the applicant. This personal interview may be conducted by the board [as a whole] or by any person delegated to act for the board. *All applicants for license by reciprocity are hereby advised that the granting of licenses by reciprocity is by privilege and not by right and the granting of such licenses rests solely in the discretion of this board.*

Section 7. All applicants successfully passing the examination or obtaining a license in this state by virtue of reciprocity procedures shall be required to pay to this board the sum of *twenty-five dollars ($25)* [ten dollars ($10)], which sum will be the fee charged for the issuance of the license certificate and the license certificate shall remain in good standing until the next renewal date. *In addition to the reciprocity fee of twenty-five dollars ($25), those persons granted a license by reciprocity shall pay to this board all costs incurred by the board in processing and handling the application for such a license.*

Section 8. Any applicant seeking to have the board consider examination scores forwarded by the Professional Examination Service (National Board scores) must submit scores of examinations conducted within the last five (5) years preceding the date of submission of the scores. Examination scores more than five (5) years old will not be considered by the board. The forwarded scores, in addition to being no more than five (5) years old, must meet the requirements of KRS 321.270(2)(a) and (b).

Section 9. The re-examination fee, when applicable, shall be twenty-five dollars ($25) and in addition to the re-examination fee, all applicants shall be required to pay the costs charged for re-examination materials furnished to the board. Applicants will be notified of the re-examination costs at the time the application is forwarded to the applicant. All sums payable to the board shall be paid by certified check, cashier's check or postal money order and be payable to the Kentucky State Treasurer.

ALBEN W. BARKLEY II, Chairman
ADOPTED: December 10, 1981
RECEIVED BY LRC: December 14, 1981 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Thomas R. Emerson, Assistant Attorney General, Attorney for Kentucky Board of Veterinary Examiners, Capitol Building, Frankfort, Kentucky 40601.

DEPARTMENT OF AGRICULTURE
Board of Veterinary Examiners
(Proposed Amendment)

201 KAR 16:030. License, annual renewal notice.

RELATES TO: KRS 321.260, 321.330
PURSUANT TO: KRS 321.240
NECESSITY AND FUNCTION: KRS 321.260 requires the board to issue a license certificate to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine, veterinary dentistry and veterinary surgery in this state. KRS 321.330 provides for the annual renewal of the license. This regulation requires the mailing of an annual renewal notice to all licensed veterinarians and requires all licensed veterinarians to complete the annual renewal notice and return it, along with the annual renewal fee to the board. It further requires all licensed veterinarians to keep the board apprised of the current address of the licensee.

Section 1. The Kentucky Board of Veterinary Examiners shall on or about April of each year mail to each licensed veterinarian an annual renewal notice. This annual renewal notice shall be completed and returned to the board on or before June 30 of each year. The annual renewal fee, in the amount of *twenty-five dollars ($25)* [ten dollars ($10)], shall be attached to the completed renewal notice when it is returned to the board. Said annual

renewal fee shall be paid by certified check, cashier's check or postal money order, payable to the Kentucky State Treasurer. All information requested on the annual renewal notice shall be furnished to the board when the completed annual renewal notice is returned to the board.

Section 2. Every person holding a certificate of license shall file his proper and current mailing address with the board at its principal office and shall immediately notify the board of any and all changes of his mailing address.

ALBEN W. BARKLEY II, Chairman
ADOPTED: December 10, 1981
RECEIVED BY LRC: December 14, 1981 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Thomas R. Emerson, Assistant Attorney General, Attorney for Kentucky Board of Veterinary Examiners, Capitol Building, Frankfort, Kentucky 40601.

DEPARTMENT OF AGRICULTURE
Board of Veterinary Examiners
(Proposed Amendment)

201 KAR 16:040. Examination and registration of animal technicians.

RELATES TO: KRS 321.440, 321.450
PURSUANT TO: KRS 321.240
NECESSITY AND FUNCTION: KRS 321.440 and 321.450 provide for the qualification, registration, and use of animal technicians. This regulation sets out the procedures for qualifying for the examination and registration of animal technicians and states that disciplinary action may be taken against both the animal technician and licensed veterinarian under certain conditions.

Section 1. Any licensed veterinarian desiring to have an animal technician registered by the board shall make application to the board on forms prepared by the board. Each application shall be accompanied by documents setting forth data requested on the form and *the application fee shall be fifteen dollars ($15)* [a check in the amount of forty dollars ($40), payable to the Kentucky State Treasurer]. *In addition to the fee of fifteen dollars ($15), all applicants shall be required to pay the costs charged for examination materials furnished to this board. Applicants will be notified of the examination materials' costs at the time the application is forwarded to the applicant. The payment of these sums pursuant to a check made payable to the Kentucky State Treasurer* [The forty dollar ($40) payment] shall constitute the application *fee* and examination *costs* [fee], and no portion of *same* [this sum] shall be refundable. All applications must be received by the board at least thirty (30) days prior to the examination date.

Section 2. Those persons eligible to take the examination under KRS 32.440(1)(b) shall have two (2) years from June 19, 1976, in which to have applications submitted on their behalf by licensed veterinarians.

Section 3. (1) *The board recognizes the following schools of animal technology as having those standards and requirements adequate to comply with the provisions of KRS 321.440. All of the following schools of animal technology have been recognized and approved by the Kentucky Board of Veterinary Examiners. Those schools are as follows:* [The two (2) year animal technician program being offered at Morehead State University, Morehead, Kentucky, is approved by the board, but this approval shall be terminated effective September 1, 1977, unless that program of study is approved by the American Veterinary Medical Association by that date, or this approval is otherwise extended by the board.]

(a) Los Angeles Pierce College, Woodland Hills, California.
(b) Consumnes Rive College, Sacramento, California.
(c) Colorado Mountain College, Glenwood Springs, Colorado.
(d) Bel-Rea Institute of Animal Technology, Denver, Colorado.
(e) St. Petersburg Junior College, St. Petersburg, Florida.
(f) Abraham Baldwin Agriculture College, Tifton, Georgia.
(g) Parkland College, Champaign, Illinois.
(h) Purdue University, West Lafayette, Indiana.
(i) Colby Community College, Colby, Kansas.
(j) Morehead State University, Morehead, Kentucky.
(k) Wayne Community College, Detroit, Michigan.
(l) Michigan State University, East Lansing, Michigan.
(m) University of Minnesota, Waseca, Minnesota.
(n) Maple Woods Community College, Kansas City, Missouri.
(o) Northeast Missouri State University, Kirksville, Missouri.
(p) University of Nebraska, Curtis, Nebraska.
(q) Camden County College, Blackwood, New Jersey.
(r) State University of New York, Canton, New York.
(s) Central Carolina Technical Institute, Sanford, North Carolina.
(t) North Dakota State University, Fargo, North Dakota.
(u) Columbus Technical Institute, Columbus, Ohio.
(v) Raymond Walters College, Cincinnati, Ohio.
(w) Harcum Junior College, Bryn Mawr, Pennsylvania.
(x) Tri-County Technical College, Pendleton, South Carolina.
(y) Columbia State Community College, Columbia, Tennessee.
(z) Frank Phillips College, Border, Texas.
(aa) Sul Ross State University, Alpine, Texas.
(bb) Blue Ridge Community College, Weyers Cave, Virginia.
(cc) Fort Steilacoom Community College, Tacoma, Washington.
(dd) Eastern Wyoming College, Torrington, Wyoming.

(2) *All other schools of animal technology must have academic standards equivalent to the schools listed above in order to be recognized by this board. Evaluation of the academic standards, of animal technology courses and practices of these schools will be made after an application for a license has been received.* [Any college or university securing approval of its program of study for animal technicians by the American Veterinary Medical Association shall be approved by the board, and graduates thereof shall be eligible to have an application submitted on their behalf to the board.]

Section 4. The board will annually specify the dates and places of the examination. The examination shall consist of

written, oral, and/or practical portions prepared by or for the board. Those subjects on which the applicant for registration may be examined shall consist of the following: laboratory procedures, x-ray procedures, collection of laboratory samples, fitting large animals, stable and kennel management, surgical preparation and assistance, anesthesia, supply and equipment maintenance, sterilization of equipment, case histories, dehorning, castration, and pharmacology.

Section 5. (1) An applicant for registration as an animal technician shall only be eligible to take the examination, if, as of the date of the examination, he is employed by the licensed veterinarian who submitted the application for him.

(2) Each person who passes an examination shall be registered as an animal technician and assigned a number. The certificate of registration shall recite that the registration shall be valid only so long as the animal technician is employed in the services of a licensed veterinarian.

Section 6. Each registered animal technician shall pay or have paid to him an annual renewal fee of fifteen dollars ($15), which amount shall be payable by check to the Kentucky State Treasurer, and shall be mailed to the office of the board on or before June 30 of each year. The board will mail an annual renewal notice to each licensed veterinarian having a registered animal technician in his employ by April 30 of each year, and this notice shall require the licensed veterinarian to report whether the registered animal technician is still in his employ, and shall further remind the veterinarian that the annual renewal fee is payable by June 30.

Section 7. (1) The registered animal technician and the licensed veterinarian for whom the animal technician is working shall be subject to appropriate disciplinary action by the board if the animal technician is permitted to and does perform veterinary services in excess of or outside of those services authorized by KRS 321.450(3).

(2) Further, the animal technician and licensed veterinarian may be subject to disciplinary action by the board if the animal technician is terminated, for any reason, as an employee of the licensed veterinarian, and the board is not promptly notified of this fact.

ALBEN W. BARKLEY II, Chairman
ADOPTED: December 10, 1981
RECEIVED BY LRC: December 14, 1981 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Thomas R. Emerson, Assistant Attorney General, Attorney for Kentucky Board of Veterinary Examiners, Capitol Building, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:075. Gigging, hand grabbing or snagging, tickling and noodling.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.235, 150.360, 150.440, 150.445, 150.470
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation is necessary to permit and govern methods of harvest to the benefit of the fishery resource. The Commissioner with the concurrence of the Commission finds it necessary to remove hand grabbing from one river, and to remove the prohibition of a natural perch or tree as a snagging site. *This amendment is necessary to allow the harvest of rough fishes from a specified section of stream.*

Section 1. As used in this regulation, the word "snagging" means an act of taking fish by using a single hook or one treble hook (except in the main stream of Green River and the main stream of Rolling Fork River where five (5) hooks, either single or treble hooks, may be used) which is attached by line to a pole and is used in a jerking and pulling manner, but does not include the term "snag line" as used in KRS Chapter 150 pertaining to designated commercial fishing streams.

Section 2. A person may gig or snag from the stream or lake banks, but cannot use these fishing methods from a boat or platform, except gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

Section 3. The season during which gigging and snagging is permitted is March 1 through May 10, annually, except persons may gig rough fish through the ice in these same waters any time the surface is frozen thick enough to stand on, and gigger must gig while supported by the ice.

Section 4. Gigging and/or snagging for rough fish is permitted night and day in all lakes and streams, except where specifically prohibited as described in Sections 2 and 5.

Section 5. Gigging and/or snagging is specifically prohibited in the following streams and their tributaries. (Exceptions: See subsection (1)(b) and subsection (2)(b) below.)

(1) (a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line, shall be open to gigging and snagging in season, except that portion of each tributary which is within one-half (½) mile of its junction with the Cumberland River.

(2) (a) Within 200 yards of any dam or any stream,

(b) Snagging only is permitted in the Tennessee River below Kentucky Dam subject to restrictions in 301 KAR 1:020.

(3) Little Kentucky River—Trimble,

(4) Goose Creek—Russell and Casey,

(5) Casey Creek—Trigg,

(6) Rough River, below Rough River Dam downstream

to where Ky. 54 crosses the stream, and above the first riffle on Rough River Lake,

(7) Middle Fork of the Ky. River, from Buckhorn Dam downstream to Breathitt-Perry County line,

(8) Trammel Creek, *upstream from the Butlersville Bridge where KY 1332 crosses the stream* [—Allen and Warren],

(9) Peters Creek—Barren and Monroe,
(10) Beaver Dam Creek—Edmonson,
(11) Canada Creek—Wayne,
(12) Shultz Creek—Greenup,
(13) Sulphur Spring Creek—Simpson,
(14) Lick Fork Creek—Simpson,
(15) Sinking Creek—Breckinridge,
(16) Beaver Creek—Barren,
(17) Big Brush Creek—Green,
(18) Rough Creek—Hardin,
(19) Claylick Creek—Crittenden,
(20) Lynn Camp Creek—Hart,
(21) Roundstone Creek—Hart,
(22) Ravens Creek—Harrison,
(23) Boone Creek—Fayette and Clark,
(24) Caney Creek—Elliott,
(25) Greasy Creek—Leslie,
(26) Laurel Fork Creek—Harlan,
(27) Beaver Creek—Wayne,
(28) Craney Creek—Rowan,
(29) Swift Camp Creek—Wolfe,
(30) Middle Fork—Powell and Wolfe,
(31) War Fork—Jackson,
(32) Indian Creek—Jackson,
(33) Clover Bottom Creek—Jackson,
(34) Cane Creek—Laurel,
(35) Hawk Creek—Laurel,
(36) Beaver Creek—McCreary,
(37) Little South Fork—McCreary and Wayne,
(38) Rock Creek—McCreary,
(39) Lick Creek—McCreary,
(40) Bark Camp Creek—Whitley,
(41) Dogslaughter Creek—Whitley,
(42) Laurel Creek—Elliott,
(43) Big Double Creek—Clay,
(44) Hood Creek—Johnson and Lawrence.

Section 6. All game fish caught by gigging or snagging, except those taken below Kentucky Dam in the Tennessee River, shall be returned to the water immediately, regardless of condition.

Section 7. The tickling and noodling (hand grabbing) season for rough fish only shall be June 10 to August 31 (all dates inclusive) during daylight hours only. Tickling and noodling shall be permitted in all waters except the South Fork of the Kentucky River and tributaries. The daily creel limit for tickling and noodling shall be fifteen (15) rough fish of which not more than five (5) may be catfish.

CARL E. KAYS, Commissioner
CHARLES E. PALMER, JR., Chairman
ADOPTED: December 6, 1981
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: December 11, 1981 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment

301 KAR 3:053. Spring gun and archery season for wild turkey.

RELATES TO: KRS 150.025, 150.175, 150.176, 150.305, 150.330, 150.360, 150.365, 150.390
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the spring gun and archery season and limits for wild turkey. The Commissioner with the concurrence of the Commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply.

Section 1. Seasons and Counties Open to Wild Turkey Hunting. (1) Seasons and Counties: Season *dates are April 17 through April 30* [opens the third Saturday in April for thirteen (13) consecutive days] in [Jackson; Owsley;] Bath; [Lee;] Rowan; Pike; Letcher; Menifee; Harlan [and] Butler [Counties.] *Crittenden and that portion of Christian County east of Highway 41.* [The season in Christian and Crittenden Counties is April 18 and 19, and April 25 and 26.] *The season dates are April 17 through April 23 in Ballard; Casey; Leslie; McCreary and Marion Counties.*

(2) All other counties and wildlife management areas are closed to wild turkey hunting unless specified below.

Section 2. Seasons on Wildlife Management Areas. (1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties. Season: any or all Saturdays and Sundays in April, depending upon military training priorities.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties. Season[:] *dates are* [opens] April *14* [8] through April *25* [17]. [The second hunting period is April 25 through May 3.]

(3) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Season[:] *dates are* [opens] *April 17 through April 30* [the third Saturday in April for thirteen (13) consecutive days].

(4) Pine Mountain Wildlife Management Area located in Letcher County. Season[:] *dates are* [opens] *April 17 through April 30* [the third Saturday in April for thirteen (13) consecutive days].

(5) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. Season[:] *dates are April 10 through 25 with no hunting on Mondays and Tuesdays* [April 18 and 19, and April 25 and 26].

(6) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties. Season dates are April 17 through April 23.

(7) Redbird Wildlife Management Area located in Leslie and Clay Counties. Season dates are April 17 through April 23.

Section 3. Bag and Possession Limits for *Wild* [All Areas Open to] Turkey Hunting. Only one (1) turkey gobbler with visible beard per hunter per calendar year shall be taken, except that two (2) turkeys may be taken if one (1) is taken on Fort Knox, Fort Campbell or Land Between the

Lakes. A second Kentucky wild turkey permit must be obtained before *hunting* [attempting to take] a second turkey.

Section 4. Requirements and Restrictions for Gun and Archery Turkey Hunting in All Designated Counties and Wildlife Management Areas. (1) The use of dogs in turkey hunting is prohibited.

(2) *All* [Any] *turkey* hunters [taking or attempting to take wild turkey] must have in their possession a valid wild turkey permit *and a valid annual Kentucky hunting license*, unless exempted by KRS 150.170(3), (5) or (6) [(the resident owner of farmlands, his wife or dependent children; resident tenants or their dependent children residing upon said farmlands; residents sixty-five (65) years or older; and resident servicemen on furlough of more than three (3) days in their county of legal residence). All persons except those exempted by KRS 150.170(3), (5) or (6), must have a valid annual Kentucky hunting license in addition to the wild turkey permit. All non-residents are required to possess an annual non-resident hunting license and a wild turkey permit].

[(3) Residents of states that do not allow residents of Kentucky to hunt turkey during open seasons in those states are prohibited from hunting turkey in Kentucky.]

(3) [(4)] Turkey may be taken from one-half (1/2) hour before sunrise until 12 noon except at Land Between the Lakes *and* [,] Fort Campbell [and Fort Knox] Wildlife Management Areas, where hunting is allowed from one-half (½) hour before sunrise to one-half (½) hour after sunset. All hours are prevailing *local* time.

(4) [(5)] Turkey may be taken with the aid of hand or mouth operated calls, or both. Electronic calls are prohibited.

(5) [(6)] Permitted and Prohibited Weapons. (See exceptions under Wildlife Management Areas.)

(a) Guns. Turkey may be taken with breech-loading shotguns, muzzle-loading shotguns, and muzzle-loading rifles. Shotguns must be no larger than 10-gauge or no smaller than 20-gauge. [Fully automatic firearms are prohibited.] Handguns are prohibited for taking turkeys except for muzzle-loading handguns on Pioneer Weapons Wildlife Management Area. Buckshot and slugs *may not be possessed while turkey hunting* [are prohibited].

(b) Bows and arrows. Turkey may be taken with any longbows and compound bows which do not have devices to hold an arrow at full draw without human aid. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(c) Crossbows. Crossbows are permitted only on the Pioneer Weapons Wildlife Management Area. Crossbows must be of at least 100 pounds pull *with a working safety.* Arrows must be barbless with broadhead points at least seven-eighths (7/8) inch wide.

(6) [(7)] Mandatory turkey check stations. Any hunter harvesting a wild turkey must have it checked at the nearest check station or by the nearest available conservation officer no later than 5:00 p.m. on the day the turkey is taken except as required on specified wildlife management areas. The hunter must complete the wild turkey permit and attach the tag portion to the turkey immediately after taking. [Part of the permit will be retained by the check station operator or conservation officer.]

(7) [(8)] Turkeys may be taken with the aid of artificial turkey decoys. Live turkeys may not be used as decoys.

(8) [(9)] Turkeys may not be *hunted* [taken by the use of bait] *on any baited area. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.*

Section 5. *Exceptions.* [Wildlife Management Area Regulations.] (1) Land Between the Lakes Wildlife Management Area. Wild turkey may be taken on the Kentucky portion of Land Between the Lakes only in designated areas. *A current* [An annual] Land Between the Lakes hunting permit is required. [and may be obtained free of charge at the Golden Pond Visitors Center and at the North Information Station twenty-four (24) hours per day. Turkey may be taken with shotguns, including muzzle-loaders, no larger than 10-gauge or no smaller than 20-gauge;] Only Number 2 shot or smaller is permitted. [Permitted archery equipment is the same as that listed in Section 4, subsection (6)(b) of this regulation.] *All* rifles[, crossbows and handguns] are prohibited. [Hunters are not required to check in or out, but] All turkey taken must be checked out *at Land Between the Lakes* and must be tagged with a [valid state wild turkey tag and a] Land Between the Lakes area tag [provided free at the check station. Check stations will be located near the junction of The Trace and U.S. Highway 68, and on The Trace about one (1) mile south of Barkley Canal. Turkeys may not be shot, stalked, or otherwise pursued in or near any area which has been baited by the placement of any grain or mixture of ingredients (normally used for domestic foul food purposes) for the purpose of attracting turkeys. This does not include grains left in the field from normal Land Between the Lakes farming practices. Persons who wish to hunt wild turkey on Land Between the Lakes must submit a written request for hunting either the first or second portion of the season. Requests must be received at Land Between the Lakes no later than the close of business on Friday, February 27, 1981. Hunters may apply individually or in groups no larger than four (4). Requests must include the name and address of each individual in the group along with the group's preference for the first or second hunting period or whether either hunting period is acceptable. Incomplete or illegible requests will be discarded. Applicants will be notified by mail no later than March 31, 1981, as to hunt dates and designated hunting areas. Hunters must have their Land Between the Lakes turkey hunting reservations in their possession while hunting. In the event that wild turkeys from other locations are released on Land Between the Lakes by March 15, 1981, that portion of Land Between the Lakes north of U.S. Highway 68 will be closed to turkey hunting and only the Golden Pond check station will be in operation].

(2) Fort Knox Wildlife Management Area. [Turkey hunting is restricted to military and civilian personnel assigned to or working on the post, except a limited number of off-post civilians will be permitted to hunt provided areas are available. Off-post civilian hunters must apply in person at the hunt control headquarters building, Building 1060, Ireland Avenue, Fort Knox, beginning March 30, 1981 at 8:00 a.m. For more information call Area Code 502 624-7311 at Fort Knox. Turkey may be taken with shotguns no larger than 12-gauge or no smaller than 20-gauge and muzzle-loading rifles no smaller than .32 caliber firing a

single projectile. Buckshot and slugs are prohibited.] All turkeys harvested must be checked in at Building 7334 *by 2:00 p.m. on the day harvested* [on the day of the kill]. *Muzzle-loading rifles smaller than .32 caliber, 10 gauge shotguns and archery equipment are prohibited.*

(3) Pioneer Weapons Wildlife Management Area. *Turkeys may not be taken with breech-loading shotguns.* [Turkey may be taken with all weapons listed under Section 4, subsection (6) except for breech-loading shotguns.]

(4) Fort Campbell Wildlife Management Area. *A post combination hunting-fishing permit is required. Muzzle-loading rifles and shot smaller than No. 2 are prohibited.* [Turkey hunting is restricted to persons who purchase a post combination hunting-fishing permit. Hunting spaces are limited by training priorties and are assigned on a first-come first-served basis. Those wanting to turkey hunt must apply in person twenty-four (24) hours prior to day of hunt at building 6645. For more information call Area Code 502 798-2175, 2176 or 2177 at Fort Campbell. Turkey may be taken with breech-loading shotguns and muzzle-loading shotguns no larger than 10 gauge or no smaller than 20 gauge using No. 2 or smaller shot. Turkey may also be taken with longbows and compound bows.]

CARL E. KAYS, Commissioner
CHARLES E. PALMER, JR., Chairman
ADOPTED: December 6, 1981
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: December 11, 1981 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 2:060. Hazardous waste *site or facility* permit[s] *process and applications.*

RELATES TO: KRS *224.087,* 224.033, 224.255, 224.855, 224.860, 224.880, 224.866
PURSUANT TO: KRS 13.082, 224.017, 224.866
NECESSITY AND FUNCTION: KRS 224.880 and 224.866 require any person who [generates,] treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste permit from the Department for Natural Resources and Environmental Protection.

Section 1. *Interim Status. The interim status provisions are contained in 40 CFR 122.23 herein filed by reference.* [Generators' Determination and Registration of Hazard.]

[(1) No person or state or federal agency shall engage in the generation of waste without having made a determination, based upon examination of 401 KAR 2:075, that the waste is hazardous or non-hazardous; and]

[(2) If the waste is hazardous, the generator shall register with the department. Such registration shall be filed within ninety (90) days after the effective date of these regulations and shall include:]

[(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually; and]

[(b) The place of generation and the name and address of a contact agent.]

[(3) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after the effective date of these regulations file a report, according to procedures previously approved by the department, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually.]

[(4) If an existing hazardous waste site or facility engages in the treatment, storage or disposal of hazardous waste, the owner/operator shall register his intent to apply for a hazardous waste permit with the department. Such registration shall be filed within ninety (90) days after the effective date of these hazardous waste regulations and shall include:]

[(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous or special wastes generated, received, or handled annually;]

[(b) Information on the name, mailing address, legal structure, and ownership of the site or facility;]

[(c) Site information which details the location, watershed, area, and other attributes;]

[(d) Geologic and soils information;]

[(e) Hydrologic information;]

[(f) Land use and population information; and]

[(g) Description of the operation.]

[(5) If, during the review of the registration information submitted pursuant to subsection (3), the department determines that there is a threat of imminent hazard to public health or substantial environmental impact, the existing hazardous waste site or facility may be required to fully comply with requirements of Sections 2 and 3.]

Section 2. Permit Required. (1) *A permit by rule is granted to the facilities described in 40 CFR 122.26 herein filed by reference.* [No person or state or federal agency shall engage in the treatment, storage, or disposal of hazardous waste without having first obtained a permit or a temporary variance from the department or, in the case of generators and recyclers, having registered with the department.]

(2) *Effect of a permit. The provisions on the effect of a permit are contained in 40 CFR 122.13 herein filed by reference.* [A permit shall authorize the permittee to engage in the treatment, storage, or disposal of hazardous waste in a manner prescribed by the department for a period of one (1) year from the date of issuance.]

(3) *Transfer of permits. The transfer of permit provisions are contained in 40 CFR 122.14 herein filed by reference.* [All existing authorizations or letters of permission to dispose of hazardous waste issued by the department shall become null and void ninety (90) days after the effective date of the hazardous waste regulations.]

(4) *Registration of recyclers.* [Generators,] Recyclers [and existing hazardous waste facilities] not registered with the department, shall register or apply for a temporary variance *by November 18, 1980* [within six (6) months after the effective date of these regulations].

[(5)] No new *recycling* [hazardous waste site or facility] shall commence construction or operation without having first [obtained a permit.] *registered with the department. The registration shall be on a form provided by the department that includes, but not limited to:*

(a) Installation name;

(b) Installation address;

(c) Installation location;

(d) Contact person and phone number;

(e) Parent firm and parent firm address;

(f) Legal structure;

(g) Known or anticipated types of EPA number, DOT hazard class, physical state, weights or volumes, sources and general characteristics of the hazardous wastes recycled.

[(6) Special waste sites or facilities and existing hazardous waste facilities registered with the department are hereby granted a permit by rule. However, if the operation of a site or facility would cause a threat of imminent hazard to public health or substantial environmental impact, the site or facility may be required to fully comply with the requirements of Section 3.]

[(7) The permit or registration shall confer upon the owner/operator a qualified right to generate, treat, store, recycle, or dispose of hazardous waste, but shall not relieve the owner/operator of responsibility to comply with all applicable federal, state, and local laws and regulations.]

Section 3. *Duration of Permit. The duration of the permit is as specified in 40 CFR 122.9 herein filed by reference.* [Application for a Hazardous Waste Facility Permit. A person or state or federal agency desiring a hazardous waste permit shall submit to the department:]

[(1) A complete application on a form provided by the department.]

[(2) An operational plan addressing:]

[(a) Known or anticipated types, potential sources, general characteristics and weights or volumes of hazardous wastes generated, received or handled annually.]

[(b) The designated capacity and expected life of equipment to be used and/or site to be used by the permittee.]

[(c) A list of operating equipment which the facility will utilize to comply with these regulations.]

[(d) A general description of the operational procedures to be conducted including procedures that will ensure compliance with KRS Chapter 224, and that will protect public health and the environment.]

[(e) A general description of procedures for shipping, receiving and identifying hazardous wastes; for deployment of qualified personnel; and for supervision of handling and disposing of hazardous waste.]

[(f) A description of procedures planned for final or partial closure of any hazardous waste disposal site.]

[(g) Closure and post-closure monitoring and maintenance cost estimates.]

[(h) A description of security measures to keep unauthorized persons from entering the site and to prevent unpermitted use.]

[(3) A contingency plan addressing:]

[(a) Actions that will be taken in the event of fire, explosion, accidental discharge, or other accident;]

[(b) The equipment and manpower available to correct effects of an accident or accidental discharge; and]

[(c) Emergency procedures for evacuating employees and notifying agencies responsible for providing services during emergencies.]

[(4) Physical information on the proposed site or facility consisting of, but not limited to:]

[(a) A map bearing the stamp of a professional engineer registered in Kentucky drawn to an appropriate scale showing the following:]

[1. Existing topographical contours of the property;]

[2. Proposed final elevations of any completed disposal site;]

[3. Legal boundaries for which clear title or lease is held by the person desiring the permit;]

[4. Locations of permanent access and permanent internal roads;]

[5. Location and type of fencing;]

[6. Locations of points of waste generation, loading facilities, unloading facilities, storage facilities, equipment cleaning areas and disposal areas;]

[7. Locations and descriptions of environmental monitoring stations;]

[8. Locations of structures, equipment or facilities for control of surface or subsurface drainage, leachate or landfill gases; and]

[9. Locations of power lines, pipelines, and easements through the hazardous waste site or facility.]

[(b) A geological report of the site including but not limited to:]

[1. A description of all soils at the site in detail identifying the suitability for the proposed use;]

[2. A description of the surface and subsurface geology of the site, including an assessment of such geological hazards as: seismic activity, subsidence, or stability; and]

[3. A description of the hydrologic characteristics of the site, including surface and ground water current use, potential use, and flow.]

[(c) All land uses and zoning contiguous with the location of hazardous waste generation and within the area affected by any hazardous waste treatment, storage, recycling, or disposal facilities.]

[(d) All necessary local governmental approvals.]

[(5) A statement of zoning approval for the hazardous waste treatment, storage, recycling, or disposal facility signed by the appropriate authority.]

[(6) A verified affidavit from the publishing newspaper certifying the time, place, and content of the applicant's advertisement in accordance with KRS 224.855, for a hazardous waste treatment, storage, recycling, or disposal facility.]

[(7) Proof of financial responsibility and plan for meeting any bonding requirements required by KRS 224.890 and by Section 4.]

[(8) Environmental compatability document for a hazardous waste disposal facility.]

Section 4. *Short term permits. The provisions for short term permits are as specified in 40 CFR 122.27 herein filed by reference.* [Closing Trust Fund; Post-Closure Trust Fund; Financial Responsiblity. Prior to issuance of a hazardous waste permit, the applicant shall establish a trust fund for the amount of the estimated closure cost; establish a trust fund for post-closure monitoring and maintenance which is to be built up over the life of the site or over twenty (20) years, whichever is shorter; and provide evidence to the department of the necessary financial responsibility for injuries to persons or property sustained as a result of an escape or release of hazardous waste.]

[(1) For treatment, storage and disposal, before a permit can be issued, the applicant shall deposit into a closure trust fund as a condition of receiving a permit a cash deposit satisfactory to the department equal to the cost estimate for closure. The acceptable method for determination of this amount is found in 40 CFR Part 265.142 filed herein by reference.]

[(2) For disposal facility, before a permit can be issued, the applicant shall establish a post-closure trust fund. The annual cost of post-closure monitoring and routine maintenance will be determined by the department based on cost estimates provided by the applicant and other sources. The annual post-closure monitoring and maintenance cost will be paid into the post-closure trust fund, at a rate as determined in 40 CFR Part 265.144 or at some other rate satisfactory to the department which will ensure the availability of the necessary funds for monitoring and maintenance after the facility has closed.]

[(3) For each facility, before a permit shall be issued, the applicant must show evidence of financial responsibility, in an amount and for a time period specified by the department.]

Section 5. Issuance of Hazardous Waste Permit. (1) *Draft permits. The provisions contained in 40 CFR 124.6, herein filed by reference, relating to draft permits shall apply.* [The department may issue a hazardous waste permit upon finding that the person or state or federal agency desiring the permit has met all the requirements for application and has the ability to meet the operational requirements of the hazardous waste regulations. Past performance in related areas will be considered in the review and in the determination of any requirement for specialized permit conditions. An application for a permit may be denied or an active permit revoked for failure to comply with applicable state statutes or regulations, including but not limited to any failure to provide or maintain adequate financial responsibility.]

(2) *Public comments and requests for public hearings. The provisions on public comments and requests for public hearings are specified in 40 CFR 124.11 herein filed by reference.* [The department shall act on the permit application within ninety (90) days of receipt or shall, within that time period, inform the applicant of a projected schedule for review.]

(3) Public hearings. Public hearing provisions are as specified in 40 CFR 124.12 herein filed by reference.

(4) Response to comments. The provisions relating to response to comments are as specified in 40 CFR 124.17 herein filed by reference.

(5) Fact sheet. The provisions relating to the fact sheet are as specified in 40 CFR 124.8 herein filed by reference.

(6) Public notice of permit sections and public comment period. Public notice of permit sections and public comment period provisions are contained in 40 CFR 124.10 herein filed by reference.

Section 6. Termination and Renewal of Hazardous Waste Permit. (1) *Modification, revocation, and reissuance, or termination of permit. The provisions relating to modification, revocation and reissuance, or termination of permit are as specified in 40 CFR 124.5 herein filed by reference.* [A hazardous waste permit shall automatically terminate at the end of one (1) year. A shorter period may be specified.]

(2) *Modification or revocation and reissuance of permits. The provisions relating to modification, revocation and reissuance of permits are as specified in 40 CFR 122.15 herein filed by reference.* [A hazardous waste permit may be renewed. Renewal requests shall be made to the division not less than ninety (90) days prior to the permit expiration date and shall include any changes or modifications in the approved plan of the operation of the facility.]

(3) *Termination of permits. The provisions relating to termination of permits are as specified in 40 CFR 122.16 herein filed by reference.* [The department, in issuing a renewal, shall consider:]

[(a) Whether all conditions of the expiring permit are being met;]

[(b) Whether any necessary modification of the original permit conditions is being met;]

[(c) New or updated information required by the department that is necessary for re-evaluating the permit's suitability for re-issuance; and]

[(d) All information considered in issuance of the original permit.]

[(4) Approval of any compliance schedule for meeting permit conditions or necessary changes in permit conditions does not constitute a waiver of the department's right to initiate enforcement action for a permittee's noncompliance with KRS Chapter 224 and the hazardous waste regulations.]

Section 7. Conditions of Hazardous Waste Permit. (1) *Requirements for recordkeeping and reporting of monitoring results. The provisions relating to requirements for recordkeeping and reporting of monitoring results are as specified in 40 CFR 122.11 herein filed by reference.* [The owner/operator shall comply with the requirements of all applicable state laws and regulations as well as any special conditions imposed by the department.]

(2) *Conditions applicable to all permits. The provisions for conditions applicable to all permits are as specified in 40 CFR 122.7 herein filed by reference.* [The department may issue a permit subject to special conditions which include but are not limited to:]

[(a) Types of hazardous wastes which may be accepted or disposed;]

[(b) Special operating conditions;]

[(c) Schedules of compliance for corrective actions;]

[(d) Procedures, conditions, and changes necessary to comply with the requirements of the hazardous waste regulations and of KRS Chapter 224; or]

[(e) The issuance of any other applicable departmental permits.]

(3) *Establishing permit conditions. The provisions for establishing permit conditions are as specified in 40 CFR 122.8 herein filed by reference.* [The owner/operator shall handle a waste as a hazardous waste if the manifest indicates that the waste is hazardous.]

(4) Establishing permit conditions. The provisions for establishing permit conditions are contained in 40 CFR 122.29 herein filed by reference.

(5) Additional conditions applicable to all permits. The provisions relating to additional conditions applicable to all permits are contained in 40 CFR 122.28 herein filed by reference.

(6) Past performance in related areas will be considered in the review and in the determination of any requirement for specialized conditions.

Section 8. *Schedule of Compliance. The provisions for a schedule of compliance are as specified in 40 CFR 122.10 herein filed by reference.* [Display of Hazardous Waste Permit. The hazardous waste permit or notice of temporary variance shall be conspicuously displayed at the hazardous waste facility. In the case of generators, recyclers and existing hazardous waste facilities certificate of registration in accordance with Section 1 shall be displayed at the generator's, recycler's or facility's place of business.]

Section 9. Confidentiality of Information. The provisions for confidentiality of information are specified in 40 CFR 122.19 herein filed by reference.

[Section 9. Prohibition of Use of Unpermitted Facility. Ninety (90) days after the effective date of the hazardous waste regulations, no person shall deliver hazardous waste to a facility for treatment, storage, recycling, or disposal unless the owner/operator has:]

[(1) Registered with the department as an existing hazardous waste facility in operation at the effective date of the hazardous waste regulations, or]

[(2) Been granted a hazardous waste permit by the department.]

[(3) Registered as a recycling facility.]

Section 10. *Interim Permits for UIC Permits. The department shall issue interim permits to any class I UIC well injecting hazardous waste as specified in 40 CFR 122.30 herein filed by reference.* [Modification of Hazardous Waste Permit to Include New Conditions. The department may at any time modify a permit issued pursuant to these regulations to include new conditions required to comply with the requirements of the hazardous waste regulations, KRS Chapter 224, or any other applicable state statutes or regulations. The modification may include a time schedule for implementing the new conditions.]

Section 11. *Signatures to Permit Applications and Reports. The provisions concerning signatures to permit applications and reports are specified in 40 CFR 122.6 herein filed by reference.* [Modification of Processing Methods or Proposed Closure by Owner/Operator. (1) The owner/operator shall notify the department in writing of any facility closing anticipated to last one (1) year or longer, or of any proposed significant change of processing, disposal, or method of operation from that described in the operation plan thirty (30) or more days before the proposed date of the closing or change.]

[(2) The owner/operator shall not proceed with the closing or change without written approval of the department.]

[(3) The department shall respond to the owner/operator within thirty (30) days of the receipt of the notice of proposed closing or change.]

Section 12. *Applications for Hazardous Waste Permits. (1) Application for permit. The provisions relating to applications for hazardous waste permits are as specified in 40 CFR 122.4 herein filed by reference.* [Change of Owner/Operator. Hazardous waste permits are nontransferable absent written approval by the department. Any proposed new owner/operator may be required to submit an application as described in this regulation.]

(2) Scope of the permit requirements. The scope of the permit requirements are specified in 40 CFR 122.21 herein filed by reference.

(3) Application for a permit. The provisions for a permit application are specified 40 CFR 122.22 herein filed by reference.

(4) Contents of Part A. The requirements concerning contents of Part A applications are contained in 40 CFR 122.24 herein filed by reference.

(5) Contents of Part B. The requirements concerning contents of Part B applications are contained in 40 CFR 122.25 herein filed by reference.

(6) Additional requirements for applications of all permits. Additional requirements for applications of all permits are specified in 40 CFR 124.3(a) herein filed by reference.

Section 13. Prohibition of use of unpermitted facility. No person shall deliver hazardous waste to a facility for treatment, storage, recycling, or disposal unless the owner/operator has:

(1) Registered with the department as an existing hazardous waste facility in operation on or before November 19, 1981; or

(2) Been granted a hazardous waste permit by the department; or

(3) Registered as a recycling facility.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.
SUBMIT COMMENT TO: Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 2:070. *Standards applicable to generators of hazardous waste* [Record keeping, operating standards, and reporting procedures].

RELATES TO: KRS 224.071, 224.255, 224.866
PURSUANT TO: KRS 13.082, 224.017, 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires the Department for Natural Resources and Environmental Protection to promulgate regulations to establish [reporting procedures, record keeping procedures and operating] standards, for the generation[, storage, treatment, recycling and disposal] of hazardous wastes.

Section 1. General. (1) Purpose, scope, and applicability.

(a) These regulations establish standards for generators of hazardous waste.

(b) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this regulation with respect to that waste: subsection (2) of this section for determining whether or not he has a hazardous waste, Section 3 for obtaining an identification number, Section 4(1)(c) and (d) for recordkeeping, Section 4(4) for additional reporting and if applicable Section 5 for farmers.

(c) Any person who imports hazardous waste into Kentucky must comply with the standards applicable to generators established in this regulation.

(d) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section 5(2) is not required to comply with other standards in this regulation or 401 KAR 2:060, 401 KAR 2:063 or 401 KAR 2:073 with respect to such pesticides.

(e) A person who generates a hazardous waste as defined by 401 KAR 2:075 is subject to the compliance requirements and penalties prescribed in KRS Chapter 224 if he does not comply with the requirements of this regulation.

(f) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this regulation.

(2) Hazardous waste determination. A person who generates a waste, as defined in 401 KAR 2:075, Section 2, must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under 401 KAR 2:075, Section 4.

(b) He must then determine if the waste is listed as a hazardous waste in 401 KAR 2:075, Section 9.

(c) If the waste is not listed as a hazardous waste in 401 KAR 2:075, Section 9, he must determine whether the waste is identified in 401 KAR 2:075, Section 8, by either:

1. Testing the waste according to the methods set forth in 401 KAR 2:075, Section 8, or according to an equivalent method approved by the secretary; or

2. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

Section *2.* [1.] Manifest. (1) *General requirements.*

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.

(b) [(2)] A generator must designate on the manifest one (1) facility which is permitted to handle the waste described on the manifest.

(c) [(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.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(2) [(4)] *Required information.* The manifest must contain all of the following information:

(a) A manifest document number;

(b) The generator's name, mailing address, telephone number, and identification number;

(c) The name and identification number of each transporter;

(d) The name, address, and identification number of the designated facility and an alternate facility, if any;

(e) The description of the waste(s) (e.g., proper shipping name, etc.) required by regulations of the U. S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203, filed herein by reference;

(f) The total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle.

(g) [(5)] The following certification must appear on the manifest: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the U. S. Department of Transportation, the U. S. Environmental Protection Agency, and the Kentucky Department for Natural Resources and Environmental Protection."

(3) [(6)] *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 to the generator.

(4) [(7)] *Use of the manifest.*

(a) The use of the manifest shall be required on the effective date of this regulation.

(b) [(8)] The department's manifest form, or a generator's manifest form which meets the requirements of this section, shall be used for intra-state shipments of hazardous waste and for shipments originating outside the state but destined for treatment, storage or disposal within Kentucky. For shipments of hazardous waste originating within Kentucky but bound for treatment, storage or disposal outside the state, the receiving state's manifest may be used providing that it meets the U.S. Environmental Protection Agency requirements.

(c) [Section 2. Manifest and Other Procedures for Generators. (1)] The generator must:

1. [(a)] Sign the manifest certification by hand; and

2. [(b)] Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

3. [(c)] Retain one (1) copy.

(d) [(2)] The generator must give the transporter the remaining copies of the manifest.

(e) [(3)] For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send three (3) copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste within Kentucky which originate at the site of generation, the generator must send at least three (3) copies of the manifest dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or

2. The designated facility if transported solely by rail; or

3. The last rail transporter to handle the waste in the United States if exported by rail.

Section 3. Pre-transport Requirements. (1) Packaging. [(4)] Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable U. S. Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179, filed herein by reference.

(2) [(5)] *Labeling.* Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials, under 49 CFR 172, filed herein by reference.

(3) [(6)] *Marking. (a)* Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials under 49 CFR 172, filed herein by reference.

(b) [(7)] Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR 172.304, filed herein by reference. The following words and information shall be displayed: "Hazardous Waste—Federal Law Prohibits Improper Disposal. If found, contact the nearest police, *or* public safety[, or state

environmental protection] authority or the U.S. Environmental Protection Agency.
Generator's Name and Address _____;;
Manifest Document Number _____.;
[As an alternative, the appropriate label as required by 40 CFR 262.31, filed herein by reference may be used.]

(4) [(8)] *Placarding.* Before tansporting hazardous waste or offering hazardous waste for transportation off-site, a generator must offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F, filed herein by reference.

(5) [(9)] *Accumulation time.* A generator may accumulate hazardous waste on-site without a permit *or without having interim status* [for ninety (90) days or less], provided that:

(a) All such waste is *within ninety (90) days* shipped off-site *to a designated facility or placed in an on-site facility that is permitted under 401 KAR 2:060 or has interim status under 401 KAR 2:073.* [in ninety (90) days or less;]

(b) The waste is placed in containers which meet the standards of [this] Section[;] *3(1) and are managed in accordance with 401 KAR 2:073, Section 8, or in tanks, provided the generator complies with the requirements of Section 9 of 401 KAR 2:073.*

(c) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(d) Each container is properly labeled and marked according to [this] Section[;] *3(2) and (3) of this regulation;*

(e) The generator complies with the requirements specified in *401 KAR 2:073, Section 3(1) and (2).* [40 CFR 265.16 and Subpart C and D of 40 CFR 265, filed herein by reference.]

(f) [(10)] 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 2:063 and 401 KAR 2:073 and the permit requirements of 401 KAR 2:060* [this regulation].

[Section 3. Manifest Procedures for Owner/Operator of Treatment, Storage, Recycling, or Disposal Facility. (1) The owner/operator of an off-site hazardous waste facility shall ensure that hazardous waste delivered to the receiving facility has essentially the same general properties and quantities as identified by the generator on the manifest, except in the case of an on-site facility operated solely for and by a generator.]

[(2) The owner/operator of an off-site hazardous waste facility shall require that the generator and transporter sections of the manifest be completed before the hazardous waste shall be accepted.]

[(3) The off-site hazardous waste facility owner/operator shall complete the applicable section of the manifest, retain a copy, and send the completed original to generator of the hazardous waste.]

[(4) The owner/operator of an off-site hazardous waste facility shall send legible copies of all completed hazardous waste manifests or other reports to the department on a current weekly basis, or on such other schedule as approved by the department, including manifests for shipments received from out of state.]

[(5) The owner/operator of an off-site hazardous waste facility shall handle manifest discrepancies as required by 40 CFR 265.72, filed herein by reference.]

[(6) The owner/operator of an off-site hazardous waste facility shall handle unmanifested shipments as required by 40 CFR 265.76, filed herein by reference.]

[Section 4. Personnel Requirements for Facility Operation. (1) The owner/operator of a hazardous waste facility shall maintain such personnel at the facility as are necessary to provide effective and timely action with regard to facility operations, maintenance, environmental controls, records, emergencies, and health or safety.]

[(2) The owner/operator shall provide at the off-site facility at least one (1) qualified person who is capable of conducting field tests of wastes for, at a minimum, pH and flammability at the time hazardous waste is accepted.]

[(3) The owner/operator of a hazardous waste facility shall provide adequate supervision to ensure that the operation of the facility and other activities carried out on the premises are in compliance with all applicable laws, regulations, permit conditions and other requirements. The owner/operator shall keep the department, local fire officials, and State Fire Marshal currently advised of the names, addresses, and telephone numbers, including emergency telephone numbers, of the owner/operator, manager, and supervisor.]

[Section 5. Equipment Requirements for Owner/Operator. (1) Hazardous waste facilities shall be designed, equipped and operated to prevent discharge of hazardous wastes outside of areas designated in the operational plan, and to prevent hazards to public health and the environment.]

[(2) Equipment used to handle, treat, store or dispose of hazardous waste shall be designed to avoid an uncontrolled reaction, fire, explosion, or discharge of hazardous waste.]

[(3) If an on-site water supply is used for controlling dust and fires, cleaning equipment or other purposes, and does not meet all health standards for drinking water, all faucets or taps shall be clearly labeled: "Polluted—Not Safe For Human Use."]

[(4) If a public water supply is used at the facility, the service connection shall be protected from contamination as specified by the department in 401 KAR 6:015, pertaining to public water supply requirements.]

[(5) The owner/operator shall provide or otherwise require special equipment such as lifts, ramps, and lines to remove containerized hazardous waste from vehicles and containers, if necessary to prevent hazards to public health and the environment.]

[(6) Hazardous waste facilities shall not be open to public except by permission of the department. Access roads leading to areas where hazardous wastes are handled, treated, recycled, stored, or disposed shall be clearly marked with notices that are legible from a distance of at least twenty-five (25) feet, and warn of the presence of hazardous wastes. Signs or traffic controllers shall be strategically located to prevent the public from being exposed to hazardous wastes.]

[Section 6. General Operating Standards for Facilities. (1) The owner/operator of a hazardous waste facility shall operate the facility in accordance with the requirements of KRS Chapter 224, and the regulations promulgated pursuant thereto, the conditions of the hazardous waste facility permit issued by the department, and the operational plan filed with the department. All existing hazardous waste facilities as of November 19, 1980 which are operating under a permit by rule in accordance with 401 KAR 2:060, Section 2(6), shall be subject to conditions and standards specified in the "Federal Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities," 40 CFR 265, as amended, filed herein by reference.]

[(2) Hazardous waste shall be handled, treated, recycled, stored, or disposed of only within the hazardous waste area designated in the operational plan filed with the department unless otherwise specified.]

[(3) The owner/operator shall ensure that methods used to handle, treat, store, recycle or dispose of hazardous waste at the hazardous waste facility are designed to avoid:]

[(a) Discharge of hazardous waste outside the designated hazardous waste area;]

[(b) Movement of hazardous waste to an area outside the hazardous waste area;]

[(c) Exposure or contamination of a person by hazardous waste; and]

[(d) Creating a hazard to public health or the environment.]

[(4) To prevent hazardous waste from being blown by wind, hazardous waste in the form of powder, dust, or a fine solid should be handled, treated, stored and disposed of in covered containers or, if the waste is not water reactive, shall be wetted sufficiently to eliminate airborne dispersal in conformance with other permit requirements.]

[(5) Hazardous wastes that are capable of releasing hazardous gases, mists or vapors in excess of existing air quality standards or where the emitted hazardous wastes could result in a hazard to public health or the environment shall not be deposited in open pits, ponds, lagoons, storage or disposal areas or containers.]

[(6) Containers holding hazardous wastes shall not be opened, handled, emptied or disposed of in a manner which may rupture the containers or cause them to leak, unless the precautions taken preclude fires, contamination of persons by hazardous waste, discharge of hazardous waste outside the hazardous waste area or movement of hazardous waste to an area outside the hazardous waste area.]

[(7) Containers or inner liners removed from containers that have been contaminated with a hazardous material or materials listed as "Acute Hazardous Wastes" in 40 CFR 261.33(e), filed herein by reference, shall be stored, handled, processed, and disposed as hazardous wastes in compliance with hazardous waste regulations, unless:]

[(a) They have been triple rinsed using a solvent capable of removing the hazardous material or materials;]

[(b) They have been cleaned by another method approved by the department; or]

[(c) In the case of a container with a liner, the inner liner that prevented contact of the listed material or materials with the container, has been removed.]

[(8) The owner/operator of a hazardous waste facility shall expedite collection of hazardous waste that is accidentally discharged from designated storage, processing or disposal areas. The owner/operator shall also collect soil contaminated by such discharge. The owner/operator shall handle and dispose of such waste and soil as hazardous wastes in compliance with these regulations and the approved operational plan.]

[(9) The hazardous waste facility shall be operated in such a manner as to minimize the chance of fire and explosions and with adequate provisions for prompt fire control.]

[(10) The owner/operator shall make provisions to prevent personnel from wearing clothing that is contaminated with hazardous waste and provide adequate decontamination facilities.]

[(11) Equipment used at hazardous waste facilities, including but not limited to storage containers, processing equipment, trucks, loaders, dozers, and scrapers, that are contaminated with hazardous waste shall be decontaminated prior to being serviced or used in an area not used for hazardous waste. Contaminated wash water, waste solutions or residues generated from washing or decontaminating the equipment shall be collected and disposed of as hazardous wastes in compliance with these regulations.]

[(12) Salvaging of hazardous waste shall be permitted only as described in the operational plan, provided that salvaging does not create nuisances or hazards to public health or safety or the environment.]

[Section 7. Additional Standards for Storage Facilities of Hazardous Waste. (1) No person or state or federal agency shall store a hazardous waste without complying with permit requirements specified in 401 KAR 2:060, Sections 1 and 2.]

[(2) Any generator who stores a hazardous waste longer than ninety (90) days shall have obtained a permit or temporary variance for storage from the department.]

[(3) The department may require that hazardous waste stored by a generator for longer than ninety (90) days be removed and disposed of in a manner acceptable to the department.]

[(4) Hazardous waste in storage by a generator for less than ninety (90) days shall be removed and disposed of in a manner acceptable to the department if so ordered by the secretary pursuant to KRS 224.071.]

[(5) Storage of water-reactive or water-soluble hazardous wastes as identified by the department shall be in a rain-tight and waterproof container or area.]

[(6) Containers used for storing hazardous waste shall be such that containers can be transported, handled, or moved safely, and without spillage.]

[(7) Storage of hazardous waste by an owner/operator of a hazardous waste storage facility shall be in a secure enclosure, including but not limited to, a building, room or fenced area, which shall prevent unauthorized persons from gaining access to the waste and in such a manner that will minimize the possibility of spills and escape from the area of storage. A caution sign shall be posted and shall be visible from any direction of access or view of hazardous waste stored in such enclosure. Wording of caution signs shall be: "Caution—Hazardous Waste Storage Area—Unauthorized Persons Keep Out."]

[(8) A label shall be maintained on all containers and storage tanks in which hazardous wastes are stored at a hazardous waste storage facility. Labels shall include the following information:]

[(a) EPA Identification number;]

[(b) Composition and physical state of the waste;]

[(c) Special safety recommendations and precautions for handling the waste;]

[(d) Statements which call attention to the particular hazardous properties of the waste;]

[(e) Name and address of the person generating the waste; and]

[(f) Date of acceptance at the storage facility.]

[(9) Records shall be maintained on all containers and storage tanks during the term of storage. The records shall include the following information:]

[(a) An identification number which appears on the label;]

[(b) Composition and physical state of the waste;]

[(c) Amount of waste;]

[(d) Name and address of the person producing the waste; and]

[(e) Date of acceptance at the storage facility.]

[Section 8. Operation Requirements for Owner/Operator of a Disposal Site. (1) Flammable wastes, water-reactive wastes and strong oxidizers shall not be applied directly to the working face of a landfill. Such wastes shall be deposited behind the working face in trenches or wells at landfill sites pursuant to the conditions of the hazardous waste permit.]

[(2) The department may require the owner/operator to remove from the disposal site and properly dispose of any hazardous waste if the disposal of the waste is not consistent with the requirements of this regulation and conditions specified by the department in the hazardous waste permit.]

[(3) Hazardous waste that has been deposited in a hazardous waste disposal area shall not be excavated, removed or recovered without written approval of the department. All subsequent handling, treatment, storage, recycling, or disposal of such hazardous waste shall be in conformance with this regulation. A complete manifest shall accompany the wastes if transported to an off-site hazardous waste facility, and applicable permits shall be required pursuant to 401 KAR 2:060.]

[(4) Burning wastes shall not be disposed of within a hazardous waste disposal site.]

[(5) Forbidden or Class A explosive wastes as defined in Title 49, Code of Federal Regulations, Sections 173.51 and 173.53, or identified by the department, shall not be disposed of on land. Such wastes shall be destroyed or used so as not to present a hazard to public health or the environment.]

[(6) Any person or state or federal agency who generates, treats, stores, recycles or disposes of hazardous wastes shall not create a situation where incompatible wastes, as defined in 401 KAR 2:050, can come in contact with each other.]

[(7) Storage and transportation containers holding wastes which might be incompatible shall be separated from each other or protected from each other, in order to prevent the wastes from mixing should the containers break or leak prior to disposal according to the operating plant.]

[(8) The owner/operator of a hazardous waste facility shall not accept hazardous wastes from generators and transporters when such wastes are not offered in compliance with applicable state and federal laws and regulations.]

[Section 9. Records. (1) Hazardous waste facility owner/operators shall maintain at their facility, for a period of not less than three (3) years, the following information:]

[(a) The names, addresses, and telephone numbers of the waste generator, transporter, processor and disposal site owner/operator of each shipment of hazardous waste transported, received, or stored;]

[(b) The source, identity, chemical composition, volume, physical state, container type and hazardous properties of each shipment of waste received, transported, or stored at the site;]

[(c) The method used to process or dispose of each waste; and]

[(d) The date that each hazardous waste was received for storage or disposal.]

[(2) Copies of completed manifests may serve the purpose in subsection (1)(a) through (d).]

[(3) The owner/operator of a hazardous waste disposal facility shall record on a grid or other suitable map the general disposal locations of hazardous wastes. The hazardous waste types shall be identified on the grid or map by types of waste, including but not limited to, acid solution, alkaline solution, pesticides, paint sludge, solvent, tetraethyl lead sludge, tank bottom sediment, contaminated oil and sand and plating waste. The record shall be permanently maintained.]

[(4) The owner/operator of a hazardous waste disposal facility shall maintain such other permanent summary and special records as required by the department.]

[(5) The retention period for all records required under this section is automatically extended during the course of an unresolved enforcement action regarding the facility or as requested by the secretary.]

[Section 10. Reports by Owner/Operator of Hazardous Waste Disposal Facility. The owner/operator of a hazardous waste disposal facility shall submit a report to the department showing the identity, source, chemical composition, weight or volume, physical state, container type, hazardous properties and method used to dispose of each waste. The reports should not be required more frequently than once per quarter.]

[Section 11. Accident Reports. Owner/operators of hazardous waste facilities shall report to the department any incident or accident within two (2) hours of the time of occurrence, which results in or could result in the discharge of hazardous waste. The department may require that a written report of the incident or accident be provided within ten (10) days.]

Section *4.* [12. Generator] Recordkeeping and Reporting. (1) *Recordkeeping. (a)* A generator must keep a copy of each manifest signed in accordance with Section *2(4)* [(1)] for three (3) years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three (3) years from the date the waste was accepted by the initial transporter.

(b) [(2)] A generator 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).*

(c) [(3)] A generator must keep records of any test results, waste analyses, or other determinations made in accordance with *Section 1(2) of this regulation* [401 KAR 2:075] 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.

(d) [(4)] 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.

(2) [(5)] *Annual reporting. (a)* A generator who ships his hazardous waste off-site must submit annual reports:

1. [(a)] On a form approved by the department according to the instructions on the form;

2. [(b)] To the department;

3. [(c)] No later that March 1 for the preceding calendar year.

(b) [(6)] Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes *in accordance with the provisions of 401 KAR 2:063, 401 KAR 2:073 and 401 KAR 2:060.*

(3) [(7)] *Exception reporting. (a)* 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 must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(b) [(8)] A generator must submit an exception report to the department 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 must include:

1. [(a)] A legible copy of the manifest for which the generator does not have confirmation of delivery;

2. [(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.

(4) [(9)] *Additional reporting.* The secretary may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 401 KAR 2:075.

Section *5.* [13.] *Special Conditions (1)* International Shipments.

(a) [(1)] Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States must comply with the requirements of this section.

(b) [(2)] When shipping hazardous waste outside the United States the generator must:

1. [(a)] Notify the department and the U.S. Environmental Protection Agency in writing four (4) weeks before the initial shipment of hazardous waste to each country in each calendar year.

a. The waste must be identified by its hazardous waste identification number and its U.S. Department of Transportation shipping description;

b. The name and address of the foreign consignee must be included in this notice;

c. These notices must be sent to: Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A-107), United States Environmental Protection Agency, Washington, D.C. 20460, and the Kentucky Department for Natural Resources and Environmental Protection, Frankfort, Kentucky 40601.

2. [(b)] Require the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;

3. [(c)] Meet the requirements under Section *2(2)* [1] for the manifest, except that:

a. [1.] In place of the name, address, and identification number of the designated facility, the name and address of the foreign consignee must be used;

b. [2.] The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(c) [(3)] A generator must file an exception report, if:

1. [(a)] He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter; or

2. [(b)] Within ninety (90) days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(d) [(4)] When importing hazardous waste, a person must meet all requirements of Section *2(2)* [1] for the manifest except that:

1. [(a)] In place of the generator's name, address and identification number, the name and address of the foreign generator and the importer's name, address and identification number must be used.

2. [(b)] In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(2) [Section 14.] 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 regulation or other standards in 401 KAR 2:060, *401 KAR 2:063 and 401 KAR 2:073* for those wastes provided he triple rinses each emptied pesticide container *in accordance with 401 KAR 2:075, Section 7,* and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.
SUBMIT COMMENT TO: Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 2:075. Identification and listing of hazardous waste.

RELATES TO: *KRS 224.864(3), 224.868, 224.876* [KRS 224.866]
PURSUANT TO: KRS 13.082, 224.017, *224.864(3)* [224.866]
NECESSITY AND FUNCTION: *KRS 224.864(3)* [KRS 224.866(2)] requires the Department for Natural Resources and Environmental Protection to identify the characteristics of and to list hazardous wastes.

Section 1. *A hazardous waste is any material that is a waste as defined in Section 2 that meets the criteria set forth in Section 3.* [Hazardous Waste Identification. The criteria for identifying the characteristics of hazardous wastes are as described in 40 CFR 261, filed herein by reference.]

Section 2. *Definition of a Waste.* [Hazardous Waste Lists. The lists of hazardous waste are as described in 40 CFR 261, filed herein by reference.] *(1) A waste is any garbage, refuse, sludge or any other waste material which is not excluded under Section 4, subsection (1) of this regulation.*

(2) An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:

(a) Is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or

(b) Has served its original intended use and sometimes is discarded; or

(c) Is a manufacturing or mining by-product and sometimes is discarded.

(3) A material is "discarded" if it is abandoned (and not used, re-used, reclaimed or recycled) by being:

(a) Disposed of; or

(b) Burned or incinerated, except where the material is being burned as a fuel for the purpose of recovering usable energy; or

(c) Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed of.

(4) A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.

(5) A "manufacturing or mining by-product" is a material that is not one (1) of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one (1) of the steps in a manufacturing or mining process and is processed through the next step of the process within a short time.

Section 3. *Definition of a* Hazardous Waste [by Definition]. [A waste that meets the definition of hazardous waste presented in 401 KAR 2:050 shall be considered a hazardous waste whether or not the waste is cited in this regulation. Such waste shall be handled and disposed of according to the requirements of the hazardous waste regulations.] *(1) A waste, as defined in Section 2 of this regulation is a hazardous waste if:*

(a) It is not excluded from regulation as a hazardous waste under Section 4, subsection (2) of this regulation; and

(b) It meets any of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in Section 8.

2. It is listed in Section 9 and has not been excluded by Section 8(1) and (3) from the lists in Section 9.

3. It is a mixture of a solid waste and a hazardous waste that is listed in Section 9 solely because it exhibits one (1) or more of the characteristics of hazardous waste identified in Section 8, unless the resultant mixture no longer exhibits any characteristics of hazardous waste identified in Section 8.

4. It is a mixture of solid waste and one (1) or more hazardous wastes listed in Section 9 and has not been excluded by Sections 8(1) and (3) from this paragraph; however, the following mixtures of solid wastes and hazardous wastes listed in Section 9 are not hazardous wastes (except by application of subparagraph (1)(b)1 or 2 of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (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 9(2), carbon tetrachloride, tetrachloroethylene, 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 9(2), chloride, 1,1,1, trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridene, 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 (25) parts per million; or

(c) One (1) of the following wastes listed in Section 9(3), 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 9(4), arising from de minimis 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, "de minimis" losses include those from normal material handling operations (e.g., 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 seal; 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 Section 9, 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 pre-treatment system, or provided the wastes' combined annualized average concentration does not exceed one (1) part million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

(2) A waste which is not excluded from regulation under subsection (1), paragraph (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 Section 9 of this regulation when the waste first meets the listing description set forth in Section 9;

(b) In the case of a mixture of solid waste and one (1) or more hazardous wastes when a hazardous waste listed in Section 9 of this regulation is first added to the waste; or

(c) In the case of any other waste (including a waste mixture) when the waste exhibits any of the characteristics identified in Section 8 of this regulation.

(3) Unless and until it meets the criteria of subsection (4) of this section:

(a) A hazardous waste will remain a hazardous waste.

(b) 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.

(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 Section 8 of this regulation.

(b) In the case of a waste which is a listed waste under Section 9 of this regulation, contains a waste listed under Section 9 of this regulation or is derived from a waste listed in Section 9 of this regulation, it also has been excluded from subsection (3) of this section under subsection (1), paragraph (b) of Section 9.

Section 4. Exclusions. (1) Those materials excluded in 401 KAR 2:055, Section 1(1)(a) to (e) are not wastes for the purpose of this regulation.

(2) Any waste which meets the requirements of 40 CFR 261.4, paragraph (b), filed herein by reference, is not a hazardous waste.

(3) 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 non-waste-treatment-manufacturing unit, is not subject to regulation under 401 KAR 2:055, 2:060, 2:063, 2:070, 2:073 and 2:085 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.

Section 5. Special Requirements for Hazardous Waste Generated by Small Generators. (1) A generator is a small quantity generator in a calendar month if he generates less than 1,000 kilograms of hazardous waste in that month.

(2) Except for those wastes identified in subsections (5) and (6) of this section, a small quantity generator's hazardous wastes are not subject to regulation under 401 KAR 2:055, 2:060, 2:063, 2:070, 2:073 and 2:085, provided the generator complies with the requirements of subsection (7) of this section.

(3) Hazardous waste that is benefically used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by Section 6, subsection (1) of this regulation, is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the special requirements of Section 6, subsection (2) of this regulation is included in the quantity determinations of this section, and is subject to the requirements of this section.

(4) In determining the quantity of hazardous waste he generates, a generator need not include:

(a) His hazardous waste when it is removed from on-site storage; nor

(b) Hazardous waste produced by on-site treatment of his hazardous waste.

(5) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under 401 KAR 2:055, 2:060, 2:070 and 2:085.

(a) A total of one (1) kilogram of a commercial chemical products and manufacturing chemical intermediates having the generic names listed in Section 9 of this regulation and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specification, would have the generic names listed in Section 9 of this regulation.

(b) A total of 100 kilograms of any residue or contaminated soil water or other debris resulting from the clean-up of a spill into or on any land or water, or any commercial chemical products or manufacturing chemical intermediates having the generic names listed in Section 9 of this regulation.

(6) A 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 waste, or his acutely hazardous wastes in quantities greater than set forth in paragraphs (a) and (b) of subsection (5) of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under 401 KAR 2:055, 2:060, 2:063, 2:070, 2:073 and 2:085. The time period of 401 KAR 2:070, Section 3, subsection (5) for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a small quantity generator to be excluded from full regulations under this section, the generator must:

(a) Comply with the requirements of 401 KAR 2:060, Section 1, subsection (1);

(b) If he stores his hazardous waste on-site, stores it in compliance with the requirements of subsection (6) of this section; and

(c) Either treats or disposes of his hazardous waste in an on-site facility, or ensures delivery to an off-site storage, treatment or disposal facility, either of which is:

1. Permitted under 401 KAR 2:060;
2. Located outside of Kentucky and is permitted under 40 CFR Part 122;
3. 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 123;
4. Permitted to manage municipal or industrial solid waste and is specifically approved for that site; and
5. Permitted, licensed or registered by a state to re-use, legitimately recycle or reclaim that waste.

(8) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous 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 Section 8.

(9) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture is subject to full regulation.

Section 6. Special Requirements for Hazardous Waste Which is Used, Re-used, Recycled or Reclaimed.

(1) Except as otherwise provided in subsections (2) and (3) of this section, a hazardous waste which meets either of the following criteria is not subject to regulation under 401 KAR 2:055, 2:060, 2:063, 2:070, 2:073 and 2:085.

(a) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.

(b) It is being accumulated, stored, or physically, chemically or biologically treated as specified in 40 CFR 261.6(a)(2) and (3) herein filed by reference.

(2) A hazardous waste which is a sludge or which is listed in Section 9 of this regulation and which is transported or stored prior to being used, re-used, recycled or reclaimed is subject to the requirements of 401 KAR 2:055, 2:060, 2:063, 2:070, 2:073 and 2:085 with respect to such transportation and storage.

(3) All facilities which beneficially use, or re-use or legitimately recycle or reclaim hazardous wastes must comply with the registration requirements of Section 2(4) of 401 KAR 2:060.

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 defined in subsection (2) of this section, is not subject to regulation under the waste management regulations relating to hazardous waste or to the notification requirements of KRS 224.864.

(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 defined in subsection (2) of this section is subject to regulations under the waste management regulations relating to hazardous wastes and to the notification requirements of KRS 224.864.

(2) 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 in Section 9(4), is empty if:

(a) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(b) No more than 2.5 centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner.

(3) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(4) A container or an inner liner removed from a container that has held a hazardous waste identified in Section 9(4) is empty if:

(a) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(b) 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

(c) 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. Characteristics of Hazardous Waste. (1) General.

(a) A waste, as defined in Section 2, which is not excluded from regulations as a hazardous waste under Section 4(2), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(b) A hazardous waste which is identified by a characteristic in this section, but is not listed as a hazardous waste in Section 9, is assigned the EPA Hazardous Waste Number set forth in the respective characteristics in this section. This number must be used in complying with the notification requirements of KRS 224.864 and certain recordkeeping and reporting requirements under the waste management regulation relating to hazardous waste.

(c) For purposes of this section, the Department will consider a sample obtained using any of the applicable sampling methods specified in Appendix I, 40 CFR 261 to be a representative sample within the meaning of 401 KAR 2:055.

(2) Characteristic of ignitability. The characteristic of ignitability as contained in 40 CFR 261.21 is adopted and herein filed by reference.

(3) Characteristic of corrosivity. The characteristic of corrosivity as contained in 40 CFR 261.22 is adopted and herein filed by reference.

(4) Characteristic of reactivity. The characteristic of reactivity as contained in 40 CFR 261.23 is adopted and herein filed by reference.

(5) Characteristic of EP toxicity. The characteristic of EP toxicity as contained in 40 CFR 261.24 is adopted and herein filed by reference.

Section 9. Lists of Hazardous Wastes. (1) General applicability and delisting procedures.

(a) A waste is a hazardous waste if it is listed in any subsection of this section unless it has been excluded from that list by meeting the requirements of paragraph (b) or this subsection.

(b) A waste will be excluded from the list in any subsection of this section where:

1. A petition is filed with the U.S. Environmental Protection Agency which meets the requirements of 40 CFR 260.22 herein filed by reference and which results in a regulatory amendment under 40 CFR 260.20 herein filed by reference that excludes the waste from lists in Subpart D of 40 CFR 261; and

2. A copy of the petition specified in subparagraph 1 is filed with the secretary; and

3. Review of the petition will be performed concurrently by the secretary and the administrator; and

4. The secretary will advise the administrator of the decision of the department; and

5. Any decision of the secretary to delist a hazardous waste must also receive the concurrence of the administrator. Based on the technical data and evaluation performed by the administrators, the secretary shall officially transmit the regulatory decision of both the department and the administrator to the petitioner that the waste is excluded. (Note: The official regulatory decision will also be published in the Federal Register.)

6. Based on the technical data and evaluation performed by the administrator, the secretary shall officially transmit the regulatory decision of both the department and the administrator to the petitioner. (Note: The official regulatory decision will also be published in the Federal Register.)

(2) The general requirements as relating to the lists of hazardous wastes in 40 CFR 261.30(b), (c) and (d) are adopted and herein filed by reference.

(3) Hazardous wastes from non-specific sources. Hazardous wastes from non-specific sources as contained in 40 CFR 261.31 are adopted and herein filed by reference.

(4) Hazardous wastes from specific sources. Hazardous wastes from specific sources as contained in 40 CFR 261.32 are adopted and herein filed by reference.

(5) Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof. Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof, as contained in 40 CFR 261.33 are adopted and herein filed by reference.

Section 10. Special Waste. (1) A special waste, as defined in KRS 224.868 or in 401 KAR 2:050, is a hazardous waste:

(a) If it meets the definition of a hazardous waste in Section 3 of this regulation; and

(b) It exhibits any of the characteristics of a hazardous waste in Section 8 of this regulation; or

(c) It is listed as a hazardous waste in Section 9 of this regulation.

(2) Any special waste which is identified as a hazardous waste as specified in subsection (1) of this section shall be regulated under the waste management regulations pertain-

ing 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 224.876(6).

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.
SUBMIT COMMENT TO: Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:105. New process gas streams.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new process gas streams.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which means any process gas stream which:
(1) Is not elsewhere subject to a standard of performance within this chapter with respect to hydrogen sulfide, sulfur dioxide, or carbon monoxide; and
(2) Commenced on or after the classification date defined below.
(3) With respect to carbon monoxide, the provisions of this regulation shall apply to each affected facility which has a potential to emit more than 1,000 tons per year of carbon monoxide and is located in an area classified nonattainment for carbon monoxide in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Classification date" means *June 6, 1979.* [the effective date of this regulation.]
(2) "Process gas stream" means any gas stream emitted from any process including, but not limited to, petroleum refineries, by-product coke plants, grey iron cupolas, blast furnace, basic oxygen steel furnace and coal conversion plants, except process upset gas as defined in this section.
(3) "Process upset gas" means any gas generated by a process unit as a result of startup, shutdown, upset, or malfunction.
(4) "Process unit" means any segment of the plant in which a specific processing operation is conducted.

Section 3. Standard for Hydrogen Sulfide. No person shall cause, suffer, allow or permit the emission or combustion of hydrogen sulfide in a process gas stream to exceed ten (10) grains per 100 dscf (165 ppm by volume) at zero percent oxygen except that sources whose combined process gas stream emission rate totals less than two (2) tons per day of hydrogen sulfide shall *either* reduce such emissions by eighty-five (85) percent *or control such emissions such that hydrogen sulfide in the gas stream emitted into the ambient air does not exceed ten (10) grains per 100 dscf (165 ppm by volume) at zero percent oxygen.*

Section 4. Standard for Sulfur Dioxide. No person shall cause, suffer, allow or permit the emission of sulfur dioxide in a process gas stream to exceed 28.63 grains per 100 dscf (250 ppm by volume) at zero percent oxygen except that sources whose combined process gas stream emission rate totals less than four (4) tons per day of sulfur dioxide shall reduce such emissions by eighty-five (85) percent. *Sources which have a potential to emit less than 100 tons per year of sulfur dioxide shall be exempt from this standard.*

Section 5. Standard for Carbon Monoxide. No person shall cause, suffer, allow, or permit the emission of carbon monoxide in a process gas stream or a waste gas stream, unless the gases are burned at 1,300°F for 0.5 seconds or greater in a direct flame afterburner or equivalent device equipped with an indicating pyrometer which is positioned in the working area at the operator's eye level.

Section 6. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Sections 3, 4 and 5 shall be conducted according to the following methods, filed by reference in 401 KAR 50:015:
(1) Reference Method 11 for Hydrogen Sulfide. The sample shall be drawn from a point near the centroid of the gas line. The minimum sampling time shall be ten (10) minutes and the minimum sample volume shall be 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately one (1) hour intervals.
(2) Reference Method 6 for Sulfur Dioxide. Reference Method 1 shall be used for velocity traverses and Reference Method 2 for determining velocity and volumetric flow rate. The sampling site for determining sulfur dioxide concentration by Reference Method 6 shall be the same as for determining volumetric flow rate by Reference Method 2. The sampling point in the duct for determining sulfur dioxide concentration by Reference Method 6 shall be at the centroid of the cross section or at a point no closer to the walls than one (1) m (thirty-nine (39) inches) if the cross-sectional area is five (5) square meters or more and the centroid is more than one (1) meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be ten (10) minutes and the minimum sampling volume shall be 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two (2) samples shall constitute one (1) run. Three (3) runs will constitute compliance test. Samples shall be taken at approximately one (1) hour intervals.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.
SUBMIT COMMENT TO: Larry Wilson, Supervisor, Regulations and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:035. Existing process gas streams.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing process gas streams.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which means any process gas stream which:

(1) Is not elsewhere subject to a standard of performance within this chapter with respect to hydrogen sulfide, sulfur dioxide, or carbon monoxide; and

(2) Commenced before the classification date defined below.

(3) *The provisions of this regulation shall apply to each affected facility which* emits hydrogen sulfide or sulfur dioxide and is located in a county classified as Class I or VA with respect to sulfur dioxide *in 401 KAR 50:025; or*

(4) *Has a potential to emit more than 1,000 tons per year of* [Emits] arbon monoxide generated during the operation of any grey iron cupola, blast furnace, basic oxygen steel furnace, coal conversion plants, catalyst regeneration of a petroleum cracking system, or other petroleum process and is located in an area classified non-attainment with respect to carbon monoxide in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010 or 401 KAR 50:025.

(1) "Classification date" *June 6, 1979* [means the effective date of this regulation].

(2) "Process gas stream" means any gas stream emitted from any process, including, but not limited to, petroleum refineries, by-product coke plants, grey iron cupolas, blast furnaces, coal conversion plants and basic oxygen steel furnaces, except process upset gas as defined in this section and the combustion products of purchased coke oven gas.

(3) "Process upset gas" means any gas generated by a process unit as a result of startup, shutdown, upset, or malfunction.

(4) "Process unit" means any segment of the plant in which a specific processing operation is conducted.

Section 3. Standard for Hydrogen Sulfide. No person shall cause, suffer, allow or permit the emission or combustion of hydrogen sulfide in a process gas stream to exceed ten (10) grains per 100 dscf (165 ppm by volume) at zero percent oxygen.

Section 4. Standard for Sulfur Dioxide. No person shall cause, suffer, allow or permit the emission of sulfur dioxide in a process gas stream to exceed 239 grains per 100 dscf (2,000 ppm by volume) at zero percent oxygen.

Section 5. Standard for Carbon Monoxide. No person shall cause, suffer, allow, or permit the emission of carbon monoxide in a process gas stream or a waste gas stream, unless the gases are burned at 1,300°F for 0.5 seconds or greater in a direct flame afterburner or equivalent device equipped with an indicating pyrometer which is positioned in the working area at the operator's eye level.

Section 6. Test Methods and Procedures. Except as provided in 401 KAR 50:045, performance tests used to demonstrate compliance with Sections 3 and 4 shall be conducted according to the following methods (filed by reference in 401 KAR 50:015):

(1) Reference Method 11 for hydrogen sulfide. The sample shall be drawn from a point near the centroid of the gas line. The minimum sampling time shall be ten (10) minutes and the minimum sample volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two (2) samples shall constitute one (1) run. Samples shall be taken at approximately one (1) hour intervals.

(2) Reference Method 6 for sulfur dioxide. Reference Method 1 shall be used for velocity traverses and Reference Method 2 for determining velocity and volumetric flow rate. The sampling site for determining SO2 concentration by Reference Method 6 shall be the same as for determining the volumetric flow rate by Reference Method 2. The sampling point in the duct for determining SO2 concentration by Reference Method 6 shall be at the centroid of the cross section or at a point no closer to the walls than one (1) m (thirty-nine (39) inches) if the cross-sectional area is five (5) square meters or more and the centroid is more than one (1) meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be ten (10) minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two (2) samples shall constitute one (1) run. Three (3) runs will constitute compliance test. Samples shall be taken at approximately one (1) hour intervals.

Section 7. Compliance Timetable. Those affected facilities subject to the standards in this regulation shall achieve compliance with those standards within eighteen (18) months of *June 6, 1979* [the effective date of this regulation].

(1) Hydrogen sulfide and sulfur dioxide. The provisions of Sections 3 and 4 are applicable *on June 6, 1979* [upon the effective date of this regulation] with respect to affected facilities located in counties classified as Class I with respect to sulfur dioxide. The owner or operator of an affected facility located in a Class VA county with respect to sulfur dioxide shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with Sections 3 and 4 no later than September 1, 1979.

(b) Award the control system contract no later than October 1, 1979.

(c) Initiate on-site construction or installation of emission control equipment no later than September 1, 1980.

(d) On-site construction or installation of emission control equipment shall be completed no later than December 1, 1980.

(e) Final compliance shall be achieved no later than February 1, 1981.

(2) Carbon monoxide. The owner or operator of an affected facility shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with Section 5 no later than September 1, 1979.

(b) Award the control system contract no later than October 1, 1979.

(c) Initiate on-site construction or installation of emission control equipment no later than July 1, 1980.

(d) On-site construction or installation of emission control equipment shall be completed no later than October 1, 1980.

(e) Final compliance shall be achieved no later than December 1, 1980.

JACKIE SWIGART, Secretary

ADOPTED: December 15, 1981

RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.

SUBMIT COMMENT TO: Larry Wilson, Supervisor, Regulations and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
(Proposed Amendment)

603 KAR 3:010. Advertising devices on interstates.

RELATES TO: KRS 177.830 to 177.890

PURSUANT TO: KRS 13.082, 174.050, 177.830 to 177.890

NECESSITY AND FUNCTION: KRS 177.830 to 177.890 authorizes the Bureau of Highways to establish regulations for the control of advertising devices on interstate highways.

Section 1. (1) Except as provided for in this regulation, no person shall erect or maintain any advertising device within any protected area if such device is legible or identifiable from the main traveled way of any interstate highway.

(2) The erection or maintenance of any advertising device located outside of "urban areas" and beyond 660 feet of the right of way which is legible and/or identifiable from the main traveled way of any interstate highway is prohibited with the exception of:

(a) Directional and official signs and notices;

(b) Signs advertising the sale or lease of property upon which they are located; or

(c) Signs advertising activities conducted on the property on which they are located.

Section 2. Definitions. The following terms when used in this regulation shall have the following meanings:

(1) "Interstate highway" means any highway, road, street access facility, bridge or overpass which is designated as a portion of the National System of Interstate and Defense Highways as may be established by law, or as may be so designated by the Department of Transportation, Bureau of Highways, in joint construction of the system by the Department of Transportation, Bureau of Highways and the United States Department of Transportation, Federal Highway Administration.

(2) [(1)] "Advertising device" means any billboard, sign, notice, poster, display, or other device intended to attract the attention of operators of motor vehicles on the highway, and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction.

(3) [(2)] "Billboard" advertising devices are those devices that contain a message relating to an activity or product that is foreign to the site on which the device and message is located or is an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(4) [(3)] "On-premise" advertising devices are those devices that contain a message relating to an activity or the sale of a product on the property on which they are located.

(5) [(4)] "Center line of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the center line of the main traveled way of a non-divided highway.

(6) [(5)] "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, *but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of an advertising device.*

(7) "Maintain" means to allow to exist.

(8) [(6)] "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(9) [(7)] "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of a separated roadway for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking area.

(10) [(8)] "Protected areas" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the edge of the right-of-way of all interstate highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected areas" also means all areas inside the boundaries of the Commonwealth which are within 660 feet of the edge of the right-of-way of an interstate highway in an adjoining state.

(11) [(9)] "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing such relationship.

(12) [(10)] "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(13) [(11)] "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting legs of an interchange.

(14) [(12)] "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(15) [(13)] "Permitted" as used in this regulation means to exist only by permit from the Department of Transportation, Bureau of Highways.

(16) [(14)] "Allowed" as used in this regulation means to exist without a permit from the Department of Transportation, Bureau of Highways.

(17) [(15)] "*Zoned* commercial or industrial area" means:

(a) The land use for the area as of September 21, 1959, was clearly established by state law as industrial or commercial and is zoned commercial or industrial at the time of the application, or

(b) The land use for such area was within an incorporated municipality as such boundaries existed on

September 21, 1959, and is zoned for commercial or industrial use.

(18) "Unzoned commercial or industrial area" means:

(a) An area which is not zoned by state or local law, regulation or ordinance and on which either a commercial or industrial activity is conducted or a permanent structure therefor is located, together with the area extending along the highway for a distance of 700 feet. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the activities, not from the property lines of the activities, and shall be along or parallel the edge of the pavement of the highway; and

(b) Any portion of the highway is constructed upon any part of right-of-way which was acquired for right-of-way on or before July 1, 1956 (a portion shall be deemed so constructed if, within such portion, a line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956).

(19) [(16)] "Commercial or industrial activities" *for purposes of unzoned industrial and commercial areas* mean[s] those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor advertising structures.

[(b) Hospitals, nursing homes, cemeteries, funeral homes, etc. Professional office buildings and roadside markets not open over three (3) months a year.]

(b) [(c)] Agricultural, forestry, ranching, grazing, farming and related activities, *including, but not limited to, wayside fresh produce stands.*

(c) Activities normally or regularly in operation less than three (3) months of the year.

(d) Activities conducted in a building principally used as a residence.

(e) Railroad tracks and minor sidings.

(f) *Transient or temporary activities.* [The sale or leasing of property.]

(g) Activities not visible from the main traveled way.

(h) Activities more than 300 feet from the nearest edge of the right-of-way.

(20) [(17)] "Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized areas in each such state or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Secretary of the United States Department of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. Such urban areas shall be designated by official order of the Kentucky Secretary of Transportation.

(21) [(18)] "Routine maintenance" means that maintenance is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device but not to the extent of adding guys or struts for the stabilization of the sign or structure or substantially changing the sign. Replacement of new or additional panels or facing shall not constitute routine maintenance. The routine changing of messages is considered to be routine maintenance. Routine maintenance includes laminating or preparing panels in a plant or factory for the changing of messages.

(22) [(19)] "Activity boundary line" means regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity.

(23) [(20)] "Abandoned or discontinued" means that for a period of one (1) year or more that the sign:

(a) Has not displayed any advertising matter; or

(b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

(24) [(21)] "Non-conforming sign" means a sign which was lawfully erected but does not comply with the provisions of state law or regulations passed at a later date or later fails to comply with state law or regulations due to changed conditions, such as but not limited to, zoning change, highway relocation or reclassification, size, spacing or distance restrictions. Performance of other than routine maintenance shall cause a non-conforming sign to lose its status and to become an illegal sign.

(25) [(22)] "Destroyed" means that the sign has sustained damage by any means in excess of sixty (60) percent of the structure and facing or sixty (60) percent of the replacement value of such sign.

Section 3. General Provisions. (1) Erection or existence of the following advertising devices may not be permitted or allowed in protected areas:

(a) Advertising devices advertising an activity that is illegal under state or federal law.

(b) Obsolete advertising devices.

(c) Advertising devices that are not clean and in good repair.

(d) Advertising devices that are not securely affixed to a substantial structure.

(e) Advertising devices illuminated by other than white lights.

(f) Advertising devices which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.

(g) Advertising devices which prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(h) Signs which contain, include, or are illuminated by any flashing, intermittent or moving lights, except those giving public service information of time, date, temperature or weather and limited to one (1) cycle of four (4) displays. They may contain no other message. The maximum time limit for the completion of the four display cycle shall be five (5) seconds. Signs which have a continuous revolving or running message shall be limited to the same restrictions as to message content, limited to one (1) cycle and limited to a maximum of five (5) seconds for the completion of the one (1) cycle.

(i) Advertising devices which use lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway or unless it is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(j) Advertising devices which move or have any animated or moving parts.

(k) Advertising devices erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(l) Advertising devices exceeding 1,250 square feet in area, including border and trim, but excluding supports.

(m) Advertising devices closer than fifty (50) feet to the edge of the main traveled way of any interstate highway.

(2) An advertising device which is not visible from the main traveled way of the highway may be allowed in protected areas.

(3) Any advertising device which is legible from the main traveled way of any interstate highway must have an approved permit from the Department of Transportation, Bureau of Highways, to be a legal advertising device.

(4) If the advertising device is legible from more than one (1) highway on which control is exercised, the appropriate criteria applies to all of these highways. (See also: 603 KAR 3:020.)

(5) A non-conforming sign may continue to exist until just compensation has been paid to the owner, only so long as it is:

(a) Not destroyed, abandoned or discontinued; and

(b) Subjected to only routine maintenance; and

(c) A sign conforming to local zoning or sign or building restrictions.

Section 4. Measurements of Distance. (1) In determining protected areas, distances from the edge of a right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the center line of a highway for a distance of 660 feet.

(2) In measuring distances for determination of spacing for advertising devices, two (2) lines shall be drawn perpendicular to the center line of the main traveled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of said highway.

(3) V-shaped or back-to-back type billboard advertising devices shall have no greater distance than fifteen (15) feet apart at the nearest point and must be connected by bracing or maintenance walkway.

(4) The spacing for billboard advertising device structures as described in Section 5, subsection (4), shall be measured from the nearest point of each structure to the other.

Section 5. "Billboard" Advertising Device Provisions. (1) "Billboard" advertising devices may be constructed and maintained in protected areas which are zoned commercial or industrial *areas* as defined in Section 2, subsection *(17)* [(15)], *or which are unzoned commercial or industrial areas as defined in Section 2, subsection (18)* of this regulation and comply with the provisions of this regulation for this type advertising device and other applicable state, county or city zoning ordinances or regulations. [Limited to a maximum of 1,250 square feet subject to other provisions of this regulation.]

(2) V-shaped or back-to-back "billboard" advertising devices will be considered as one (1) advertising device structure and must meet specifications as described in Section 4, subsection (3).

(3) "Billboard" advertising devices may contain two (2) messages per facing not to exceed the maximum sized area as set forth in Section 3, subsection (1).

(4) No "billboard" advertising device structure shall be erected within 500 feet of any other such advertising device structure on the same side of the highway, unless separated by a building, natural obstruction or roadway in such manner that only one (1) sign located within the required spacing distance is visible from the highway at any one time. (See Measurement of spacing, Section 4, subsection (4).) This spacing shall not apply to on-premise advertising devices nor will on-premise advertising devices affect the spacing of other advertising structures. Billboard structures in legal existence on the effective date of this amendment which are less than 500 feet from any other such advertising device structure on the same side of the highway, may continue to remain in place until they are destroyed, abandoned or discontinued as defined in this regulation, as long as only routine maintenance as described in Section 2, subsection (18), is performed on them.

(5) "Billboard" advertising devices that were legally erected may remain in place if they meet all criteria except spacing. Only routine maintenance may be performed on the sign and its structure until such time as proper spacing as described in this regulation is attained.

(6) Spacing rights will be issued on a "first come, first served" basis. Proof of lease of a site must accompany the application. Updating of proof of lease and application will be required annually until a sign has been erected.

Section 6. "On-premise" Advertising Devices. (1) "On-premise" advertising devices may have a maximum of 1,250 square feet in area if they qualify as commercial or industrial activities as set forth in Section 2, subsection (16), of this regulation, and are on or within fifty (50) feet of the advertised activity and are within the property boundary lines of such activity.

(2) To qualify as an "on-premise" advertising device, the device must be within the property boundary lines of the advertised activity.

(3) No "on-premise" advertising device may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports, if it is farther than fifty (50) feet from the activity boundary lines (not the property boundary lines).

(4) No "on-premise" advertising device advertising a commercial or industrial activity as set forth in Section 2, subsection (16) of this regulation, shall be located more than 400 feet, measured within the property boundary, from the advertised activity. In using a corridor to reach the location of the device, the corridor must be no less than 100 feet in width and must be an integral part of the property on which the advertised activity is located. No other activity which is in any manner foreign to the advertised activity may be located on or have use of said corridor between the advertised activity and the location of the device. No activity incidental to the primary activity advertised will be considered in taking measurements.

(5) Only one (1) "on-premise" advertising device which is listed as an exception in Section 2, subsection (16), may be located in such a manner that it is legible from the main traveled way.

(6) Only one (1) of the the following "on-premise" advertising devices may be located in such a manner that it is legible from the main traveled way.

(a) The setting forth or indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located; or

(b) The name or type of business or profession conducted on the property on which the advertising device is located; or

(c) Information required or authorized by law to be posted or displayed on such property; or

(d) The sale or leasing of the property upon which the advertising device is located.

1. Advertising devices which are for the purpose of sale or leasing of property by a real estate company or individual will be limited to a six (6) month permit. After the six (6) months, the real estate name must be removed and the message advertising the sale or lease of the property along with the telephone number of the real estate com-

pany is all that may remain. This will be a condition of the permit.

2. If the property is for sale by the owner and the owner is other than a real estate company, the message stating the leasing or sale of the property may list the name of the owner (letters of owners name may be no larger than one-half (½) the size of the letters in the basic message), and the telephone number and will not be restricted to the six (6) month permit.

(e) Advertising customarily used at similar places of business that are not legible from the main traveled way of the highway; or

(f) The advertisement or control of an activity or sale of products on the property where the advertising device is located.

(7) No advertising device referred to in subsections (5) and (6) of this section may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports. Nor will these advertising devices be subject to restrictions as set forth in subsection (4).

(8) Brand name, "on-premise" advertising devices may advertise only the activities conducted upon the property on which they are located with exceptions as to type as follows:

(a) "Ford," "Chevrolet," "Pontiac," etc.

(b) "A & P," "Kroger," etc.

(c) "Kentucky Fried Chicken," "Bob Evans Restaurants," "Stuckeys," etc.

(9) Brand names such as the following may not be advertised because they are incidental to the primary activity:

(a) "Auto Light," "Delco," etc.

(b) "8 O'Clock Coffee," "Armour Meats," "Clabber Girl Baking Powder," etc.

(c) "Coca-Cola," "Pepsi," "Winstons," etc.

(10) Application for advertising device permits for on-premise signs must give a detailed description of the exact wording of the message to be conveyed on the advertising device. This information may be furnished by either a photograph or a drawing, and may be changed only upon the approval of the Bureau of Highways of a new application submitted by the permit holder which shows the proposed change in the message.

(11) An exception to subsection (10) is that a marquee type on-premise advertising device, such as a typical theatre or cinema advertising device, may change messages without a new application. This message change may be from one (1) legitimate on-premise activity to another.

DEAN HUFF, Commissioner
ADOPTED: December 15, 1981
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: December 15, 1981 at 11:30 a.m.
SUBMIT COMMENT OR REQUEST FOR COMMENT TO: Steve Reeder, Deputy Secretary for Legal Affairs, Department of Transportation, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

KENTUCKY SCHOOL BUILDING AUTHORITY
(Proposed Amendment)

723 KAR 1:005. Funding procedure.

RELATES TO: KRS 157.820, *157.840,* 157.895
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To establish procedures for funding *Kentucky School Building Authority* [Department of Education] projects.

Section 1. The authority shall act upon projects recommended by the Superintendent of Public Instruction and approved by the [appropriate] state board of education.

Section 2. The authority shall consider funding projects based upon the order of priorities established by the [appropriate] state board of education after approval by the authority.

Section 3. In the absence of legislative determination, the authority shall determine the allocation of funds available to the authority which shall be made to the various types of projects.

Section 4. In the event funding for projects recommended by the Department of Education exceed the limit of resources established by the School Building Authority for such projects, the chairman of the authority shall notify the chairman of *the state board* [either affected board] of the amount by which [such] resources have been or will be exceeded and *the* [such] board, upon recommendation of the Superintendent of Public Instruction, shall eliminate or reduce the scope of the projects recommended in order to stay within resources available.

Section 5. In establishing funding priorities, the authority shall give first priority to school building projects from available uncommitted funds needed because of some sudden and disastrous calamity or other unusual occurrence which necessitates housing school children in inadequate facilities:

(1) Calamity projects are defined as those projects necessary to replace or restore a facility lost or destroyed through an occurrence normally covered by insurance such as flood, fire, tornado or other such happenings.

(2) Such projects shall be undertaken by the authority only when the Department of Education certifies to the authority that school children normally housed in the affected facility cannot be housed in standard facilities within a reasonable distance of the facility destroyed.

(3) The authority's share of debt service payments on a calamity project shall be based upon the replacement cost of the facility destroyed or damaged less the net proceeds of any casualty insurance collected, less any other local, state, federal or private grants available and committed to the project. In addition, the authority's participation shall be reduced by the current bonding potential of the school district as certified to the authority by the Superintendent of Public Instruction only if the calamity project for which assistance is requested is the district's first priority construction need as established by the official facility plan or if the plan indicates no construction needs. The official facility plan shall be the latest plan approved by the Department of Education and in effect at the time the calamity occurred. The authority's participation shall not exceed ninety percent (90%) of the debt service cost of any calamity project.

(4) The net insurance proceeds shall be that amount of insurance collected as a result of the calamity less any expenses the district incurs in providing temporary school housing or other expediencies attendant to providing temporary housing which are in excess of the normal operating expenses of the school district for that facility provided such expenses receive the prior approval of the Superintendent of Public Instruction or his designee.

Section *6.* [5.] Upon recommendation of the Superintendent of Public Instruction, the authority shall employ a fiscal agent(s) for such project or projects which have been approved by the authority.

Section *7.* [6.] Fiscal agent(s) employed by the authority shall carry out all functions normally performed by such agents and shall include but not be limited to preparing conveyances of property, preparing contracts of lease and rent, and all other functions normally associated with the preparation and sale of bonds issued by the authority.

Section *8.* [7.] Upon direction of the authority, the Bureau of Facilities Management will enter into a contract with an architect and/or engineer for such project or projects which have been approved by the authority.

Section *9.* [8.] Architects and/or engineers shall be employed through the use of contract form B210-26, as adopted by the Bureau of Facilities Management, Department of Finance, with such amendments thereto as may be required from time to time by the Bureau of Facilities Management, *Department of Finance.*

Section *10.* [9.] Architects and/or engineers so employed shall be responsible for the preparation of preliminary and completed plans and specifications which shall have the approval of the Superintendent of Public Instruction prior to bids being taken for construction of the project or projects. Such architect and/or engineer shall also be responsible for obtaining approval of their plans and specifications from all authorities having jurisdiction. This provision shall be included in every contract into which the authority enters.

Section *11.* [10.] Architects and/or engineers so employed shall at the end of each month for each construction project prepare an estimate of work completed and materials used on each project. Such an estimate shall be provided the Superintendent of Public Instruction for his approval on or before the tenth day of each month and shall cause to be withheld ten (10) percent of the first one (1) million dollars and five (5) percent of the completed performance above one (1) million dollars of the contract price of the work until the work is substantially completed. Upon substantial completion of the work, the ten (10) percent retainage may be reduced to five (5) percent with certification of the architect or engineer and approval of the Superintendent of Public Instruction. No part of the five (5) percent retainage shall be paid until the Superintendent of Public Instruction has made final inspection of the completed construction in accordance with approved plans, specifications and contract documents. When certified for payment by the Superintendent of Public Instruction, such estimate shall provide the basis for all authority payments. This provision shall be included in every contract into which the authority enters.

Section *12.* [11.] On all properties which are to be deeded to the Kentucky School Building Authority for the purposes of constructing a project, the School Building Authority will receive a fee simple title in conformance with KRS 162.010. A copy of the deed and an attorney's title certificate, along with evidence of title insurance, based on current appraised value of the site, from an acceptable insurance company will be provided the director of the School Building Authority.

MARSHALL E. SWAIN, Director
ADOPTED: October 27, 1981
RECEIVED BY LRC: December 8, 1981 at 2:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Marshall E. Swain, Secretary, Kentucky School Building Authority, Room 927, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
(Proposed Amendment)

808 KAR 10:010. Forms for application, registration; reporting and compliance.

RELATES TO: KRS Chapter 292
PURSUANT TO: KRS 13.082, 292.500(3)
NECESSITY AND FUNCTION: To promulgate and make available to persons affected by the Kentucky Securities Act the forms necessary for registration, reporting and general compliance.

Section 1. The following forms are filed herein by reference, for use by those persons affected by the Act. The requirements and instructions contained in the forms shall have the same force and effect as rules and regulations duly promulgated. *Information on obtaining the forms is available through the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C. 20006 (or any regional NASD office) or* [Copies may be obtained] from the Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

(1) Form BD; Application for Registration as Broker-Dealer.

[(1) Form 33 (amended); Application for Registration as Broker-Dealer.]

(2) Form U-4 (1981 Rev.); Application for Registration as Agent or Transfer of an Agent.

[(2) Form 33-b; For Individuals, Partners, Officers, Trustees and Directors of a Corporation.]

(3) Form 33-e (amended); Application for Renewal of Broker-Dealer and Agent Licenses.

[(3) Form 33-c; Application for Registration as Agent.]

(4) Form ADV; Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549).

[(4) Form 33-e (amended); Application for Renewal of Broker-Dealer's and Agent's Licenses.]

(5) Form 33-h-1; Application for Renewal of Investment Adviser's License.

[(5) Form 33-f; Application for Transfer of Agent.]

(6) Form 34; Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.

[(6) Form 33-h; Application for Registration of Investment Adviser.]

(7) Form 35-a; Application for Registration by Notification (Non-Issuer Distribution).

[(7) Form 33-h-1; Application for Renewal of Investment Adviser's License.]

(8) Form U-1; Application for Registration of Securities by Notification or Coordination.

[(8) Form 34; Report to be Filed by an Issuing Company Registered for the Purpose of Selling Its Own Securities.]

(9) Form ICURA (Investment Company Uniform Report and/or Application); Application for Annual Renewals of Investment Company Registrations.

[(9)Form 35; Application for Registration of Securities by Notification.]

(10) Form 37 (amended); Application for Registration of Securities of Qualification.

[(10) Form 35-a; Registration by Notification (Non-Issuer Distribution).]

(11) Form 38-a; Impounding Agreement.

[(11) Form 36 (amended); Application for Registration of Securities by Coordination.]

(12) Form U-2; Consent to Service of Process and Jurisdiction (Investment Adviser, Broker-Dealer or Issuer).

[(12) Form 36-a (amended); Application for Annual Registration of Securities by Coordination.]

(13) Form U-2A; Resolution (Investment Adviser, Broker-Dealer or Issuer.)

[(13) Form 37 (amended); Application for Registration of Securities by Qualification.]

[(14) Form 38-a; Impounding Agreement.]

[(15) Form 43; Consent to Service of Jurisdiction and Process (Issuer).]

[(16) Form 43-a; Resolution (Investment Adviser or Issuer).]

[(17) Form 431A; Consent to Service of Jurisdiction and Process Investment Adviser).]

TRACY FARMER, Secretary

ADOPTED: December 11, 1981

RECEIVED BY LRC: December 15, 1981 at 4:05 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
(Proposed Amendment)

808 KAR 10:190. Securities registration exemptions for certain business transactions.

RELATES TO: KRS 292.410(1)

PURSUANT TO: KRS 13.082, 292.500(3)

NECESSITY AND FUNCTION: To outline the informational requirements and the form for a claim of exemption from securities registration under subsections (i), (j) and (k) of KRS 292.410(1), and to declare that registration is not necessary in the public interest for certain types of business transactions with limited securities implications pursuant to KRS 292.410(1)(q)].

Section 1. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.410(1)(i).

(1) The claim of exemption required to be filed with the director under KRS 292.415(1), where an offeror claims an exemption under KRS 292.410(1)(i), shall contain the following:

(a) The filing fee;

(b) A declaration that the KRS 292.410(1)(i) exemption will be relied upon;

(c) A representation that offers will be made to not more than twenty-five (25) persons in this state during the period of twelve (12) consecutive months from the effective date of the exemption;

(d) A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting any prospective buyer in this state;

(e) A representation that the seller believes that all the buyers in this state are purchasing for investment;

(f) A representation that each buyer will sign an appropriate "investment intent letter," a copy of which shall be included in the claim of exemption, stating in part that the buyer is not taking with a view to distribution;

(g) A representation that securities to be issued will bear an appropriate restrictive legend, a copy of which shall be submitted with the claim of exemption;

(h) A copy of the Articles of Incorporation, By-laws, limited partnership agreement, or other organizational document which reflects the security holders' rights;

(i) A prospectus, offering circular, or memorandum making full disclosure of material facts, including a discussion of all salient risk factors;

(j) Current financial statements of the issuer shall be filed with the director and contained in the disclosure document;

(k) A representation that the offerees and purchasers shall have access to information concerning the issuer;

(l) A representation that no public advertising or solicitation will be employed in effecting the proposed transaction; and

(m) If available, a sample copy of the security.

(2) The director may in particular cases require additional information and undertakings or waive any of the above requirements. The director may require that the names and addresses of offerees, actual purchasers and the dates of such purchases be submitted to complete the claim of exemption.

Section 2. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.410(1)(j).

(1) A claim of exemption filed pursuant to KRS 292.415(1) shall contain:

(a) The filing fee;

(b) A declaration that the KRS 292.410(1)(j) exemption will be relied upon;

(c) A copy of the preorganization certificate;

(d) A representation that no commission or other remuneration will be paid or given directly or indirectly for soliciting the prospective subscribers;

(e) A representation that the number of subscribers will not exceed twenty-five (25);

(f) A representation that no payment is to be made for the security by any subscriber; and

(g) A statement as to whether registration, or reliance upon a specific exemption, will ultimately be used to sell the security.

(2) The director may require additional information and documentation or waive any of the above requirements.

The director may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.

Section 3. The following provisions shall apply to matters relating to an exemption from registration pursuant to KRS 292.410(1)(k).

(1) A claim of exemption filed pursuant to 292.415(1) shall contain:

(a) The filing fee;

(b) A declaration that the KRS 292.410(1)(k) exemption will be relied upon;

(c) A statement disclosing the circumstances under which the outstanding shares were originally placed with the existing security holders, which statement shall indicate whether the shares were issued pursuant to a registration statement or in reliance upon an exemption from registration;

(d) A prospectus, offering circular, or memorandum making such full disclosure of material facts, including a discussion of all salient risk factors;

(e) The names and number of shares or rights held by existing security holders in this state unless such information is not readily available, in which event the director shall be so advised; and

(f) A representation as to whether or not a commission or other remuneration (other than a standby commission) is to be paid or to be given directly or indirectly for soliciting any security holder in this state.

(2) The director may require additional information and documentation or waive any of the above requirements. The director may require that the name and address of each purchaser and the date of each such purchase be submitted to complete the filing.

TRACY FARMER, Secretary

ADOPTED: December 11, 1981

RECEIVED BY LRC: December 15, 1981 at 4 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:018. Medication; testing procedures.

RELATES TO: KRS 230.210 to 230.360

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation relates to the use of medication on the horses and requirements and controls thereof.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) No horse while participating in a race shall carry in its body any medication, or drug, or substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic, or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) Also prohibited are any drugs which might mask or screen the presence of the aforementioned prohibited drugs, or prevent or delay testing procedures.

(3) Proof of detection by the commission chemist of a medication, or drug, or substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that such horse was administered and carried such prohibited medication, drug, or substance, in its body while running in such race in violation of this rule.

Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which such horse is entered and prior to such race.

Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2, or caused, or participated, or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering; and failing to prove such freedom from negligence (or reliance on the professional ability of a licensed veterinarian) shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2, if found negligent in guarding or protecting such horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing such treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a pre-race or post-race test may be grounds for disciplinary action:

(1) Such daily reports shall accurately reflect the identity of the horse treated, [diagnosis,] time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Such daily reports shall remain confidential except that the commission veterinarian may compile general data

therefrom to assist the commission in formulating policies or rules, and the stewards may review same in investigating a possible violation of these rules.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing, and such detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, or *other* [saliva] specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist, provided the costs of such testing are borne by the owner or trainer requesting such test. In the absence of any such order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, [same] all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn are to be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom, or hotwalker, of a horse to be tested, and no lead pony, shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than necessary for washing and cooling out a horse are prohibited in the detention area; buckets and water will be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.

(3) During the taking of specimens from a horse, the owner, or responsible trainer (who, in the case of a claimed horse shall be the person in whose name such horse raced), or a stable representative designated by such owner or trainer, shall be present and witness the taking of such specimen and so signify in writing.

(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken except in the presence of the witness as provided by subsection (3) of this section. [Only distilled water, with or without acetic acid, shall be used to moisten gauze used in collection of saliva. Instruments and utensils used in the taking of samples shall be sterilized after each use.]

(5) Samples taken from a horse by the commission veterinarian or his assistant at the detention barn shall be placed equally in double containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which such specimen was taken, as well as the race and day, verified by such witness, and such detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with these provisions, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature, as near as possible. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing thereon. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.

[(5) Samples taken from a horse by the commission veterinarian or his assistant shall be placed in a container and sealed together with a double identification tag. One (1) portion of such tag bearing a printed identification number shall remain with the sealed container; the other portion of such tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section, the commission veterinarian shall thereon identify the horse from which such specimen was taken, as well as the race and day, verified by such witness, and such detached portions of identification tags shall be placed in a sealed envelope by the commission veterinarian for delivery only to the stewards. The commission veterinarian shall take every precaution to ensure that the commission chemist and no member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing thereon.]

(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a

prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than four (4) laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these rules may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. A blind sample may be submitted only if there are fifty (50) ml. or more of urine available. If there are less than fifty (50) ml. of urine available, the referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

[(b) With the consent of the trainer or attendant the commission veterinarian may administer to the horse a diuretic to facilitate urination. Quantity, identity and time of administration shall be noted on both portions of the specimen identification tag by the commission veterinarian.]

(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests. [If a sufficient quantity of the specimen is available, a third portion shall be preserved for further testing as the commission may direct.]

(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances, and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. [Such report shall be submitted within twenty-four (24) hours after the conclusion of the last race of the preceding day, dark days excluded.] The commission chemist shall report test findings to no person other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until given clearance of chemical tests by the stewards.

(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.

MICHAEL W. DAVIDSON, Director
ADOPTED: September 14, 1981
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: November 16, 1981 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Keene Daingerfield, Senior State Steward, Kentucky State Racing Commission, P.O. Box 1080, Lexington, Kentucky 40588.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:004. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by 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

regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations of the Medically Needy: An applicant for or recipient of medical assistance is permitted to retain:

(1) A homestead, occupied or abandoned, household equipment, motor vehicles and farm equipment without limitation on value;

(2) Equity of $6,000 in income-producing, non-homestead property;

(3) Equity of $3,000 in non-income producing, non-homestead property;

(4) Savings, stocks, bonds, totaling no more than $1,500 for family size of one (1); $3,000 for family size of two (2); and fifty dollars ($50) for each additional member.

(5) Burial reserves in the form of pre-paid burial, trust fund or life insurance policies are exempt from consideration if the reserve does not exceed $1,500 per individual. If burial reserves have a face value in excess of the above amount, the cash surrender value is determined and any excess of the allowable reserve added to total liquid assets in determining eligibility.

Section 2. Income and Resource Exemptions: Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the department, except that the AFDC earned income disregard (first thirty dollars ($30) and one-third (⅓) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy: Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	2,200	183
2	2,600	217
3	3,100	258
4	3,800	317
5	4,400	367
6	5,000	417

For each additional member, $600 annually or fifty dollars ($50) monthly is added to the scale.

Section 4. Additional Income Considerations: In comparing income with the scale as contained in Section 3, gross income is adjusted as follows in all cases with exceptions as contained in Section 5:

(1) In cases of adults and children, the standard [or actual] work related expenses of adult members and out-of-school youth are deducted from gross earnings. *For those with full-time employment (defined as employment of thirty (30) hours per week or 130 hours per month or more) the standard work expense deduction is seventy-five dollars ($75) per month. For those with part-time employment (defined as employment of twenty-nine (29) hours per week or 129 hours per month or less) the standard work expense deduction is forty dollars ($40) per month.* All earnings of an in-school child are disregarded [plus any amount of a statutory benefit received by an eighteen (18) to twenty-one (21) year old youth contingent upon school attendance actually used for school expenses].

(2) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1)) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1)). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

(3) [(2)] In all cases, verified fixed and measurable medical costs, including cost of health insurance premiums and expenses for medical services, recognized under state law but outside the scope of the medical assistance program, are deducted from income before comparison with the scale.

Section 5. Individuals in Chronic Care Institutions: For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable:

(1) Income protected for basic maintenance is twenty-five dollars ($25) monthly in lieu of the figure shown in Section 3. All income in excess of twenty-five dollars ($25) is applied to the cost of care except as follows:

(a) Available income in excess of the twenty-five dollars ($25) is first applied to the cost of non-covered medical expenses and to other verified fixed and measurable medical expenses; and

(b) Remaining income of the patient is conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3, including any additional amount needed to cover the verified fixed and measurable medical expenses of the spouse or minor children.

(2) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs. However, an individual entering a facility on the first day of the month, and who remains institutionalized for the remainder of the month, would not receive a disregard for home maintenance.

Section 6. Spend-Down Provisions: No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 may qualify for any part of a three (3) month period in which medical expenses incurred during the period have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment and is thus disregarded as a fixed and measurable medical expense. When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the medical assistance program) if actually available for payment to the provider.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the medical assistance program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases which are solely responsible for ineligibility of the individual for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements.

Section 10. Relative Responsibility. For purposes of the medical assistance program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. *Stepparents are responsible for their stepchildren as shown in Section 11.* This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2) In cases of aged, blind, or disabled applicants or recipients living with their spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind, or disabled couples, living apart, both of whom are concurrently applying for or receiving MA only, income is considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart. After the six (6) month period, each is considered as a single individual.

(4) In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, the applicant or recipient is considered as a single individual in the month after separation and only that individual's income and resources are considered.

(5) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 10(3) and (4), who has jointly held resources with his spouse, one-half (½) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(6) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or non-spouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(7) In cases of a blind or disabled child under eighteen (18), or age eighteen (18) through twenty (20) if in school, living with his parent(s), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent.

(8) Income and resources of parent(s) are not considered available to a child living apart from the parent(s) for a period in excess of thirty (30) days, but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

(9) When a recipient in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year. For such an individual, the twenty-five dollars ($25) maintenance standard is not applicable since his needs are considered with that of other family members. The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent and Effect on Eligibility of the *Assistance Group* [Parent]. An incapacitated (as determined by the department) stepparent's income is considered in the same manner as for a parent if the stepparent is included in the family case. *When the stepparent living in the home is not being included in the family case on the basis of incapacity, the stepparent's gross income is considered available to the assistance group subject to the following exclusions/disregards:*

(1) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time (with full-time and part-time employment as defined in Section 4(1)).

(2) An amount equal to the medically needy income limitations scale as shown in Section 3 for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability.

(3) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(4) Payments by the stepparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent receiving Supplemental Security Income.

(6) Verified fixed and measurable medical expenses for the stepparent and his/her dependents in the home.

[When the stepparent is not being so included, the amount of available income to allocate to the parent from the stepparent is determined by first deducting from the combined

income of the stepparent and his minor dependent children in the home the standard or actual work expenses if income is earned (not to exceed earnings). Then disregard the maintenance amount (Section 3) for the stepparent and his/her children in the home, their verified fixed and measurable medical expenses, and any child support payments being paid by the stepparent for children outside the home. From the remainder, deduct any income attributable to the stepparent's children which is in excess of the children's prorated share of the maintenance scale. The balance is then allocated to the parent. If this balance, plus other income of the parent, equals or exceeds the parent's prorated share from the maintenance scale, the parent is precluded from eligibility. If the balance is less than the prorated share, the parent may be included in the family case with the income allocated from the stepparent to the parent considered when determining eligibility of the family case.]

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, *resources* and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability *(except as shown in subsection 3).*

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 11, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:010. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.

Section 2. Definitions. For purposes of determination of payment: (1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a pre-determined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within *the state* [each medical service area].

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1974, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1973.

(2) Effective October 1, 1974, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.

(3) Effective October 1, 1974, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program to comply with 45 C.F.R. section 250.30, now recodified as 42 C.F.R. 447.341.

(4) Effective October 1, 1974, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program to comply with 45 C.F.R. section 250.30, now recodified as 42 C.F.R. 447.341.

(5) Percentile:

(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the seventy-fifth (75th) precentile.

(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the seventy-fifth (75th) percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:

(a) Actual charge for service rendered as submitted on billing statement;

(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made. [; or]

[(c) The physician's reasonable charge recognized under Part B, Title XVIII.]

(2) In no case may payment exceed the *aggregate* prevailing charge *established* [recognized] under Part B, Title XVIII for similar service *on a statewide basis* [in the same locality].

[(3) In instances where a reasonable charge for a specific medical procedure for a given physician has not been established under Part B, Title XVIII, the prevailing charge recognized under Part B, Title XVIII, for a similar procedure is utilized.]

(3) [(4)] In instances where *a* [neither a reasonable charge nor] prevailing charge has *not* been established for a specific medical procedure by Part B, Title XVIII, the

prevailing charge established under Title XIX is utilized as the maximum allowable fee.

(4) [(5)] The upper limit for new physicians shall not exceed the fiftieth (50th) percentile.

Section 5. Exceptions. Exceptions to reimbursement as outlined in foregoing sections are as follows: (1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first fifty dollars ($50) of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of fifty dollars ($50) per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of fifty dollars ($50) per procedure is established at sixty (60) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 and Section 5(1) within the individual's deductible and coinsurance liability.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 2, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 4, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:026. Dental services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by 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 regulation sets forth the provisions relating to dental services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-Hospital Services. Payment for services is limited to those procedures listed in the department's Dental Benefit Schedule which are included in the following categories:
(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Operative;
(6) Crown [and bridge]; *and*
[(7) Prosthetics;]
[(8) Orthodontics;]
[(9) Dentures; and]
(7) [(10)] Other services.

Section 2. Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):
(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.
(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.
(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.

Section *3.* [2.] Limitations by Age Group. Payment for the following procedure[s] shall be limited to recipients of medical assistance who are under age twenty-one (21): *extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.*
[(1) Topical application of stannous fluoride, two (2) treatments per year excluding prophylaxis. The dentist may, at his option, utilize dental sealant instead of the second topical application of stannous fluoride.]
[(2) Extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.]
[(3) Repair of fracture of transitional appliance or space maintainers.]
[(4) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance or space maintainer.]
[(5) Fixed space maintainer, band type.]
[(6) Removable space maintainer, acrylic.]
[(7) Removable appliance for tooth guidance.]
[(8) Fixed or cemented appliance for tooth guidance.]
[(9) Transitional appliance, includes one (1) tooth on appliance, upper appliance.]
[(10) Transitional appliance, includes one (1) tooth on appliance, lower appliance.]
[(11) Each additional tooth on appliance.]
[(12) Child dental prophylaxis, two (2) treatments per year.]

[Section 3. Calendar Year Restrictions: Procedures for which payment is limited on a calendar year basis are:]
[(1) One (1) each for the following:]
[(a) Dental prophylaxis (for adults aged twenty-one (21) or over).]
[(b) Relining upper denture (flask cured only).]
[(c) Relining lower denture (flask cured only).]
[(d) Transitional appliance, includes one (1) tooth on appliance, upper appliance.]
[(e) Transitional appliance, includes one (1) tooth on appliance, lower appliance.]
[(2) Any two (2) from the following. This may be in the form of two (2) from any one (1) of the procedures, or one (1) each from any two (2) of the procedures:]
[(a) Fixed space maintainer, band type.]
[(b) Removable space maintainer, acrylic.]
[(c) Removable appliance for tooth guidance.]
[(d) Fixed or cemented appliance for tooth guidance.]
[(3) Three (3) each for the following:]
[(a) Repair of fracture of transitional appliance or space maintainer.]
[(b) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance or space maintainer.]

[(c) Repairing broken denture with no teeth damaged.]
[(d) Repairing broken denture and replacing one (1) broken tooth.]

Section 4. In-patient Hospital Services. (1) Payment shall be made for all hospital in-patient services rendered by oral surgeons.

(2) Payment for services[, pre-authorized by the Division for Medical Assistance,] rendered by general dentists for hospital in-patient care [shall be limited to multiple extractions] for patients termed to be "medically a high risk," defined as:

(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
(e) Other, e.g., car accident, high temperature, massive infection.

[Section 5. Dentures: Dentures, excluding replacement and interim dentures, are provided only when preauthorized by the department. Such preauthorization shall be granted only when submitted prior to extraction and full-mouth extraction of remaining teeth of the eligible recipient is the indicated method of dental treatment. Recipients currently edentulous (without teeth at the time of the preauthorization request) are not eligible for this benefit. Coverage of dentures shall end at that point in each fiscal year when the funds appropriated for provision of dentures are exhausted, and shall resume at such time as funds appropriated for that purpose again become available.]

Section 5. Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982.

(1) Oral surgery, as follows:
(a) Extraction, uncomplicated, single tooth, with local anesthetic and including routine post-operative care; and
(b) Extraction, uncomplicated, each additional tooth, with local anesthetic and including routine post-operative care.
(2) Operative, as follows:
(a) Amalgam filling for one (1) surface cavity;
(b) Amalgam filling for two (2) surface cavity;
(c) Amalgam filling for cavity involving three (3) or more surfaces;
(d) Silicate cement filling; and
(e) Acrylic, plastic, or composite filling.
(3) Diagnostic services, as follows:
(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;
(b) Intraoral periapical radiograph, single view; and
(c) Full mouth radiograph, single panaramic film limited to one (1) per patient per every two (2) years per dentist.
(4) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 15, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:027. Payment for dental services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by 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 regulation sets forth the method for determining amounts payable by the department for dental services.

Section 1. Out-of-Hospital Care. (1) The department shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at rates based on the dentist's usual customary, reasonable, and prevailing charges.

(2) Definitions: For purpose of determination of payment:

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

(b) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a pre-determined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within *the state* [each medical service area].

(3) Method and source of information on charges:

(a) Effective with fee revisions December 1, 1974 and after, individual fee profiles for participating dentists will be generated from historical data accumulated from charges submitted and processed by the Medical Assistance Program during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(b) Effective with revisions December 1, 1974 and after, Title XIX prevailing fee maximums will be generated from the same historical data as referenced in paragraph (a) above.

(c) Effective with revisions December 1, 1974 and after, when applicable, Title XVIII, Part B current *aggregate* [reasonable charge profiles and current] prevailing charge data will be utilized by the Medical Assistance Program, to comply with 42 CFR 447.341.

(d) Percentile. The Title XIX prevailing charges were established by utilizing the statistical computation of the *50th and* 75th percentile.

(4) Maximum reimbursement for covered procedures: Reimbursement for covered procedures shall be limited to the lowest of the following:

(a) The actual charge for services rendered as submitted on the billing statement.

(b) The dentist's median charge for a given service derived from claims processed during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(c) The Title XIX prevailing fee maximum for a given service, derived from claims processed as described in paragraph (b) above.

[(d) The dentist's reasonable charge recognized under Part B, Title XVIII when applicable.]

Section 2. Hospital Inpatient Care. (1) Hospitalized inpatient care refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. All fees for "hospitalized inpatient care" are on a per admission basis, i.e., any dentist or oral surgeon submitting a claim for a payment of either of the two (2) benefits under hospitalized inpatient care must agree to accept that single program benefit payment for all his professional services rendered to that patient during that admission.

(2) An oral surgeon submitting a claim for payment shall be paid for all in-hospital dental services as an "attendance fee" or "consultation fee." The "attendance fee" shall be fifty dollars ($50) and the "consultation fee" shall be twenty-five dollars ($25).

(3) A general dentist may submit a claim for hospital inpatient services [only for multiple extractions] for the patient termed "medically a high risk." Medically high risk is defined as a patient in one (1) of the following classifications:

(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient (retardate, emotionally disturbed); or
(e) Other (car accident, high temperature, massive infection, etc.).

(4) A general dentist shall receive "attendance fee" or "consultation fee" for the hospital inpatient service in the amount of forty dollars ($40) as "attendance fee" and twenty dollars ($20) as "consultation fee."

(5) "Attendance fee" is considered to be full payment for daily attendance of a hospital inpatient, per admission, regardless of length of stay, diagnosis, or type of professional service rendered. This fee is to be requested by the attending dentist or oral surgeon for any given admission.

(6) "Consultation fee" is considered to be in full payment of consultation provided on behalf of a hospital inpatient or at the request of the consulting physician/oral surgeon/dentist. This fee may be paid to more than one (1) physician/oral suregon/dentist per admission. The fee is thus considered full payment for all consultation provided by a given physician/oral surgeon/dentist (other than the attending oral surgeon/dentist) during a given admission. For purpose of payment in this program the administration of anesthesia by a physician/oral surgeon will be considered consultation.

Section 3. Dentures. [Effective July 1, 1979,] The maximum program payment for complete upper and lower dentures is $250.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 2, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 4, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:040. Payments for vision care services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by 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 regulation sets forth the method for determining amounts payable by the department for vision care services.

Section 1. Allowable Charge Determinations. Reimbursement shall be made to optometrists and ophthalmic dispensers on the basis of usual, customary and allowable charges, except that reimbursement for materials is at the laboratory cost of the materials not to exceed upper limits as set by the department.

Section 2. Definitions. For purposes of determination of payment the following definitions shall be applicable:

(1) "Usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

(2) "Allowable charges" are those charges computed on the basis of the provider's past charge history [, determined by medical service area,] and which do not exceed:

(a) The median charge for the service; or
(b) The [area] seventy-fifth (75th) percentile (or fiftieth (50th) percentile for newly participating providers) charge for the service; or
(c) The Title XVIII-B (Medicare) *aggregate* [reasonable or] prevailing charge for the service.

(3) The "median charge" is the arithmetic median of all billed charges for a given individual procedure billed by a given optometrist in a calendar year.

(4) The "seventy-fifth (75th) percentile" or "fiftieth (50th) percentile" is the charge that is equal to or greater than seventy-five (75) or fifty (50) percent of all charges, respectively, computed on the basis of all submitted charges for each procedure [within a given area].

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Optometrists.

(1) Reimbursement for covered services, except materials, is limited to the lowest of the following:

(a) The actual charge for the service rendered as submitted on the billing statement; or
(b) The allowable charge, as defined in Section 2.

(2) Reimbursement for materials (eyeglasses and/or parts of eyeglasses) may be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the department. A laboratory invoice, or proof of actual acquisition cost of materials, must accompany the billing form.

Section 4. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) Payment for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic

dispensers to eligible recipients is limited to the lowest of the following:

(a) The actual charge for the service rendered as submitted on the billing statement; or

(b) The allowable charge, as defined in Section 2.

(2) Reimbursement for materials (eyeglasses and/or parts of eyeglasses) may be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the department. A laboratory invoice, or proof of actual acquisition cost of materials, must accompany the billing form.

Section 5. Reimbursement for Other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges may not be made to the department or the recipient for these items.

Section 6. Effect of Third Party Liability. When payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the department shall be reduced by the amount of the third party payment.

Section 7. Limitations. (1) Program reimbursement for eyeglasses must be inclusive. The cost of both laboratory materials and dispensing fees must be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the department and no bill for the service shall be paid by the department. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, and/or collecting from, liable third parties.

(2) Telephone contacts are excluded from payment.

(3) Contact lenses are excluded from payment.

(4) Safety glasses are excluded from payment, unless the recipient is blind in one (1) eye and safety glasses are prescribed for protection.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 2, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 4, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by 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 regulation sets forth the method for determining amounts payable by the department for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.321, the department shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the department may require of this class of provider) set by the department, on the following basis:

(1) Payment shall be made on the basis of reasonable allowable costs.

(2) Payment amounts shall be determined by application of the "Community Mental health Center General Policies and Guidelines and Principles of Reimbursement" developed and issued by the department, supplemented by the use of Title XVIII reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) The upper limit for allowable costs shall be set at [110 percent of] the median visit cost, for the four (4) different service areas reimbursed under the program (inpatient, outpatient, partial hospitalization, and personal care), with the upper limit imposed on a prospective basis at the time final rates are determined.

(5) Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state, and legal fees for unsuccessful lawsuits.

Section 2. Implementation of Payment System. (1) The system shall utilize a method whereby community mental health centers are reimbursed on a prospective basis based on [prior year] actual allowable cost.

(2) The department may establish an interim rate at the end of each fiscal year until such time as a final prospective rate is determined with interim payments adjusted to the final prospective rate as necessary.

(3) The vendor shall complete an annual cost report on forms provided by the department not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the department at the end of each fiscal reporting period, and at such intervals as the department may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the department.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The department shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the

department's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 2, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 4, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 2:050. Time and manner of payment.

RELATES TO: KRS 205.220(1)
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer money payment programs under Title IV-A of the Social Security Act and a state funded program of money payments to those aged, blind and disabled individuals disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. In addition KRS 205.245 provides for money payments to certain other aged, blind or disabled individuals. This regulation sets forth the time and the manner in which payments are made and the persons to whom payments may be made as required by KRS 205.220(1).

Section 1. Manner and Time of Payment: (1) All assistance payments are made by check issued monthly.
(2) The effective date of payment shall be the first day of the month of application if all eligibility factors were met as of that month.
(3) Payment is made for an entire month during any part of which eligibility factors are met.
(4) Payments shall not be made to an individual in any month in which the amount of the benefit payment would be less than ten dollars ($10). Any individual who is denied a payment for this reason shall be deemed a receipient of AFDC for all other purposes.
(5) [(4)] Supplemental payments shall be made if, due to administrative deadlines, changes in circumstances cannot be recognized in the month such change is reported.
(6) [(5)] Supplemental payments to correct underpayments due to administrative errors shall be made for a period of up to twelve (12) months preceding the month of error correction if the error existed in the preceding months.

Section 2. Inalienability of Payment: Money payments are unconditional and are exempt from any remedy for the collection of debts, liens and encumbrances.

Section 3. Eligible Payees: Money payments are issued in the name of the eligible applicant, except that:
(1) In the Aid to Families with Dependent Children Program, a protective payment may be made to a third party payee when:
(a) A determination has been made that poor money management is contributing to the unsuitability of the home for a needy child; or
(b) The parent payee has refused without good cause to pariticipate in the Work Incentive Program or the Child Support Program.
(2) Payment for the month of death may be made to the parent or other specified relative of the deceased child, or the duly appointed administrator of the estate or other qualified executor of the will of the deceased.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 11, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. 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 regulation sets forth definitions for terms used by the department in regulations pertaining to the food stamp program.

Section 1. Definition of terms utilized in regulations relating to the food stamp program are as follows:
(1) "Application for participation" means the form designed or approved by Food and Nutrition Service, hereinafter referred to as FNS, which is completed by a household member or authorized representative; or for household consisting solely of public assistance recipients, it may also mean the application form used to apply for public assistance, including attachments approved by FNS, which is completed by a household member or authorized representative.
(2) "Authorization to participate card," ATP, means the document which is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.
(3) "Authorized representative" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities: making application for the program, obtaining the coupons, using the coupons.
(4) "Certification" means the action necessary to determine eligibility of a household. Such action includes interviews, verification and decisions.
(5) "Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients and their

spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concessional prices to elderly persons or SSI recipients and their spouses.

(6) "Coupons" mean any stamp, coupon or type of certificate issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(7) "Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the department or agencies designated by the Governor as responsible for the administration of the state's programs for alcoholics and drug addicts.

(8) "Elderly person" means a person sixty (60) years of age or older.

(9) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption of eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by a communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(d) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to households eligible to use coupons to purchase those meals; or

(e) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or Title XVI of the Social Security Act.

(10) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(11) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(12) "Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113) including any subsequent amendment thereto.

(13) "Group living arrangement" means a public or private nonprofit residential setting that serves no more than sixteen (16) residents and is appropriately certified. Residents must be blind or disabled and receiving benefits under Title II or Title XVI of the Social Security Act to be eligible for food stamps.

(14) "Head of household" is the person in whose name the application for participation is made.

(15) "Household" means any of the following individuals or groups of individuals provided that such individuals or groups are not residents of an institution, [or residents of a commercial boarding house,] and provided that separate household status shall not be granted to a spouse of a member of the household, [or] to children under eighteen (18) years of age under the parental control of a member of the household, *to non-elderly parents (regardless of their marital status) and children who live together, or to a boarder*:

(a) An individual living alone;

(b) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

[(c) An individual who is a boarder, living with and paying reasonable compensation to the others for meals for home consumption;]

(c) [(d)] A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption. [; or]

[(e) A group of individuals who are boarders living with others and paying reasonable compensation to the others for meals for home consumption.]

(16) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(17) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(18) "Institution of higher education" means any institution providing post high school education, *which normally requires a high school diploma or equivalency certificate for a student to enroll,* including but not limited to colleges, universities, and vocational or technical schools [at the post high school level].

(19) "Low-income household" means *any* [a] household whose *gross* [annual] income does not exceed *130* [125] percent of the Office of Management and Budget poverty guidelines, *with the following exceptions: Households in which one (1) of the members is sixty (60) years of age or older, or one (1) of the members receives Supplemental Security Income (SSI) under Title XVI of the Social Security Act or disability and blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act shall not have net income exceeding 100 percent of the Office of Management and Budget poverty guidelines.*

(20) "Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which the department has contracted for the preparation of meals at concessional prices to elderly persons and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(21) "Medicaid" means medical assistance under Title XIX of the Social Security Act, as amended.

(22) "Non-Assistance household" hereinafter referred to as NA, means a household containing members who are not included in a public assistance household, hereinafter referred to as PA, grant.

(23) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(24) "Non-household member" means individuals residing with a household but [are] not considered household members in determining the household's eligibility or allotment. Non-household members who are otherwise eligible may participate in the program as separate households.

(a) Roomers. Individuals to whom a household furnishes lodging, but not meals, for compensation.

(b) Boarders. Individuals to whom a household furnishes lodging and meals with the following restrictions;

1. Boarder status shall not be granted to a spouse of a member of the household, *non-elderly parents (regardless of marital status) and children who live together even if they do not prepare or eat meals together,* or to children

under eighteen (18) years of age under the parental control of a member of the household.

2. Boarder status shall not be extended to persons paying less than a reasonable monthly payment for meals.

(c) Live-in-attendants. Individuals who reside with a household to provide medical, housekeeping, child care or other similar personal services.

(d) Ineligible aliens. Individuals who do not meet the citizenship or eligible alien status.

(e) Ineligible students. Students not meeting eligiblity requirements as set forth in 7 CFR 273.5.

(f) Disqualified individuals. Individuals disqualified for fraud, or for failure to meet social security number requirements as set forth in 7 CFR 273.6.

(g) Others. Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

(25) "Overissuance" means the amount by which coupons issued to a household exceeds the amount such household was eligible to receive.

(26) "Public assistance" hereinafter referred to as PA, means any of the programs authorized by the Social Security Act of 1935, as amended; old age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed parents, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.

(27) "Spouse" refers to either of two (2) individuals:

(a) Who would be defined as married to each other under applicable state law; or

(b) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(28) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees, unless otherwise exempt from work registration for reasons other than employment.

(29) [(28)] "Supplemental security income (SSI)" means monthly cash payments made under the authority of Title XVI of the Social Security Act, as amended, to the aged, blind and disabled.

(30) [(29)] "Thrifty food plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty-four (54), a child six (6) through eight (8), and a child nine (9) through eleven (11) years of age, determined in accordance with the Secretary of United States Department of Agriculture's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(31) [(30)] "Underissuance" means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
COMMENT OR REQUEST FOR HEARING
ary for Human Resouces, DHR Building, 275 Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:020. Eligibility requirements.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. 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 regulation sets forth the eligibility requirements used by the department in the administration of the food stamp program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service, of the United State Department of Agriculture, national uniform standards of eligibility for the food stamp program, composed of both financial and non-financial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Non-financial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) non-farm income poverty guidelines.

Section 2. Countable Income. The following, when received by any household member, shall be considered as income:

(1) All wages and salaries of an employee, *including all wages and salaries received by a striker the month prior to the month of the strike.*

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.

(4) Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.

(5) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.

(6) Support or alimony payments made directly to the household from non-household members.

(7) Scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like in excess of amounts excluded.

(8) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money

payments from any source which can be construed to be a gain or benefit.

(9) Monies withdrawn or dividends which are or could be received from a trust fund by a household, unless otherwise exempt under the provisions set forth in 7 CFR 273.9(c).

Section 3. Income Exclusions. The following payments shall not be considered as income;

(1) Money withheld from an assistance payment, earned income or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source.

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment.

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty dollars ($30) in a quarter.

(6) Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are used for tuition and mandatory fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped.

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household.

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are members of the household, who are students at least half-time and who have not obtained their eighteenth (18th) birthday.

(11) Money received in the form of a non-recurring lump-sum payment.

(12) The cost of producing self-employment income.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the food stamp program.

(14) Any energy assistance payments made under federal, state, or local laws.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below.

(1) Households which contain a member who is sixty (60) years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV or XVI of the Social Security Act shall have their net income compared 100 percent to the Office of Management and Budget (OMB) poverty guidelines.

(2) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the Office of Management and Budget (OMB) poverty guidelines.

Section *5.* [4.] Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be *periodically* adjusted by FNS [each January 1 to the nearest five dollars ($5)] to reflect changes in the *cost of living for a prior period of time as determined by FNS* [consumer price index for items other than food for the twelve (12) months ending the preceding September 30].

(2) *Eighteen (18)* [Twenty (20)] percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent *when necessary for a household member to seek, accept or continue employment or attend training or pursue education preparatory to employment.* This deduction shall not exceed the standard established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction alone or in combination with the dependent care deduction in subsection three (3) above shall not exceed a fixed monthly amount established by FNS. This fixed monthly amount shall be adjusted *periodically by FNS to* [each January to the nearest five dollars ($5). The adjustment shall] reflect changes in the *cost of living for a prior period of time as determined by FNS* [shelter, fuel, and utility components of the consumer price index for the eighteen (18) month period ending the preceding September 30]. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR Part 273.9(d). The department shall develop a standard utility allowance for use in calculating shelter cost for those households which incur utility cost separate and apart from their rent or mortgage payments. If the household is not entitled to the standard or does not choose to use the standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses in excess of thirty-five dollars ($35) per month, excluding special diets, incurred by any household member who meets the definition of aged, blind, or disabled as set forth in 7 CFR 273.9(d)(3). Allowable medical costs are those meeting the criteria set forth in 7 CFR 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section *6.* [5.] Resources. Uniform national resource standards of eligibility shall apply to applicant households. Eligibility shall be denied or terminated if the total value of the liquid and non-liquid household's resources exceed:

(1) $3000: for all households with two (2) or more members, when at least one (1) member is sixty (60) years or older; or

(2) $1500: for all other households.

Section *7.* [6.] Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personal effects *including one (1) burial plot per household member,* [and] the cash value of life insurance policies and pension funds, *and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.*

(3) Licensed*/unlicensed* vehicles as specified in 7 CFR Part 273.8[(h)].

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by expressed provision of federal statute.

Section *8.* [7.] Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section *9.* [8.] Non-financial Criteria. Non-financial eligibility standards apply equally to all households and consist of:

(1) Residency: A household must live in the county in which they make application;

(2) Identity: Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;

(3) Citizenship or eligible alien status: A program participation shall be limited to either a citizen of the United States or eligible alien as outlined in 7 CFR Part 273.4;

(4) Household size: Size of household will be verified through readily available documentary evidence or through a collateral contract; and

(5) Work registration: All household members between the ages of eighteen (18) and sixty (60), except those exempt in 7 CFR Part 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR Part 273.7.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:030. Application process.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This regulation sets forth the application process used by the department in the administration of the food stamp program.

Section 1. Application Process. The application process consists of filing and completing an application, an interview and required verification and documentation. The department shall make applications readily accessible to households as well as groups and organizations involved in *program information activities* [outreach efforts] and shall provide an application form to anyone upon request.

Section 2. Prompt Action on Applications. The department shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible but not later than thirty (30) days after the application is filed. The bureau shall notify the household of any action it must take to complete the application process. If verification is lacking, the household will have up to thirty (30) days from the date the missing verification was requested to provide such verification.

Section 3. Expedited Service. (1) The department shall identify households eligible for expedited service at the time the household requests assistance. If otherwise eligible, the following households are entitled to expedited service:

(a) Households with zero (0) net monthly income as computed in 7 CFR Part 273.10.

(b) Households who are destitute as defined in 7 CFR Part 273.10(e)(3).

(2) The department shall comply with 7 CFR Parts 273.2(i)(3) and 273.2(i)(4) when expediting certification and issuance procedures.

Section 4. Public Assistance Application Process. Households in which all members are applying for public assistance (PA) and state administered general assistance shall be allowed to simultaneously apply for food stamp benefits. The department shall comply with procedures specified in 7 CFR 273.2(j) in handling PA households.

Section 5. Joint SSI/FS Application Process. Households in which all members are applicants/recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office. The

department will comply with procedures specified in 7 CFR 273.2(k) in processing these households.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. 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 regulation sets forth the certification process used by the department in the administration of the food stamp program.

Section 1. Eligibility and Benefit Levels. Eligibility and benefit levels shall be determined by the department by considering the households circumstances for the entire month(s) for which each household is certified. Procedures specified in 7 CFR Parts 273.10(a), 273.10(b), 273.10(c), 273.10(d) and 273.10(e) shall be used to determine eligibility and calculate net income and benefit levels.

Section 2. Certification Periods. The department shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification. Certification periods for non-public assistance households shall be in accordance with those specified in 7 CFR Part 273.10(f)(3)(4)(5)(6). Households in which all members are included in a PA grant shall be certified for one (1) year, except that the food stamp case shall be recertified at the same time they are redetermined for PA.

Section 3. Certification Notices to Households. The department shall provide applicants with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:
(1) Notice of eligibility.
(2) Notice of denial.
(3) Notice of pending status.

Section 4. Application for Recertification. The department shall process applications for recertification in accordance with 7 CFR Part 273.10(g)(2) and Part 273.14.

Section 5. Certification Process for Specific Households. The following households have circumstances that are substantially different from other households and therefore require special certification procedures:
(1) Households with self-employed members shall have their cases processed in accordance with 7 CFR Part 273.11(a).
(2) [Boarders and/or] Households with boarders shall have their case processed in accordance with 7 CFR Part 273.11(b).
(3) Households with members which have been disqualified from program participation due to fraud or failure to provide a Social Security number shall have their case processed in accordance with 7 CFR Part 273.11(c).
(4) Households with ineligible aliens or other non-household members will be processed in accordance with 7 CFR Part 273.11(d).
(5) Residents of drug/alcoholic treatment and rehabilitation programs shall have their case processed in accordance with 7 CFR Part 273.11(e).
(6) Residents of group living arrangements who are blind or disabled receive benefits under Title II or Title XVI of the Social Security Act shall have their case processed in accordance with 7 CFR Part 273(f), which allows residents to apply in their own behalf or through the use of an authorized/certified facility's authorized representative.
(7) Households consisting only of Supplemental Security Income (SSI) applicants or recipients shall have their case processed in accordance with 7 CFR 273.2(k).
(8) Households with a member who is on strike shall have their case processed in accordance with 7 CFR 273.1(g).
(9) [(7)] Households requesting replacement allotments for stolen or destroyed coupons or improperly manufactured or mutilated coupons shall be processed in accordance with 7 CFR 273.11(g).

Section 6. Reporting Changes. Certified households are required to report within ten (10) days, those changes in household circumstances specified in 7 CFR Part 273.12(a). The department shall use the change report form designated by FNS and shall act on reported changes in accordance with 7 CFR Part 273.12(c). The department shall comply with other change reporting provisions outlined in 7 CFR Part 273.12.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 3:050. Additional provisions.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a food stamp program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. 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 regulation sets forth additional provisions used by the department in the administration of the food stamp program.

Section 1. Civil Rights Compliance. The department insures that no applicant or participant shall be discriminated against in any aspect of program administration for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. Benefits shall be restored to households as specified in 7 CFR Part 273.17, when such household has lost benefits due to an error by the department.

Section 3. *Program Informational Activities.* ["Outreach."] Low-income or disadvantaged households shall be informed of the availability of the program and *program rights and responsibilities through program informational activities* [encouraged participation in the program through an "outreach" program] as required by 7 CFR Part 272.6.

Section 4. Claims Against Households. The department shall establish a claim against households that receive more coupons than it is entitled to receive. Claims shall be classified as:
(1) Non-fraud which shall be processed as specified in 7 CFR Part 273.18(b).
(2) Fraud claims which shall be processed as specified in 7 CFR Part 273.18(c).

Section 5. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, or with other federal or federally aided, means-tested assistance programs such as Titles IV-A (AFDC), XIX (Medicaid), or XVI (SSI). Regulations, plans of operation, state manuals, and federal procedures which affect the public shall be maintained in the central and local office as well as in FNS national and regional offices for examination by members of the public on regular workdays during regular office hours. Copies of regulations, plans of operation, state manuals and federal procedures may be obtained from FNS or the department.

Section 6. Sixty (60) Day Continuation of Certification. Certification of a household moving from one (1) food stamp county to another, whether within Kentucky or between states, shall remain under certain circumstances valid for a period of sixty (60) days after the date of the move without regard to change in income or resources.

Section 7. Retention of Records. The department shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record. The department shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 8. Disaster Certification. The Department shall distribute emergency coupon allotments to households within a food stamp county determined to be a disaster area only when so authorized by the Food and Nutrition Service.
(1) In accordance with the Disaster Relief Act, emergency food stamp assistance may be authorized by the Food and Nutrition Service of the United States Deprtment of Agriculture as a result of a major disaster which is determined as such by the President of the United States.
(2) In accordance with the Food Stamp Act, emergency food stamp assistance may be authorized by the Food and Nutrition Service as a result of a lesser disaster, even if the affected area has not been declared a major disaster, if the emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution *and the Food Stamp Program is operational.*

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

PERSONNEL AND MANAGEMENT CABINET
Kentucky Retirement Systems

105 KAR 1:061. Repeal of 105 KAR 1:030, 1:050, 1:060.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852
PURSUANT TO: KRS 16.576, 61.592, 61.637, 61.702, 78.545
NECESSITY AND FUNCTION: The provisions set forth in 105 KAR 1:030 pertaining to "Certain Payment Option" for hazardous positions are now incorporated in KRS 16.576, 61.592 and 78.545. The provisions set forth in 105 KAR 1:050 pertaining to a "Social Security Adjustment Option" for beneficiaries are now incorporated in KRS 61.635. The provisions set forth in 105 KAR 1:060 pertaining to "Hospital and Medical Insurance" are now incorporated in KRS 61.702. The function of this regulation is to repeal the three (3) regulations referenced.

Section 1. 105 KAR 1:030, Certain payment option for hazardous positions; 105 KAR 1:050, Beneficiary social security adjustment option; and 105 KAR 1:060, Hospital and medical insurance, are hereby repealed.

CHARLES L. BRATTON, General Manager
ADOPTED: November 20, 1981
APPROVED: GEORGE E. FISCHER, Secretary
RECEIVED BY LRC: December 11, 1981 at 9:10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

PERSONNEL AND MANAGEMENT CABINET
Kentucky Retirement Systems

105 KAR 1:070. Allocation of special appropriation for military service credit.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852
PURSUANT TO: KRS 61.555
NECESSITY AND FUNCTION: KRS 61.555(4) permits eligible members to receive current service in the retirement systems for up to four (4) years of military service. The cost of such service credit is calculated by the Board with the member paying thirty-five percent (35%) of the cost and the remaining sixty-five percent (65%) is to be paid from funds specifically appropriated for this purpose. If no funds are available in the special appropriation account, the Board may not accept employee payments. From time to time, when funds are appropriated for this provision, such funds may not be adequate to accommodate all members who may wish to purchase current service for military time. The Board believes that all eligible members should have an equal chance to utilize appropriated funds and this regulation is necessary to define the administrative procedures that will be followed when such funds are not sufficient to satisfy the demand from eligible members.

Section 1. When a special appropriation is made to permit purchase of current service in the Kentucky Retirement Systems for time in the military service, the following procedures will apply:
(a) The Board will announce at least two (2) weeks in advance the period of time during which applications to purchase current service for military service may be submitted to the Kentucky Retirement Systems. The period of time for accepting applications shall not be less than four (4) weeks. Applications must be submitted on forms supplied by the Kentucky Retirement Systems.
(b) At the close of the application period, an independent accounting firm will be engaged to supervise a drawing that will identify those applicants that will be permitted to purchase such credit. Applications shall be processed in the order they are drawn until the special appropriation has been exhausted.

CHARLES L. BRATTON, General Manager
ADOPTED: November 20, 1981
APPROVED: GEORGE E. FISCHER, Secretary
RECEIVED BY LRC: December 11, 1981 at 9:10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: General Manager, Kentucky Retirement Systems, 226 West Second Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Waste Management

401 KAR 2:063. General standards for hazardous waste sites or facilities.

RELATES TO: KRS 224.033, 224.255, 224.855, 224.860, 224.880, 224.890
PURSUANT TO: KRS 13.082, 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires the department to promulgate regulations establishing standards for the storage, treatment, recycling or disposal of hazardous waste.

Section 1. General. (1) Purpose, scope and applicability.
(a) The purpose of this regulation is to establish minimum standards which define the acceptable management of hazardous waste.
(b) The standards in this regulation apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this regulation or in 401 KAR 2:075.

(c) The requirements of this regulation 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 2:060.

(d) The requirements of this regulation apply to a person disposing of hazardous waste by means of underground injection subject of 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 401 KAR 2:060.

(e) The requirements of this regulation 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 2:060.

(f) The requirements of this regulation do not apply to:

1. The owner or operator of a facility permitted by the department to manage solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under 401 KAR 2:075;

2. The owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in 401 KAR 2:075, Section 6(1) except to the extent that 401 KAR 2:075, Section 6(2) provides otherwise;

3. A generator accumulating waste on-site in compliance with 401 KAR 2:070;

4. A farmer disposing of waste pesticides from his own use in compliance with 401 KAR 2:070;

5. The owner or operator of a totally enclosed treatment facility, as defined in 401 KAR 2:050.

6. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in 401 KAR 2:050;

7. Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Sections 3 and 4 of this regulation are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to waste management regulation;

8. A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 401 KAR 2:070 at a transfer facility for a period of ten (10) days or less.

(2) Relationship to interim status standards. A facility owner or operator who has fully complied with the requirements for interim status, as defined in Section 3005(e) of the Resource Conservation and Recovery Act and regulations under 401 KAR 2:060, must comply with the regulations specified in 401 KAR 2:073 in lieu of this regulation until final administrative disposition of his permit application is made.

(3) Imminent hazard action. Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to KRS 224.071.

Section 2. General Facility Standards. (1) Applicability.

(a) This regulation applies to owners and operators of all hazardous waste facilities, except as Section 1, paragraph (b) of this subsection provides otherwise.

(b) Section 2(9)(b) is applicable only to facilities subject to regulation under Sections 19, 20, 21, 22, and 23 of this regulation.

(2) Identification number. Every facility owner or operator must apply to the department for an identification number in accordance with the notification procedures.

(3) Required notices.

(a) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the department in writing at least four (4) weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

(c) Before transfering ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this regulation and 401 KAR 2:060.

(4) General waste analysis.

(a) 1. Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this regulation or with the conditions of a permit issued under 401 KAR 2:060.

2. The analysis may include data developed under 401 KAR 2:075 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

3. The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

a. When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and

b. For off-site facilities, when the results of the inspection required in paragraph (a)4 of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

4. The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with paragraph (a) of this subsection. He must keep this plan at the facility. At a minimum, the plan must specify:

1. The parameters of which each hazardous waste will be analyzed and the rational for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this subsection);

2. The test methods which will be used to test for these parameters;

3. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

a. One (1) of the sampling methods described in Appendix I of 40 CFR 261; or

b. An equivalent sampling method.

4. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that analysis is accurate and up to date; and

5. For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

6. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 23(1) and in subsection (8) of this section.

(c) For off-site facilities, the waste analysis plan required in paragraph (b) of this subsection must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:

1. The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

2. The sampling method which will be used to obtain a representative sample of the waste to be idenified, if the identification method includes sampling.

(5) Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the secretary that:

1. Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

2. Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this regulation.

(b) Unless the owner or operator has made a successful demonstration under paragraphs (a)1 and 2 of this subsection, a facility must have:

1. A twenty-four (24) hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

2. a. An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

b. A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(6) General inspection requirements.

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to: release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b) 1. The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

2. He must keep this schedule at the facility.

3. The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

4. The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in Sections 19(5), 20(4), 21(6), 22(5), and 23(7) of this regulation, where applicable.

(c) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three (3) years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

(7) Personnel training.

(a) 1. Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this regulation. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)3 of this subsection.

2. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

3. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

a. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

b. Key parameters for automatic waste feed cut-off systems;

c. Communications or alarm systems;

d. Response to fires or explosions;

e. Response to groundwater contamination incidents; and

f. Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this subsection within six (6) months after the effective date of these regulations or six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this subsection.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this subsection.

(d) The owner or operator must maintain the following documents and records at the facility:

1. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

2. A written job description for each position listed under paragraph (d)1 of this subsection. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

3. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)1 of this subsection; and

4. Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this subsection has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(8) General requirements for ignitable, reactive, or incompatible wastes.

(a) The owner or operator must take precautions to prevent accidential ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other subsections of this regulation, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

1. Generate extreme heat or pressure, fire or explosions, or violent reactions;

2. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

3. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

4. Damage the structural integrity of the device or facility; or

5. Through other like means threaten human health or the environment.

(c) When required to comply with paragraphs (a) or (b) of this subsection, the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in Section 2(4)), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

(9) Location standards.

(a) Seismic considerations.

1. Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located with sixty-one (61) meters (200 feet) of a fault which had displacement in Holocene time.

2. As used in paragraph (a)1 of this subsection:

a. "Fault" means a fracture along which rocks on one (1) side have been displaced with respect to those on the other side.

b. "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction.

c. "Holocene" means the most recent epoch of the Quarternary period, extending from the end of the Pleistocene to the present.

(b) Floodplains.

1. A facility located in a 100-year floodplain must be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood unless the owner or operator can demonstrate to the Secretary that procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters.

2. As used in paragraph (b)1 of this subsection:

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. "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

c. "100-year flood" means a flood that has a one (1) percent chance of being equalled or exceeded to any given year.

Section 3. Preparedness and Prevention. (1) Applicability. The regulations in this section apply to owners and operators of all hazardous waste facilities, except as Section 1 provides otherwise.

(2) Design and operation of facility. Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(3) Required equipment. All facilities must be equipped with the following, unless it can be demonstrated to the Secretary that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(4) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as

necessary to assure its proper operation in time of emergency.

(5) Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Secretary has ruled that such a device is not required under Section 3(3).

(b) If there is ever just one (1) employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Secretary has ruled that such a device is not required under Section 3(3).

(6) Required aisle space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Secretary that aisle space is not needed for any of these purposes.

(7) Special handling for ignitable or reactive waste. The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(8) Arrangements with local authorities.

(a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

1. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to any roads inside the facility, and possible evacuation routes;

2. Where more than one (1) police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

3. Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

4. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where state or local authorites decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

Section 4. Contingency Plan and Emergency Procedures. (1) Applicability. The regulations in this section apply to owners and operators of all hazardous waste facilities, except as Section 1 provides otherwise.

(2) Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(3) Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with Sections 4(2) and 4(7) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this regulation.

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to Section 3(8).

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Section 4(6)) and this list must be kept up to date. Where more than one (1) person is listed, one (1) must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be supplied to the Secretary at the time of certification, rather than at the time of permit application.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(4) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the facility; and

(b) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

(5) Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) The facility permit is revised;

(b) The plan fails in an emergency;

(c) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions,

or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

(6) Emergency coordinator. At all times, there must be at least one (1) employee either on the facility premises or on call (i.e., 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. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

(7) Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

1. Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

2. Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic irritating or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, he must report his findings as follows:

1. If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

2. He must immediately notify either the government official designated as the on-scene coordinator or the National Response Center (using their twenty-four (24) hour toll free number 800-424-8802). The report must include:

a. Name and telephone number of reporter;

b. Name and address of facility;

c. Time and type of incident (e.g., release, fire);

d. Name and quantity of material(s) involved, to the extent known;

e. The extent of injuries, if any; and

f. The possible hazards to human health or the environment outside the facility.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or other material that results from a release, fire, or explosion at the facility.

(h) The emergency coordinator must ensure that, in the affected area(s) of the facility;

1. No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

2. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator must notify the Secretary and appropriate state and local authorities that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen (15) days after the incident, he must submit a written report on the incident to the Secretary. The report must include:

1. Name, address, and telephone number of the owner or operator;

2. Name, address, and telephone number of the facility;

3. Date, time, and type of incident (e.g., fire, explosion);

4. Name and quantity of material(s) involved;

5. The extent of injuries, if any;

6. An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

7. Estimated quantity and disposition of recovered material that resulted from the incident.

Section 5. Manifest System, Recordkeeping, and Reporting. (1) Applicability. The regulations in this section apply to owners and operators of both on-site and off-site facilities, except as Section 1 provides otherwise. Sections 5(2), 5(3) and 5(7) do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

(2) Use of manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agency, must:

1. Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

2. Note any significant discrepancies in the manifest (as defined in Section 5(3)(a)) on each copy of the manifest;

3. Immediately give the transporter at least one (1) copy of the signed manifest;

4. Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

5. Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

(b) 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 (excluding the identification numbers,

generator's certification, and signatures), the owner or operator, or his agent, must:

1. 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;

2. Note any significant discrepancies (as defined in Section 5(3)(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

3. 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);

4. 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, must send a copy of the shipping paper signed and dated to the generator; and

5. 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.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 401 KAR 2:070.

(3) Manifest discrepancies.

(a) 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:

1. For bulk waste, variations greater than ten (10) percent in weight; and

2. 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.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conservations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator must immediately submit to the Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(4) Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

1. A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility;

2. 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 must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

3. Records and results of waste analyses performed as specified in Sections 2(4), 2(8) and 23(2);

4. Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 4(7);

5. Records and results of inspections as required by Section 2(6)(d) (except these data need be kept only three (3) years);

6. Monitoring, testing, or analytical data where required by Section 22;

7. For off-site facilities, notices to generators as specified in Section 2(3)(b); and

8. All closure cost estimates under Section 11, for disposal facilities, and post-closure cost estimates under Section 13.

(5) Availability, retention, and disposition of records.

(a) All records, including plans, required under this part must be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of the department who is duly designated by the Secretary of the department.

(b) The retention period for all records required under this regulation is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Secretary.

(c) A copy of records of waste disposal locations and quantities under Section 5(4)(b)2 must be submitted to the Secretary and local land authority upon closure of the facility.

(6) Annual report. The owner or operator must prepare and submit a single copy of an annual report to the Secretary by March 1 of each year. The report form designated by the department must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) The state or EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the state or EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and addresss of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by state or EPA identification number of each generator;

(e) The method of treatment, storage or disposal for each hazardous waste;

(f) The most recent closure cost estimate under Section 11 disposal facilities, the most recent post-closure cost estimate under Section 13; and

(g) The certification signed by the owner or operator of the facility or his authorized representative.

(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 401 KAR 2:085, Section 3, and if the waste is not excluded from the manifest requirement by 401 KAR 2:075 then the owner or operator must prepare and submit a single copy of a report to the Secretary within fifteen (15) days after receiving the waste. The report must include the following information:

(a) The state or EPA identification number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The state or EPA identification number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste and facility received;
(e) The method of treatment, storage, or disposal for each hazardous waste;
(f) The certification signed by the owner or operator of the facility or his authorized representative; and
(g) A brief explanation of why the waste was unmanifested, if known.
(8) Additional reports. In addition to submitting the annual report and unmanifested waste reports described in Section 5(6) and 5(7) the owner or operator must also report to the Secretary:
(a) Releases, fires, and explosions as specified in Section 4(7); and
(b) Facility closure as specified in Section 7(3).

Section 6. Closure and Post-Closure. (1) Applicability. Except as Section 1(1) provides otherwise:
(a) Sections 6(2), 6(3) and 7(3) (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and
(b) Section 7(4) to (7) (which concern post-closure care) apply to the owners and operators of all hazardous waste disposal facilities.
(2) Closure performance standard. The owner or operator must close the facility in a manner that:
(a) Minimizes the need for further maintenance; and
(b) Controls, minimizes or eliminates to the extent necessary to prevent threats to human health and the environment, post-closure excape of hazardous waste, hazardous waste constitutents, leachate, contaminated rainfall, or waste decomposition products to the ground or surface waters or to the atmosphere.
(3) Closure plan; amendment of plan.
(a) The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with 401 KAR 2:060 and approved by the Secretary as part of the permit issuance proceeding under 401 KAR 2:060. In accordance with 401 KAR 2:060, the approved closure plan will become a condition of any hazardous waste site or facility permit. The Secretary's decision must assure that the approved closure plan is consistent with Sections 6(2), 7(1), 7(2), 7(3) and the applicable requirements of Sections 19(9), 20(5), 21(7), 22(9) and 23(8). A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified in accordance with Section 7(3). The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include at least:
1. A description of how and when the facility will be partially closed, if applicable and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility and how the requirements of Sections 6(2), 7(1), 7(2), 7(3) and the applicable closure requirements of Sections 19(9), 20(5), 21(7), 22(9) and 23(8) will be met;
2. An estimate of the maximum inventory of waste in storage and in treatment at any time during the life of the facility. (Any change in this estimate is a minor modification under 401 KAR 2:060.);
3. A description of the steps needed to decontaminate facility equipment during closure; and
4. An estimate of the expected year of closure and a schedule for final closure. The schedule must include, at a minimum, the total time required to close the facility and the time required for intervening closure activities which will allow tracking of the progress of closure. (For example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory and of the time required to place a final cover must be included.)
(b) The owner or operator may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) The owner or operator must amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure. When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, he must request a modification of the closure plan at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within sixty (60) days after the change in plan or design occurs.
(c) The owner or operator must notify the Secretary at least 180 days prior to the date he expects to begin closure.

Section 7. (1) Closure; time allowed for closure.
(a) Within ninety (90) days after receiving the final volume of hazardous wastes, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Secretary may approve a longer period if the owner or operator demonstrates that:
1. a. The activities required to comply with this paragraph will, of necessity, take longer than ninety (90) days to complete; or
b. The facility has the capacity to receive additional wastes; there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and closure of the facility would be incompatible with continued operation of the site; and
2. He has taken and will continue to take all steps to prevent threats to human health and the environment.
(b) The owner or operator must complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. The Secretary may approve a longer closure period if the owner or operator demonstrates that:
1. a. The closure activities will, of necessity, take longer than 180 days to complete; or
b. The facility has the capacity to receive additional wastes; there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and closure of the facility would be incompatible with continued operation of the site; and
2. He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility.
(2) Disposal of decontamination of equipment. When closure is completed, all facilities equipment and structures must have been properly disposed of or decontaminated by removing all hazardous waste and residues.
(3) Certificate of closure. When closure is completed, the owner or operator must submit to the Secretary certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.
(4) Post-closure care and use of property.

(a) 1. Post-closure care must continue for thirty (30) years after the date of completing closure and must consist of at least the following:

a. Groundwater monitoring and reporting as applicable; and

b. Maintenance of monitoring and waste containment systems as applicable.

2. a. During the 180 day period preceding closure at any time thereafter, the Secretary may reduce the post-closure care period to less than thirty (30) years if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the facility is secure).

b. Prior to the time that the post-closure care period is due to expire, the Secretary may extend the post-closure care period if he 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 waste at levels which may be harmful to human health and the environment).

(b) The Secretary may require, at closure, continuation of any of the security requirements of Section 2(5) during part or all of the post-closure period after the date of completing closure when:

1. Wastes may remain exposed after completion of closure; or

2. Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after closure must 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 Secretary finds that the disturbance:

1. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2. Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 7(5).

(5) Post-closure plan; amendment of plan.

(a) The owner or operator of a disposal facility must have a written post-closure plan. The plan must be submitted with the permit application, in accordance with 401 KAR 2:060 and approved by the department as part of the permit issuance proceeding under 401 KAR 2:060. In accordance with 401 KAR 2:060, the approved post-closure plan will become a condition of any permit issued. A copy of the approved plan and all revisions to the plan must be kept at the facility until the post-closure care period begins. This plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

1. A description of the planned groundwater monitoring activities and frequencies at which they will be performed;

2. A description of the planned maintenance activities, and frequencies at which they will be performed to ensure:

a. The integrity of the cap and final cover or other containment structures where applicable; and

b. The function of the facility monitoring equipment;

3. The name, address and phone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

(b) The owner or operator may amend his post-closure plan at any time during the active life of the disposal facility or during the post-closure care period. The owner or operator must amend his plan whenever changes in operating plans or facility design, or events which occur during the active life of the facility or during the post-closure period, affect his post-closure plan. He must also amend his plan whenever there is a change in the expected year of closure.

(c) When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. In all other cases, the request for modification of the post-closure plan must be made within sixty (60) days after the change in operating plans or facility design or the events which affect his post-closure plan occur.

(6) Notice to local land authority. Within ninety (90) days after closure is completed, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Secretary of the department a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 7(4)(c). In addition, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Secretary a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the Secretary.

(7) Notice in deed to property.

(a) The owner of the property on which a disposal facility is located must 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;

2. Its use is restricted under Section 7(4)(c); and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility required in 401 KAR 2:073 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Secretary of the department.

(b) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may remove the notation on the deed to the facility property or other instrument normally examin-

ed during title search, or he may add a notation to the deed or instrument indicating the removal of the waste.

Section 8. Financial Requirements. Sections 9 through 18 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.866(3) for hazardous waste sites or facilities. A reference to this section is a citation of Sections 9 through 18.

Section 9. Applicability. (1) The requirements of Sections 11, 12 and 15 through 18 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in Section 1(1) of this regulation.

(2) The requirements of Sections 13 and 14 apply only to owners and operators of disposal facilities.

(3) States and the federal government are exempt from the requirements of Section 8.

Section 10. Financial Requirement Definitions. (1) When used in Sections 11 through 18 the following terms have the meanings given below:

(a) "Compliance procedure" means any proceedings instituted pursuant to KRS Chapter 224 or hazardous waste regulations issued under authority of KRS Chapter 224 which seek to require compliance or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a compliance order or notice of intention to terminate a permit pursuant to KRS Chapter 224 or 401 KAR 2:060 or an application in the circuit court for appropriate relief pursuant to KRS Chapter 224. For the purposes of Section 8, a compliance procedure is considered to be pending from the time an order or notice of intent to terminate is issued or judicial proceedings are begun until the Secretary notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

(b) "Standby trust fund" means a trust fund which must be established by an owner or operator who obtains a letter of credit or surety bond as specified in these regulations. The institution issuing the letter of credit or surety bond will desposit into the standby trust fund any drawings by the Secretary on the credit or bond.

(2) The following terms are used in the liability requirements. The definitions suggest what the department believes are the common meanings of the terms as they are generally used in the insurance industry; the definitions are not intended to limit the meanings in a way that conflicts with general usage.

(a) "Claims-made policy" means an insurance policy that provides coverage for an occurrence if a claim is filed during the term of the policy.

(b) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(c) "Nonsudden accident" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

(d) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

(e) "Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

Section 11. Cost Estimate for Facility Closure. (1) The owner or operator must have a written estimate of the cost of closing the facility in accordance with the requirements in Sections 6(2) and (3), and 7(1), (2) and (3) and applicable closure requirements in Sections 19(9), 20(5), 21(7), 22(9), and 23(9). The owner or operator must kept this estimate, and all subsequent estimates required in this section, at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (Section 6(3)(a)).

(2) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.

(3) On each anniversary of the date on which the first estimate was prepared as specified in paragragh (1) of this section, the owner or operator must adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor must be calculated by dividing the latest published annual Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted closure cost estimate must equal the latest closure cost estimate (see subsection (2) of this section) times the inflation factor.

Section 12. Financial Assurance for Facility Closure. An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from among the following options:

(1) Closure trust fund.

(a) An owner or operator may satisfy the requirements of this section by establishing a closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the department by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the trust agreement to the department by certified mail at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in Section 18(1)(a) and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 18(1)(b)).

(c) Payments to the trust fund must be made annually by the owner or operator over the term of the intitial permit. The payments to the closure trust fund must be made as follows:

1. For a new facility, as defined in 401 KAR 2:055, the first payment must be made when the trust fund is established. The first payment must be at least equal to the closure cost estimate (see Section 11), except as provided in paragraph (g) of this section, divided by the number of years in the term of the permit. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by performing the following calculation:

$$\text{NEXT payment} = \frac{\text{ACE - CV}}{\text{Y}}$$

Where ACE is the adjusted closure cost estimate, CV is the

current value of the trust fund, and Y is the number of years remaining in the term of the permit.

2. If an owner or operator established a trust fund as specified in 401 KAR 2:070, and the value of the trust fund does not equal the adjusted closure cost estimate when a permit is awarded for the facility, the amount of the adjusted closure cost estimate still to be paid into the trust fund must be paid in over the term of the permit. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 401 KAR 2:073. The amount of each payment must be determined by performing the following calculation:

$$\text{NEXT payment} = \frac{\text{ACE - CV}}{\text{Y}}$$

Where ACE is the adjusted closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the term of the permit.

(d) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in subsections (1)(a) and (1)(c) of this section.

(e) If the owner or operator establishes a closure trust fund after having initially used one (1) or more alternate mechanisms specified in this Section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments made as specified in subsections (1)(a) and (1)(c) of this section.

(f) After the term of the initial permit is completed, whenever the adjusted closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund (described in Section 10 of the trust agreement). If the value of the fund is less than the amount of the new estimate, the owner or operator must, within 60 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this section to cover the difference.

(g) If the value of the trust fund is greater than the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Secretary for release of the amount in excess of the adjusted closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Secretary for release of the amount in the trust fund which is greater than the amount required as a result of such substitution.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (1)(g) and (1)(h) of this section, the Secretary will instruct the trustee to release to the owner or operator such funds as the Secretary specifies in writing.

(j) After beginning final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Secretary. Within sixty (60) days after receiving bills for closure activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing if the Secretary determines that the closure expenditures are in accordance with the closure plan or otherwise justified.

(k) The Secretary will agree to termination of the trust when:

1. The owner or operator substitutes alternate financial assurance for closure as specified in this section; or

2. The Secretary notifies the owner or operator, in accordance with paragraph (a) of this subsection, that it is no longer required by this section to maintain financial assurance for closure of the facility.

(2) Surety bond guaranteeing payment into a closure trust fund.

(a) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Secretary by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in Section 18(2).

(c) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust fund must meet the requirements specified in subsection (1) of this section, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the Secretary with the surety bond; and

2. After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in subsection (1) of this section are not required until the standby trust fund is funded pursuant to the requirements of this paragraph.

(d) The bond must guarantee that the owner or operator will:

1. Fund the standby trust fund in an amount equal to the penal sum of the bond at least sixty (60) days prior to the expected date of the beginning of final closure of the facility; or

2. Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin closure in accordance with Section 7 is issued by the Secretary or by circuit court pursuant to KRS Chapter 224, or with fifteen (15) days after issuance of a notice of termination of the permit pursuant to 401 KAR 2:060; or

3. Provide alternate financial assurance as specified in this section within thirty (30) days after receipt by the Secretary of a notice of cancellation of the bond from the surety.

(e) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted closure cost estimate (see Section 11) except as provided in subsection (7) of this section.

(g) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator must, within sixty

(60) days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this section, to cover the increase. Whenever the adjusted closure cost estimate decreases, the penal sum may be reduced to the amount of the new estimate following written approval by the Secretary. Notice of an increase or decrease in the penal sum must be sent to the Secretary by certified mail within sixty (60) days after the change.

(h) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Secretary. Cancellation cannot occur, however:

1. During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the Secretary as shown on the signed return receipt; or

2. While a compliance procedure is pending, as defined in Section 10.

(i) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Secretary of a notice of cancellation of the surety bond. Upon receipt of such notice the Secretary will issue a compliance order pursuant to KRS 224.866 unless the owner or operator has demonstrated alternate financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternative financial assurance within thirty (30) days after issuance of the compliance order, the Secretary may direct the surety to place the penal sum of the bond in the standby trust fund.

(j) The owner or operator may cancel the bond if the Secretary has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(k) The Secretary will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if he provides alternate financial assurance as specified in this section.

(3) Surety bond guaranteeing performance of closure.

(a) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Secretary by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in Section 18(3).

(c) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust must meet the requirements specified in paragraph (a) of this subsection, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the Secretary with the surety bond; and

2. After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in paragraph (a) of this subsection are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(d) The bond must guarantee that the owner or operator will:

1. Perform final closure in accordance with the closure plan and other requirements in the permit for the facility; or

2. Perform final closure in accordance with Sections 6 and 7 of this regulation following an order to begin closure issued by the Secretary or by circuit court pursuant to KRS Chapter 224, or following issuance of a notice of termination of the permit pursuant to 401 KAR 2:060; or

3. Provide alternate financial assurance as specified in this section within thirty (30) days after receipt by the Secretary of a notice of cancellation of the bond from the surety.

(e) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the amount of the adjusted closure cost estimate (see Section 11).

(g) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator must, within sixty (60) days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this section, to cover the increase. Whenever the adjusted closure cost estimate decreases, the penal sum may be reduced to the amount of the adjusted closure cost estimate following written approval by the Secretary. Notice of an increase or decrease in the penal sum must be sent to the Secretary by certified mail within sixty (60) days after the change.

(h) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Secretary. Cancellation cannot occur, however:

1. During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the Secretary as shown on the signed return receipt; or

2. While a compliance procedure is pending, as defined in Section 10.

(i) Following a determination pursuant to KRS 224.866(3) that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure in accordance with the closure plan and other permit requirements or closure order; as an alternative the surety may deposit the amount of the penal sum into the standby trust fund.

(j) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Secretary of a notice of cancellation of the surety bond. Upon receipt of such notice the Secretary will issue a compliance order pursuant to KRS 224.866(3) unless the owner or operator has demonstrated alternate financial assurance as specified in this Section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within thirty (30) days after issuance of the compliance order, the Secretary may direct the surety to place the penal sum of the bond in the standby trust fund.

(k) The owner or operator may cancel the bond if the Secretary has given prior written consent based on receipt

of evidence of alternate financial assurance as specified in this section.

(l) The Secretary will notify the surety if the owner or operator provides alternate financial assurance as specified in this section.

(m) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the owner or operator has been notified by the Secretary in accordance with paragraph (i) of this subsection that he is no longer required by this section to maintain financial assurance for closure of the facility.

(4) Closure letter of credit.

(a) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Secretary by certified mail. An owner or operator of a new facility must have the letter of credit delivered to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit must be effective before the initial receipt of hazardous waste. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter of credit must be identical to the wording specified in Section 18(6).

(c) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Secretary will be deposited promptly and directly by the issuing institution into the standby trust fund. The standby trust fund must meet the requirements of the trust fund specified in subsection (1) of this section, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the Secretary with the letter of credit; and

2. After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in subsection (1) of this section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(d) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date, it must at least ninety (90) days before that date notify both the owner or operator and the Secretary by certified mail of that decision. The ninety (90) day period will begin on the date of receipt by the Secretary as shown on the signed returned receipt. Expiration cannot occur, however, while a compliance procedure is pending as defined in Section 10.

(e) The letter of credit must be issued for at least the amount of the adjusted closure cost estimate (see Section 11(7)).

(f) Whenever the adjusted closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator must within sixty (60) days of the increase cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted closure cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the Secretary. Notice of an increase or decrease in the amount of the credit must be sent to the Secretary by certified mail within sixty (60) days of the change.

(g) Following a determination pursuant to KRS 224.866(3) that the owner or operator has failed, when required to do so, to perform closure in accordance with the closure plan or other permit requirements, the Secretary may draw on the letter of credit.

(h) The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Secretary of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Secretary will issue a compliance order pursuant to KRS 224.866(3), unless the owner or operator has demonstrated alternate financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within thirty (30) days of issuance of the compliance order, the Secretary may draw on the letter of credit.

(i) The Secretary will return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes alternate financial assurance for closure as specified in this section; or

2. The Secretary notifies the owner or operator, in accordance with subsection (7) of this section, that he is no longer required by this section to maintain financial assurance for closure of the facility.

(5) Cash and certificates of deposits.

(a) An owner or operator may satisfy the requirements of this section by having the cash or certificates of deposits delivered to the Secretary by certified mail.

(b) The bank or financial institution holding the cash deposit or certificate of deposit must be regulated and examined by a federal or state agency. The cash deposit or certificate of deposit must be established at least sixty (60) days before hazardous waste is first received at a new facility.

(c) The department must be the beneficiary of the cash deposit or certificate of deposit. The Secretary must be empowered to draw upon the funds if the owner or operator fails to perform closure or post-closure care in accordance with the applicable plans or interim status requirements.

(d) The owner or operator must make an immediate deposit in the full amount of the cost estimate, or the payments be made pursuant to a pay-in period that is no longer than the trust pay periods for closure care set forth in subsection (1) of this section.

(e) The cash deposit or certificate of deposit cannot be terminated unless:

1. The financial institution provides advance notice to the department; and

2. The state indicated either that the owner or operator has performed closure/post-closure to the Secretary's satisfaction, or that the owner or operator has established an alternate financial assurance mechanism in accordance with this section.

(f) The cash deposit or certificate of deposit cannot be cancelled:

1. While proceedings to enforce regulatory compliance are pending; and

2. In the event of transfer of ownership or operation of the facility, until the successor owner or operator has established his own financial assurance mechanism in accordance with this regulation.

(6) Use of multiple financial mechanisms. An owner or

operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a closure trust fund, letters of credit and cash. The mechanisms must be as specified in subsections (1), (2) and (4) respectively of this section, except that it is the combination of mechanisms rather than each single mechanism which must provide financial assurance for an amount at least equal to the adjusted closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the bond or letter of credit. If the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The Secretary may invoke use of any or all of the mechanisms in accordance with the requirements of subsections (1), (2) and (4) of this section to provide for closure of the facility.

(7) Use of a financial mechanism for multiple facilities.

(a) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility of which he is the owner or operator. Evidence of financial assurance submitted to the Secretary must include a list showing, for each facility, the EPA or Kentucky Identification Number, name, address, and the amount of funds for closure assured by the mechanism. If the list is changed by addition or subtraction of a facility or by an increase or decrease in the amount of funds assured for closure of one (1) or more facilities, a corrected list must be sent to the Secretary within sixty (60) days of such change. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(b) A letter of credit may not be used to assure funds for facilities other than in Kentucky.

(8) Release of the owner or operator from the requirements of this section. Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan (see Section 7(3) of this regulation), the Secretary will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for closure of the particular facility, unless the Secretary has reason to believe that closure has not been in accordance with the closure plan.

Section 13. Cost Estimate for Post-Closure Monitoring and Maintenance. (1) The owner or operator of a disposal facility must have a written estimate of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Section 7(4) to (7). The owner or operator must keep this estimate, and all subsequent estimates required in this section, at the facility. For existing facilities the post-closure estimates must be completed by May 9, 1981.

(2) The owner or operator must prepare a new annual post-closure cost estimate whenever a change in the post-closure plan affects the cost of post-closure care (see Section 7(5)(b) of this regulation). The latest post-closure cost estimate is calculated by multiplying the latest annual post-closure cost estimate by the number of years of post-closure care required in the latest post-closure plan approved for the facility by the Secretary.

(3) On each anniversary of the date on which the first estimate was prepared as specified in subsection (1) of this section, during the operating life of the facility, the owner or operator must adjust the latest post-closure cost estimate using the inflation factor calculated in accordance with Section 11(3). For existing facilities the adjustment must be made on each anniversary of the effective date of the anniversary date of this regulation. The adjusted post-closure cost estimate must equal the latest post-closure cost estimate (see subsection (2) of this section) times the inflation factor.

Section 14. Financial Assurance for Post-closure Monitoring and Maintenance. An owner or operator of each disposal facility must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility. He must choose from among the following options:

(1) Post-closure trust fund.

(a) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and by sending an originally signed duplicate of the trust agreement to the Secretary by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the trust agreement to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee must be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(b) The wording of the trust agreement must be identical to the wording specified in Section 18(1)(a) and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 18(1)(b)).

(c) Payments to the trust fund must be made annually by the owner or operator over the term of the initial permit. For existing facilities, the first payment must be made by the effective date of this regulation and must be at least equal to the closure or post-closure cost estimate divided by the number of years in the pay-in period. The payments to the post-closure trust fund must be made as follows:

1. For a new facility, as defined in 401 KAR 2:050, the first payment must be made when the trust fund is established. The first payment must be at least equal to the post-closure cost estimate (see Section 13) except as provided in subsection (7) of this section, divided by the number of years in the term of the permit. Payment for existing facilities is required over the operating life of the facility (as determined in the closure plan) or over a twenty (20) year pay-in period beginning with the effective date of this regulation whichever is shorter. Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by performing the following calculation:

$$\text{NEXT payment} = \frac{\text{ACE} - \text{CV}}{\text{Y}}$$

Where ACE is the adjusted post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the term of the permit.

2. If an owner or operator established a trust fund as specified in Section 12(1), and the value of the fund does not equal the adjusted post-closure cost estimate when a permit is awarded for the facility, the amount of the adjusted post-closure cost estimate still to be paid into the

fund must be paid in over the term of the permit. Payments must continue to be made no later than thirty (30) days after each anniversary date of the first payment made pursuant to 401 KAR 2:070. The amount of each payment must be determined by performing the following calculation:

$$\text{NEXT payment} = \frac{\text{ACE - CV}}{\text{Y}}$$

Where ACE is the adjusted post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the term of the permit.

(d) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in subsections (1)(a) and (c) of this section.

(e) If the owner or operator establishes a post-closure trust fund after having initially used one (1) or more alternate mechanisms specified in this section, his first payment must be at least the amount that the fund would have contained if the trust fund were established and annual payments made as specified in subsections (1)(a) and (c) of this section.

(f) After the term of the initial permit is completed, for existing facilities after the pay-in period is completed, whenever the adjusted post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund (described in Article 10 of the trust agreement in Section 18). If the value of the fund is less than the amount of the new estimate, the owner or operator must, within sixty (60) days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this section to cover the difference.

(g) If the value of the trust fund is greater than the total amount of the adjusted post-closure cost estimate, the owner or operator may submit a written request to the Secretary for release of the amount in excess of the adjusted post-closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Secretary for release of the amount in the trust fund which is greater than the amount required as a result of such substitution.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (1)(g) or (h) of this section, the Secretary will instruct the trustee to release to the owner or operator such funds as the Secretary specifies in writing.

(j) An owner or operator or any other person authorized to conduct post-closure may request reimbursement for post-closure expenditures by submitting itemized bills to the Secretary. Within sixty (60) days after receiving bills for post-closure activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing if the Secretary determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified.

(k) The Secretary will agree to termination of the trust when:

1. The owner or operator substitutes alternate financial assurance for post-closure as specified in this section; or

2. The Secretary notifies the owner or operator in accordance with subsection (7) of this section that he is no longer required by this section to maintain financial assurance for post-closure care of the facility.

(2) Surety bond guaranteeing payment into a post-closure trust fund.

(a) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Secretary by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(b) The wording of the surety bond must be identical to the wording specified in Section 18(4).

(c) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund. This trust fund must meet the requirements specified in subsection (1) of this section, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the Secretary with the surety bond; and

2. After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in subsection (1) of this section are not required until the standby trust fund is funded pursuant to the requirements of the paragraph.

(d) The bond must guarantee that the owner or operator will:

1. Fund the standby trust fund in an amount equal to the penal sum of the bond by the beginning of final closure of the facility; or

2. Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin closure in accordance with Sections 6 and 7 is issued by the Secretary or by a circuit court pursuant to 401 KAR 2:060, or within fifteen (15) days after issuance of a notice of termination of the permit pursuant to 401 KAR 2:060; or

3. Provide alternate financial assurance as specified in this section within thirty (30) days after receipt by the Secretary of a notice of cancellation of the bond from the surety.

(e) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be an amount at least equal to the amount of the adjusted post-closure cost estimate (see Section 13) except as provided in subsection (5) of this section.

(g) Whenever the adjusted post-closure cost estimate increases to an amount greater than the penal sum of the bond the owner or operator must, within sixty (60) days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this section, to cover the increase. Whenever the adjusted post-closure cost estimate decreases, the penal sum may be reduced to the amount of the new cost estimate following

written approval by the Secretary. Notice of an increase or decrease in the penal sum must be sent to the Secretary by certified mail within sixty (60) days after the change.

(h) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Secretary. Cancellation cannot occur, however:

1. During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the Secretary as shown on the signed return receipt; or

2. While a compliance procedure is pending, as defined in Section 10.

(i) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Secretary of a notice of cancellation of the surety bond. Upon receipt of such notice the Secretary will issue a compliance order pursuant to KRS 224.866(3), unless the owner or operator has demonstrated alternate financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within thirty (30) days after issuance of the compliance order, the Secretary may direct the surety to place the penal sum of the bond in the standby trust fund.

(j) The owner or operator may cancel the bond if the Secretary has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this Section.

(k) The Secretary will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if he provides alternate financial assurance as specified in this section.

(3) Surety bond guaranteeing performance of post-closure care.

(a) An owner or operator of a new facility only may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and by having the bond delivered to the Secretary by certified mail. An owner or operator of a new facility must have the surety bond delivered to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for disposal. The surety bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must at a minimum be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of Treasury.

(b) The wording of the surety bond must be identical to the wording specified in Section 18(5).

(c) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited into the standby trust fund. This trust fund must meet the requirements specified in subsection (1) of this section, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the Secretary with the surety bond; and

2. After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in subsection (1) of this section are not required unless the standby trust fund is funded pursuant to the requirements of this paragraph.

(d) The bond must guarantee that the owner or operator will:

1. Perform post-closure care in accordance with the post-closure plan and other requirements of the permit; or

2. Provide alternate financial assurance within thirty (30) days of receipt by the Secretary of a notice of cancellation of the bond from the surety.

(e) The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount at least equal to the adjusted post-closure cost estimate (see Section 13.)

(g) Whenever the adjusted post-closure cost estimate increases to an amount greater than the penal sum of the bond during the operating life of the facility, the owner or operator must, within sixty (60) days after the increase in the estimate, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the new estimate following written approval by the Secretary. Notice of an increase or decrease in the penal sum must be sent to the Secretary by certified mail within sixty (60) days after the change.

(h) During the period of post-closure care, the Secretary may approve a decrease in the penal sum of the surety bond if the owner or operator demonstrates to the Secretary that the amount exceeds the remaining cost of post-closure care.

(i) The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Secretary. Cancellation cannot occur, however:

1. During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the Secretary as shown on the signed return receipt; or

2. While a compliance procedure is pending, as defined in Section 10.

(k) Following a determination pursuant to KRS 224.866(3) that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure plan and other permit requirements or deposit the amount of the penal sum into the standby trust fund.

(l) The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the secretary of a notice of cancellation of the surety bond. Upon receipt of such a notice the Secretary will issue a compliance order pursuant to KRS 224.866 unless the owner or operator has demonstrated alternate financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within thirty (30) days after issuance of the compliance order, the Secretary may direct the surety to place the penal sum of the bond in the standby trust fund.

(m)The owner or operator may cancel the bond if the Secretary has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(n) The Secretary will notify the surety if the owner or operator provides alternate financial assurance as specified in this section.

(o) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the owner or operator has been notified by the Secretary in accordance with subsection (7) of this section that he is no longer required by this section to maintain

financial assurance for post-closure care of the facility.

(4) Post-closure letter of credit.

(a) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Secretary by certified mail. An owner or operator of a new facility must have the letter of credit delivered to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The wording of the letter of credit must be identical to the wording specified in Section 18(6).

(c) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Secretary will be deposited promptly and directly by the issuing institution into the standby trust fund. The standby trust fund must meet the requirements of the trust fund specified in subsection (1) of this section, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the Secretary with the letter of credit; and

2. After a nominal initial payment agreed upon between the trustee and the owner or operator, payments as specified in subsection (1) of this section are not required unless the standby trust fund is funded pursuant to the requirements of this subsection.

(d) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date, it must at least ninety (90) days before that date notify both the owner or operator and the Secretary by certified mail of that decision. The ninety (90) day period will begin on the date of receipt by the Secretary as shown on the signed return receipt. Expiration cannot occur, however, while a compliance procedure is pending as defined in Section 10.

(e) The letter of credit must be issued for at least the amount of the adjusted post-closure cost estimate (Section 13), except as provided in subsection (5) of this section.

(f) Whenever the adjusted post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator must within sixty (60) days of the increase cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted post-closure cost estimate decreases during the operating life of the facility, the letter of credit may be reduced to the amount of the new estimate following written approval by the Secretary. Notice of an increase or decrease in the amount of the credit must be sent to the Secretary by certified mail within sixty (60) days of the change.

(g) During the period of post-closure care, the Secretary may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Secretary that the amount exceeds the remaining cost of post-closure care.

(h) Following a determination pursuant to KRS 224.866(3) that the owner or operator has failed, when required to do so, to perform post-closure in accordance with the post-closure plan or other permit requirements, the Secretary may draw on the letter of credit.

(i) The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Secretary of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Secretary will issue a compliance order pursuant to KRS 224.866(3), unless the owner or operator has demonstrated alternate financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within thirty (30) days of issuance of the compliance order, the Secretary may draw on the letter of credit.

(j) The Secretary will return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes alternate financial assurance for post-closure care as specified in this section; or

2. The Secretary notifies the owner or operator, in accordance with subsection (7) of this section, that he is no longer required by this section to maintain financial assurance for post-closure of the facility.

(5) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism. These mechanisms are limited to trust funds, surety bond guaranteeing payment into a post-closure trust fund, and letters of credit. The mechanisms must be as specified in subsections (1), (2), and (4), respectively, of this section, except that it is the combination of mechanisms rather than each single mechanism which must provide financial assurance for an amount at least equal to the adjusted post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the bond or letter of credit. If the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The Secretary may invoke use of any or all of the mechanisms in accordance with the requirements of subsections (1), (2), and (4) of this section to provide for post-closure care of the facility.

(6) Use of a financial mechanism for multiple facilities.

(a) An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility of which he is the owner or operator provided the facilities are all within the Commonwealth. Evidence of financial assurance submitted to the Secretary must include a list showing for each facility the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. If the list is changed by addition or subtration of a facility or by an increase or decrease in the amount of funds assured for post-closure care of one (1) or more facilities, a corrected list must be sent to the Secretary within sixty (60) days of such change. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(b) A letter of credit may not be used to assure funds for facilities located in other than the Commonwealth.

(7) Release of the owner or operator from the re-

quirements of this section. When an owner or operator has completed to the satisfaction of the Secretary all post-closure care requirements for the period of post-closure care specified in the permit for the facility or the period specified by the Secretary after the closure, whichever period is shorter, the Secretary will, at the request of the owner or operator, notify him in writing that he is no longer required by this section to maintain financial assurance for post-closure care of the particular facility.

Section 15. Use of a Mechanism for Financial Assurance of Both Closure and Post-closure Care. An owner or operator may use one (1) of the following financial assurances for both closure and post-closure care of one (1) or more facilities of which he is the owner or operator:

(1) A trust fund that meets the specifications of Sections 12(1) and 14(1); or

(2) A letter of credit that meets the specifications of both Sections 12(4) and 14(4). The amount of funds available under the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care of each facility.

Section 16. Liability Requirements. (1) An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for claims arising from the operations of each such facility or group of facilities from sudden and accidental occurrences that cause injury to persons or property. An owner or operator must have and maintain liability insurance for sudden occurrences in the amount of at least $1,000,000 per occurrence with an annual aggregate of at least $2,000,000, exclusive of legal defense costs. As evidence of this liability insurance, an owner or operator must deliver an originally signed duplicate of the insurance policy to the Secretary by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the insurance policy to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. Each policy must be for limits of liability not less than the minimum amounts required by this paragraph and each policy must be amended in order to comply with the requirements of this regulation by attachment of the Hazardous Waste Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in Section 18(7).

(2) An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for claims arising from the operation of each such facility or group of facilities from non-sudden and accidental occurrences that cause injury to persons or property. An owner or operator must have and maintain liability insurance for non-sudden occurrences in the amount of at least $3,000,000 per occurrence with an annual aggregate of at least $6,000,000, exclusive of legal defense costs. As evidence of this liability insurance, an owner or operator of an existing surface impoundment, landfill, or land treatment facility must deliver an originally signed duplicate of the insurance policy to the Secretary by certified mail. However, such insurance will not be required of an existing facility before the following dates:

(a) For an owner or operator with annual sales in the last calendar year preceding the effective date of these regulations totaling $10,000,000 or more, after the effective date of this regulation.

(b) For an owner or operator with annual sales in the last calendar year preceding the effective date of these regulations greater than $5,000,000 but less than $10,000,000, eighteen (18) months after the effective date of this regulation.

(c) All other owners or operators, thirty (30) months after the effective date of this regulation. An owner or operator of a new surface impoundment, landfill, or land treatment facility must send an originally signed duplicate of the insurance policy to the Secretary by certified mail at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. For both existing and new facilities, each policy shall be for limits of liability not less than the minimum amount required by this section and each policy must be amended in order to comply with the requirements of the Hazardous Waste Facility Liability Endorsement. The wording of the endorsement must be identical to the wording specified in Section 18(7).

(3) If an owner or operator elects to comply with subsections (1) and (2) of this section through one (1) insurance policy covering both sudden and non-sudden occurrences, this policy must be in the amount of at least $4,000,000 per occurrence with an annual aggregate of at least $8,000,000, exclusive of legal defense costs.

(4) If an owner or operator can demonstrate to the satisfaction of the Secretary that the levels of financial responsibility required by subsections (1) and (2) of this section are not consistent with the degree and duration of tasks associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the Secretary. The request for a variance must be submitted to the Secretary as part of the permit application under 401 KAR 2:060 for a facility that does not have a permit, or pursuant to the procedures for permit modification under 401 KAR 2:060 for a facility that has a permit. The variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Secretary's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The Secretary may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Secretary to determine a level of financial responsibility other than that required by subsections (1) and (2) of this section. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under 401 KAR 2:060.

(5) If the Secretary determines that the levels of financial responsibility required by subsections (1) and (2) of this section are not consistent with the degree and duration of risks associated with treatment, storage, or disposal at any facility or group of facilities, the Secretary may adjust the level of financial responsibility required under subsections (1) and (2) of this section as may be necessary to protect human health and the environment, such adjusted level to be based on the Secretary's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. The Secretary may also require an owner or operator of a treatment or storage facility or group of facilities to comply with subsection (2) of this section if the Secretary determines that there is a significant risk to human health and

the environment from non-sudden and accidental occurrences from the operations of such facility or group of facilities. Any adjustment of the level of required coverage for a facility that has a permit shall be treated as a permit modification under 401 KAR 2:060.

Section 17. Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies. An owner or operator who fulfills the requirements of Sections 12, 14 or 16 by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or liability coverage within sixty (60) days of such events.

Section 18. Wording of the Instruments. (1)(a) A trust agreement for a trust fund as specified in Section 12(1) or 14(1) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agrement," entered into as of (date) by and between (name of the owner or operator), a (state) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (state corporation) (national bank), the "Trustee."

Whereas, the Kentucky Department for Natural Resources and Environmental Protection, "the department," an agency of the Commonwealth, has established certain regulations applicable to the grantor, requiring that the owner or operator of a hazardous waste management facility must provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this agreement, and the Trustee is willing to act as Trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Article 1. Definitions. As used in this Agreement:

(a) The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

(b) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(c) The term "Trustee" means the Trustee who enters into this agreement and any successor Trustee.

Article 2. Identification of Facilities and Cost Estimates. This Agreement pertains to (for each facility insert the EPA Identification Number, name, and address, and the adjusted closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Article 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "fund" for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule A attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profit thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Department.

Article 4. Payment for Closure and Post-Closure Care. The Trustee will make such payments from the Fund as the Secretary of the Department will direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Secretary of the Department from the Fund for closure and post-closure expenditures in such amounts as the Secretary of the Department will direct, in writing. The Trustee will notify the Secretary of the Department when twenty (20) percent of the amount allocated for closure of the facility remains in the Fund, and will not make further reimbursements for closure expenditures unles the Secretary of the Department identifies reimbursements that may be made out of the remaining twenty (20) percent. In addition, the Trustee will refund to the Grantor such amounts as the Secretary of the Department specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Article 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the Trustee.

Article 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income. In accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Article. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the Trustee Fund solely in the interest of the participants and beneficiaries and with the care, skill, prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC Section 80a-2.(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Article 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein. To the extent of the equitable share of

the Fund in any such commingled trust, such commingled trust will be part of the Fund;

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC Section 80-A1 et seq., or one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Article 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the fund.

Article 9.Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All the expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Article 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Secretary of the Department a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than thirty (30) days prior to the date of the statement. The failure of the Grantor to object in writing to the trustee within ninety (90) days after the statement has been furnished to the grantor and the Secretary of the Department will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Article 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extend permitted by law, in acting upon the advice of counsel.

Article 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Article 13. Successor Trustee. Upon the written agreement of the Grantor, the Trustee, and the Secretary of the Department, the Trustee may resign or the Grantor may replace the Trustee. In either event, the Grantor will appoint a successor Trustee who will have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor Trustee, the Trustee will assign, transfer and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee and the date on which he assumes administration of the Trust will be specified in writing and sent to the Grantor, the Secretary of the Department, and the present and successor Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Section 9.

Article 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Secretary of the Department to the Trustee will be in writing, signed by the Secretary of the Department and the Trustee will act and will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of the EPA hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the grantor and/or the EPA, except as provided for herein.

Article 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Secretary of the Department by certified mail within ten (10) days following the expiration of the thirty (30) day period after the anniversary of the establishment of the Trust if no payment is received from the Grantor during that period. After the pay-in period is completed the Trustee is not required to send a notice of nonpayment.

Article 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Secretary of the Department or by the Trustee and the Secretary of the Department if the Grantor ceases to exist.

Article 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provid-

ed in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Secretary of the Department or by the Trustee and the Secretary of the Department if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Article 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Secretary of the Department issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Article 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Kentucky.

Article 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Article of this Agreement will not affect the interpretation or the legal efficiency of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording as specified in Section 18(1)(a) of 401 KAR 2:063.

(signature of Grantor)
By (Title)
Attest:
(Title)
(Seal)
(Signature of Trustee)
By
Attest:
(Title)
(Seal)

(b) This is an example of the certification of acknowledgment, which must accompay the trust, agreement for a trust fund as specified in Section 12(1) or 14(1):

State of _____
County of _____

On this (date), before me personally came (owner or operator) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(2) A surety bond guaranteeing payment into a closure trust fund, as specified in Section 12(2) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond for Closure

Date bond executed: _____
Effective date: _____
Principal: (legal name and business address)
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")
State of incorporation: _____
Surety(ies): (Name(s) and business address(es))
EPA Identification Number, name and address of each facility and, if more than one facility is covered by this bond, the amount of the penal sum for each facility: _____
Total penal sum of bond: _____

Know all men by these presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Secretary of the Department for Natural Resources and Environmental Protection (hereinafter called Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as it sets forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit or permits, or interim status, on order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas, said Principal is required to provide financial assurance for closure of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas, said Principal shall establish a standby trust fund as specified by Section 12 of this regulation or in 401 KAR 2:073.

Now, therefore the conditions of the obligation are such that if the Principal shall faithfully, for the facility(ies) identified above, at least 60 days before the beginning of final closure, fund the standby trust fund in an amount equal to the penal sum.

Or, if the Principal shall fund the standby trust fund in such an amount within 15 days after an order to begin closure in accordance with Sections 6 and 7 of 401 KAR 2:063, and Section 6 of 401 KAR 2:063 is issued by the Secretary of the Department or by a circuit court pursuant to KRS 224.866 or within 15 days after a notice of termination of the permit(s) or interim status pursuant to 401 KAR 2:060.

Or, if the Principal shall provide alternate financial assurance as specified in Section 12 of 401 KAR 2:063 or Section 6 of 401 KAR 2:073 within 30 days after the date notice of cancellation is received by the Secretary of the Department, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Secretary of the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount of the penal sum into the standby trust fund as directed by the Secretary of the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event

shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the Secretary of the Department in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur: (1) during the 90 days beginning on the date of receipt of the notice of cancellation by the Secretary of the Department as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in Section 12 of 401 KAR 2:063 or Section 6 of 401 KAR 2:073.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Secretary of the Department in which the bonded facility(ies) is (are) located. (The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than twenty (20) percent in any one year, and no decrease in the penal sum takes place without the written permission of the Secretary of the Department.

In witness thereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 18(2) of 401 KAR 2:063.

Principal

Signature(s): _____

Name(s) and title(s) (typed) _____

Corporate seal:

Corporate Surety(ies)

Name and address: _____

State of incorporation: _____

Liability limit: $ _____

Signature(s): _____

Name(s) and title(s) (Typed): _____

Corporate seal:

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $ _____

(3) A Surety bond guaranteeing performance of closure, as specified in Section 12(3) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond for Closure

Date bond executed: _____

Effective Date: _____

Principal: (Legal name and business address)

Type of organization: (Insert "individual," "joint venture," "partnership", or "corporation")

State of incorporation: _____

Surety(ies): (name(s) and business address(es))

EPA Identification Number, name, address and adjusted closure cost estimate for each facility: _____

Total penal sum of bond: $_____

Know all men by these presents, that we the Principal and Surety(ies) hereto are firmly bound to the Secretary of the Department in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally, with the Principal, for the payment of such sum only as it is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit or permits from the Secretary of the Department in order to own or operate the hazardous waste management facility(ies), identified above, and

Whereas, said Principal is required to provide financial assurance for closure to the facility(ies) as a condition of the permit(s), and

Whereas, said Principal shall establish a standby trust as specified by Section 12 of 401 KAR 2:063,

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure of the facility(ies) identified above in accordance with the closure plan(s) submitted, the receipt of said permit(s) and other requirements of said permit(s) as such plan(s) and permit(s) may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended.

Or, if the Principal shall faithfully perform closure in accordance with 401 KAR 2:063, Sections 6 and 7, following an order to begin closure issued by the Secretary of the Department or by a circuit court pursuant to KRS Chapter 224 or following a notice of termination of the permit pursuant to 401 KAR 2:060 of this Chapter,

Or, if the Principal shall provide alternate financial assurance as specified in 401 KAR 2:062, Section 12, within thirty (30) days of the date notice of cancellation is received by the Secretary of the Department, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Secretary of the Department that the Principal has been found in violation of 401 KAR 2:063, Section 12, in an order made pursuant to KRS 224.866, the Surety(ies) must place funds in the amount of the adjusted closure cost estimate(s) into the standby trust fund as directed by the Secretary of the Department that the Principal has been found in violation of an order to begin closure, the Surety(ies) must either perform closure in accordance with the closure order or place the amount of the adjusted closure cost estimate(s) in the standby trustee fund.

The Surety(ies) hereby waives notification of amendments to the closure plan(s), permit(s), applicable laws, statutes, rules and regulations and agrees that no such amendment(s) shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the Secretary of the Department in which the facility(ies) is

(are) located, provided, however, that cancellation cannot occur

(1) During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the Secretary of the Department as shown on the signed return receipt(s); or

(2) While a compliance procedure is pending, as defined in Section 10 of 401 KAR 2:063.

The Principal may terminate the bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Secretary of the Department. (The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than twenty (20) percent in any one (1) year, and no decrease in the penal sum takes place without the written permission of the Secretary of the Department.

In witness whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 18(3) of 401 KAR 2:063.

Principal

Signature(s): _____
Name(s) and title(s) (Typed): _____
Corporate seal: _____

Corporate Surety(ies)

Name and address: _____
State of incorporation: _____
Liability limit: $_____
Signature(s): _____
Name(s) and title(s) (Typed): _____
Corporate seal: (for every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: $_____

(4) A surety bond guaranteeing payment into a post-closure trust fund, as specified in Section 14(2) must be worded as follows, except that instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Financial Guarantee Bond for Post-Closure Care

Date bond executed: _____
Effective date: _____
Principal: (legal name and business address)
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")
State of incorporation: _____
Surety(ies): (name(s) and business address(es))
EPA Identification Number, name and address of each facility and, if more than one (1) facility is covered by this bond, the amount of the penal sum for each facility:
Total penal sum of bond: $_____

Know all men by these presents That we, the Principal and Surety(ies) hereto, are firmly bound to the Secretary of the Department in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a Departmental permit or permits, or interim status, in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas, said Principal is required to provide financial assurance for post-closure care of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas, said Principal shall establish a standby trust fund as specified by Section 12 of 401 KAR 2:063 or Section 6 of 401 KAR 2:073;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, for the facility(ies) identified above, by the beginning of final closure, fund the standby trust fund in an amount equal to the penal sum.

Or, if the Principal shall fund the standby trust fund in such an amount within fifteen (15) days after an order to begin closure in accordance with Sections 6 and 7 of 401 KAR 2:063 and Section 6 of 401 KAR 2:073 is issued by the Secretary of the Department within fifteen (15) days after a notice of termination of the permit(s) or interim status pursuant to 401 KAR 2:060.

Or, if the Principal shall provide alternate financial assurance as specified in Section 12 of 401 KAR 2:063 or Section 6 of 401 KAR 2:073 within thirty (30) days after the date notice of cancellation is received by the Secretary of the Department, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Secretary of the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) must place funds in the amount of the penal sum into the standby trust fund as directed by the Secretary of the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the Secretary of the Department in which the facility(ies) is (are) located, provided, however, that cancellation cannot occur:

(1) During the ninety (90) days beginning on the date of the receipt of the notice of cancellation by the Secretary of the Department as shown on the signed return receipt(s); or

(2) While a compliance procedure is pending, as defined in Section 10 of 401 KAR 2:063 or Section 6 of 401 KAR 2:073.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Secretary of the Department in which the bonded facilty(ies) is (are) located. (The following

paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted post-closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than twenty (20) percent in any one (1) year, and no decrease in the penal sum takes place without the written permission of the Secretary of the Department.

In witness whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 18(4) of 401 KAR 2:063.

Principal

Signatue(s): _____
Name(s) and title(s) (typed): _____
Corporate Seal:

Corporate Surety(ies)

Name and address: _____
State of incorporation: _____
Liability limit: $_____
Signature(s): _____
Name(s) and title(s) (typed): _____
Corporate Seal: (for every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: $_____

(5) A surety bond guaranteeing performance of post-closure care, as specified in Section 14(3) must be worded as follows, except that the instructions in brackets are to be replaced with relevant information and the brackets deleted:

Performance Bond for Post-Closure Care

Date bond executed: _____
Effective date: _____
Principal: (legal name and business address)
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")
State of incorporation: _____
Surety(ies): (name(s) and business address(es)
EPA Identification Number, name, and address of each facility and, if more than one (1) facility is covered by this bond, the amount of the penal sum for each facility:
Total penal sum of bond: $_____

Know all men by these presents That we, the Principal and Surety(ies) hereto, are firmly bound to the Secretary of the Department in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a Departmental permit or permits, or interim status, in order to own or operate the hazardous waste management facility(ies) identified above, and

Whereas, said Principal is required to provide financial assurance for post-closure care of the facility(ies) as a condition of the permit(s) or interim status, and

Whereas, said Principal shall establish a standby trust fund as specified in Section 12 of 401 KAR 2:063 or Section 6 of 401 KAR 2:073.

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully perform post-closure care of the facility(ies) identified above in accordance with the post-closure plan(s) and other requirements of the permit(s), as such post-closure plan(s) and permit(s) may be amended, pursuant to all applicable laws, statutes, rules and regulations as such laws, statutes, rules and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in Section 12 of 401 KAR 2:063 within thirty (30) days of the date notice of cancellation is received by the Secretary of the Department, then this obligation will be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Secretary of the Department that the Principal has been found in violation of Section 12 of 401 KAR 2:063 in an order made pursuant, the Surety(ies) must place funds in the amount of the adjusted post-closure cost estimate(s) into the standby trust fund as directed by the Secretary of the Department. Upon notification by the Secretary of the Department that the Principal has been found in violation of the post-closure requirements of 401 KAR 2:063 the Surety(ies) must perform post-closure care in accordance with the post-closure plan and other requirements of the permit or place the amount of the adjusted post-closure cost estimate(s) into the standby trust fund.

The Surety(ies) hereby waive(s) notification of amendments to closure plan(s), permit(s), applicable laws, statutes, rules and regulations, and agrees that no such amendment(s) shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's(ies') obligation hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending written notice of cancellation to the owner or operator and to the Secretary of the Department, provided, however, that cancellation cannot occur:

(1) During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the Secretary of the Department as shown on the signed return receipt(s); or

(2) While a compliance procedure is pending, as defined in Section 10 of 401 KAR 2:063. (The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it equals the adjusted post-closure cost estimate(s), provided that the amount of the cost estimate(s) does (do) not increase by more than twenty (20) percent in any one (1) year, and no decrease in the penal sum takes place without the written permission of the Secretary of the Department.

In witness whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby cer-

tify that they are authorized to execute this surety bond on behalf of the principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Section 18(5) of 401 KAR 2:063.

Principal

Signature(s): _____
Name(s) and title(s) (typed): _____
Corporate seal:

Corporate Surety(ies)

Name and address: _____
State of incorporation: _____
Liability limit: $_____
Signature(s): _____
Name(s) and title(s) (typed): _____
Corporate seal: (for every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: $_____

(6) A letter of credit as specified in Sections 12(4) and 14(4) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

(Secretary of the Department)

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Secretary of the Department, at the request and for the account of (owner's name and address) up to the aggregate amount of (in words) U.S. dollars $_____, available upon presentation of:

(1) Your sight draft, bearing reference to this Letter of Credit No. _____ together with

(2) Your signed statement declaring that the amount of the draft is payable pursuant to the regulations issued under the authority of the Kentucky Revised Statutes Chapter 224.

The following amounts are included in the amount of this Letter of Credit: (for each facility, insert the EPA Facility Identification Number, name and address, and the adjusted closure and/or post-closure cost estimate, or portions thereof, for which financial assurance is demonstrated by this Letter of Credit).

This Letter of Credit is effective as of (date) and will expire on (date at least one (1) year later), such expriation date will be automatically extended for a period of (at least one (1) year) on (date) and on each successive expiration date, unless at least ninety (90) days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for ninety (90) days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending as defined in Section 10 of 401 KAR 2:063, whichever is later.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will deposit the amount of the draft promptly and directly into the standby trust fund of (owner's or operator's name) held in trust by (name and address of corporate trustee).

I hereby certify that I am authorized to execute this Letter of Credit on behalf of (issuing institution) and that the wording of this Letter of Credit is identical to the wording specified in Section 18(6) of 401 KAR 2:063.

Attest: (Signature and title of official of issuing institution) (date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or the "Uniform Commercial Code").

(7) A hazardous waste facility liability endorsement as required by Section 16 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Hazardous Waste Facility Liability Endorsement

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of (insert Section 16(1)(a) and or (1)(b) of 401 KAR 2:063) amends the policy to provide insurance in accordance with the provisions of such regulations to the extent of coverage and limits of liability required thereby at (list EPA Identification Number, name, and address for each facility). Within the limits of liability provided it is understood that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgement, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company, and the insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in the endorsement.

2. Whenever requested by the Secretary of the Department, the Company agrees to furnish to the Secretary of the Department a duplicate original of said policy and all endorsements thereon.

3. This endorsement may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may only be effected by the Company or the insured giving sixty (60) days' notice in writing to the Secretary of the Department, such sixty (60) days' notice to commence to run from the date the notice is actually received by the Secretary of the Department.

4. Notwithstanding any other provision of this policy, if this endorsement or policy is on a claims-made basis, cancellation or termination may not be effected within 120 days of any fire, explosion, or unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater.

Attached to and forming part of Policy No. _____ issued by (name of Company), herein called the Company, of (address of Company), to (name of insured) of (address). Dated at _____ this _____ day of _____, 19 _____.

Countersigned by _____, authorized Company representative.

Section 19. Use and Management of Containers. (1) Applicability. The regulations in this section apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as Section 1 provides otherwise.

(2) Condition of containers. If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this regulation.

(3) Compatibility of waste with containers. The owner or operator must use a container made of or lined with materials which will not react with and are otherwise compatible with the hazardous waste to be stored so that the ability of the container to contain the waste is not impaired.

(4) Management of containers.

(a) A container holding hazardous waste must always be closed during storage except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(5) Inspections. At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

(6) Containment.

(a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this subsection except as otherwise provided in paragraph (c) of this subsection.

(b) A containment system must be designed and operated as follows:

1. A base must underly the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

2. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

3. The containment system must have sufficient capacity to contain ten (10) percent of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

4. Run-on into the containment system must be prevented unless the collections sytem has sufficient excess capacity in addition to that required in paragraph (b)3 of this subsection to contain any run-on which might enter the system; and

5. Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in as timely a manner as necessary to prevent overflow of the collection system.

(c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by paragraph (b) of this subsection, provided that:

1. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

2. The containers are elevated or otherwise protected from contact with accumulated liquid.

(7) Special requirements for ignitable or reactive waste. Containers holding ignitable or reactive waste must be located at least fifteen (15) meters (fifty (50) feet) from the facility's property line.

(8) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials wastes, must not be placed in the same container, unless Section 2(8)(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(9) Closure. At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases and soil constraining or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

Section 20. Tanks. (1) Applicability.

(a) The regulations in this Section apply to owners and operators of facilities that use tanks to treat or store hazardous waste, except as Section 1(1) and paragraph (b) of this subsection provide otherwise.

(b) The regulations in this section do not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection.

(2) Design of tanks. Tanks must have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The Secretary of the Department will review the design of the tanks, including the foundation, structural support, seams and pressure controls. The Secretary of the Department shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Factors to be considered in establishing minimum thickness include the width, height, and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and establishing a minimum thickness, the Secretary of the Department shall rely upon appropriate industrial design standards and other available information.

(3) General operating requirements.

(a) Wastes and other materials (e.g., treatment reagents) which are incompatible with the material of construction of the tank must not be placed in the tank unless the tank is protected from accelerated corrosion, erosion or abrasion through the use of:

1. An inner liner or coating which is compatible with the waste or material and which is free of leaks, cracks, holes or other deterioration; or

2. Alternative means of protection (e.g., cathodic protection or corrosion inhibitors).

(b) The owner or operator must use appropriate controls and practices to prevent overfilling. These must include:

1. Controls to prevent overfilling (e.g., waste feed cutoff system or by-pass system to a standby tank); and

2. For uncovered tanks, maintenance of sufficient freeboard to prevent overtopping by wave or wind action or by precipitation.

(4) Inspections.

(a) The owner or operator must inspect:

1. Overfilling control equipment (e.g., waste feed cutoff systems and by-pass systems) at least once each operating day to ensure that it is in good working order;

2. Data gathered from monitoring equipment (e.g., pressure and temperature gauges) where present, at least

once each operating day to ensure that the tank is being operated according to its design;

3. For uncovered tanks, the level of waste in the tank, at least once each operating day to ensure compliance with Section 20(3);

4. The construction materials of the above-ground portions of the tank, at least weekly to detect corrosion or erosion and leaking of fixtures and seams; and

5. The area immediately surrounding the tank, at least weekly to detect obvious signs of leakage (e.g., wet spots or dead vegetation).

(b) As part of the inspection schedule required in and in addition to the specific requirements of paragraph (a) of this subsection, the owner or operator must develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure must be adequate to detect cracks, leaks, corrosion or erosion which may lead to cracks or leaks, or wall thinning to less than the thickness required under Section 20(2). Procedures for emptying a tank to allow entry and inspection of the interior must be established when necessary to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments must be based on the material of construction of the tank, type of corrosion or erosion protection used, rate of corrosion or erosion observed during previous inspections, and the characteristics of the waste being treated or stored.

(c) As part of the contingency plan required under Section 4, the owner or operator must specify the procedures he intends to use to respond to tank spills or leakage, including procedures and time for expeditious removal of leaked or spilled waste and repair of the tank.

(5) Closure. At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge containment structures.

(6) Special requirements for ignitable or reactive wastes.

(a) Ignitable or reactive waste must not be placed in a tank unless:

1. The waste is treated, rendered, or mized before or immediately after placement in the tank so that the resulting waste, mixture or dissolution of material no longer meets the definition of ignitable or reactive waste under 401 KAR 2:075, and Section 2(8)(b) of this regulation is complied with; or

2. The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

3. The tank is used solely for emergencies.

(b) The owner or operator of a facility which treates or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981).

(7) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank unless Section 2(8)(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless Section 2(8)(b) is complied with.

Section 21. Surface Impoundments. (1) Applicability.

(a) The regulations of this section apply to owners and operators of facilities that store or treat hazardous waste in piles, except as Section 1 provides otherwise.

(b) Owners and operators of waste piles used to store or treat only hazardous wastes that do not contain free liquids are not subject to regulation under subsections (2), (3), (4), (5) and (6) of this section with respect to those piles, provided that:

1. Liquids or materials containing free liquids are not placed in the pile;

2. The pile is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated;

3. The pile is protected from surface water run-on by the structure or in some other manner;

4. The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

5. The pile will not generate leachate through decomposition or other reactions.

(2) General design requirements.

(a) A surface impoundment must be designed to provide:

1. At least sixty (60) centimeters (two (2) feet) of freeboard; or

2. An amount of freeboard other than sixty (60) centimeters based on documentation, acceptable to the Secretary of the Department that the specified amount of freeboard will prevent overtopping.

(b) A surface impoundment must be designed so that any flow of waste into the impoundment can be immediately shut off in the event of overtopping or liner failure.

(c) A surface impoundment must be designed to prevent discharge into the land and groundwater and to surface water (except discharges authorized by an NPDES permit or state equivalent permit) during the life of the impoundment by use of a containment system which complies with Section 21(4).

(d) Dikes must be designed with sufficient structural integrity to prevent massive failure without dependence on any liner system included in the surface impoundment design.

(e) A leachate detection, collection, and removal system must be designed so that liquid will flow freely from the collection system to prevent the creation of pressure head within the collection system in excess of that necessary to cause the liquid to flow freely.

(3) General operating requirements.

(a) A surface impoundment must be operated to prevent any overtopping due to wind and wave action, overfilling precipitation, or any combination thereof.

(b) A surface impoundment must be operated to maintain at least the amount of freeboard specified by the Secretary of the Department in the permit.

(c) A leachate detection, collection, and removal system installed to comply with Section 21(4)(b) must be operated so that leachate flows freely from the collection system and is removed as it accumulates or with sufficient frequency to prevent backwater within the collection system.

(d) Earthen dikes must be kept free of:

1. Perennial woody plants with root systems which could displace the earthen materials upon which the structural integrity of the dike is dependent; and

2. Burrowing mammals which could remove earthen materials upon which the structural integrity of the dike is dependent or create leaks through burrows in the dike.

(e) Run-on must be diverted away from a surface impoundment.

(4) Containment systems.

(a) Earthen dikes must have a protective cover, such as grass, shale or rock, to minimize wind and water erosion and to preserve the structural integrity of the dike.

(b) A liner system designed to prevent discharge into the land during the life of the surface impoundment must:

1. Be constructed with a highly impermeable liner system in contact with the waste which will prevent discharge of the waste or leachate through the liner(s) during the life of the surface impoundment based on the liner(s) thickness, the saturated permeability of the liner(s) and the pressure head or waste or leachate to which the liner(s) will be exposed; and a leachate detection, collection, and removal system beneath the liner(s) in contact with the waste to detect, contain, collect, and remove any discharge from the liner system in contact with the waste; and

2. Be constructed above the water table to ensure the detection of any discharge of waste or leachate through the liner system in contact with the waste; prevent the discharge of groundwater to the leachate detection, collection and removal system; and to protect the structural integrity of the liner(s).

(c) A containment system must have a containment life equal to or greater than the life of the surface impoundment.

(d) Liner systems must be constructed:

1. Of materials which have appropriate chemical properties and strength and of sufficient thickness to prevent failure due to pressure head, physical contact with the waste or leachate to which they are exposed, climatic conditions, and the stress of installation; and

2. On a foundation capable of providing support to the liner(s) and resistance to pressure head above the liner(s) to prevent failure of the liner(s) due to settlement or compression.

(5) Inspections and testing.

(a) 1. During construction or installation, liner systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials).

2. Earth material liner systems must be tested for compaction density, moisture content, and permeability after placement.

3. Manufactured liner materials (e.g., membranes, sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears or blisters.

(b) The owner or operator must inspect:

1. A surface impoundment which contains free liquids at least once each operating day to ensure compliance with Section 21(3)(a), (b), and (c) and to detect any leaks or other failure of the impoundment.

2. Each surface impoundment, including dikes, berms, and vegetation surrounding the dike, at least once a week and after storms to detect any evidence of or potential for leaks from the impoundment, erosion of dikes, and to ensure compliance with Section 21(3)(d).

(c) The structural integrity of any dike, including that portion of any dike which provides freeboard, must be certified against massive failure by a qualified engineer prior to the issuance or reissuance of a permit; or if the impoundment is not in service, prior to being placed in service and after construction or prior to being returned to service.

1. In certifying the structural integrity of the dike, it must be established that the dike will withstand:

a. The stress of the pressure head of liquids placed into the impoundment;

b. The weakening effect of earth materials being scoured due to leakage from the impoundment through and under the dike without relying on any liner system; and

c. The weakening effect of earth materials being scoured due to leakage from the impoundment through and under the dike assuming leaks develop in the liner system.

(6) Containment system repairs; contingency plans.

(a) Whenever there is any indication of a possible failure of the containment system, that system must be inspected in accordance with the provisions of the containment system evaluation and repair plan required by paragraph (d) of this subsection. Indications of possible failure of the containment system include at least an unplanned and non-sudden drop in liquid level in the impoundment, liquid detected in the leachate detection system, evidence of leakage or the potential for leakage in the dike, erosion of the dike, apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials, any mishandling of wastes placed in the impoundment, and foreign objects in the impoundment.

(b) Whenever there is a positive indication of a failure of the containment system, the impoundment must be removed from service. Indications of positive failure of the containment system include an unplanned sudden drop in liquid level in the impoundment, waste detected in the leachate detection system, active leakage through the dike, or a branch (e.g., a hole, tear, crack, or separation) in the liner system.

(c) If the surface impoundment must be removed from service as required by paragraph (b) of this subsection, the owner or operator must:

1. Immediately shut off the flow of or stop the addition of wastes into the impoundment;

2. Immediately contain any leakage which has occurred or is occurring;

3. Immediately cause the leak to be stopped; and

4. If the leak cannot be stopped by any other means, empty the impoundment.

(d) As part of the contingency plan required in Section 4, the owner or operator must specify:

1. The requirements of paragraph (c) of this subsection; and

2. A containment system evaluation and repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to containment system failure or deterioration which does not require the impoundment to be removed from service.

(e) No surface impoundment that has been removed from service in accordance with paragraph (b) of this subsection may be restored to service unless:

1. The containment system has been repaired; and

2. The containment system has been certified by a qualified engineer as meeting the design specifications approved in the permit.

(f) A surface impoundment that has been removed from service in accordance with paragraph (b) of this subsection and that is not being repaired must be closed in accordance with Section 21(7).

(7) Closure. At closure, all hazardous waste and hazardous waste residues must be removed from the impoundment. Any component of the containment system or any appurtenant structures or equipment (e.g., discharge platforms and pipes, and baffles, skimmers, aerators, or other equipment) containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

(8) Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

1. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 401 KAR 2:063; and

2. Section 2(8)(b) is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The surface impoundment is used solely for emergencies.

(9) Special requirements for incompatible wastes. Incompatible wastes, or incompatible wastes and materials, must not be placed in the same surface impoundment except as Section 2(8)(b) is complied with.

Section 22. Waste Piles. (1) Applicability.

(a) The regulations of this section apply to owners and operators of facilities that store or treat hazardous waste in piles, except as Section 1(1) provides otherwise.

(b) Owners and operators of waste piles used to store or treat only hazardous wastes that do not contain free liquids are not subject to regulation under subsections (2), (3), (5) and (6) of this section with respect to those piles, provided that:

1. Liquids or materials containing free liquids are not placed in the pile;

2. The pile is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated;

3. The pile is protected from surface water run-on by the structure or in some other manner;

4. The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

5. The piles will not generate leachate through decomposition or other reactions.

(2) General design requirements.

(a) A waste pile must be designed to control dispersal of the waste by wind, where necessary, or by water erosion.

(b) A waste pile must be designed to prevent discharge into the land, surface water or groundwater during the life of the pile by use of a containment system which complies with Section 22(4).

(3) General operating requirements.

(a) The Secretary of the Department shall specify control practices (e.g., cover or frequent wetting) where necessary to ensure that wind dispersal of hazardous waste from piles is controlled.

(b) Run-on must be diverted away from a waste pile.

(c) Leachate and run-off from a waste pile must be collected and controlled.

(4) Containment systems.

(a) A containment system must be designed, constructed, maintained and operated to prevent discharge into the land, surface water, or groundwater during the life of the waste pile. The system must consist of:

1. A leachate and run-off collection and control system; and either

2. A base underlying and in contact with the waste pile that is made of liner(s) which will prevent discharge into the land, surface water, or groundwater during the life of the pile based on the liner(s) thickness, the permeability of the liner(s), and the characteristics of the waste or leachate to which the liner(s) will be exposed. The liner(s) must be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste in or on the pile, or to clean and expose the liner surface for inspection; or

3. A base as in subsection (2)(a) of this section except that the liner(s) need not be of sufficient strength and thickness to prevent failure due to physical damage from equipment used to clean and expose the liner surface for inspection, and a leachate detection, collection, and removal system beneath the base to detect, contain, collect, and remove any discharge from the base. The leachate detection, collection, and removal system must be placed above the water table to ensure the detection of any discharge through the base; to prevent the discharge of groundwater into the leachate detection, collection, and removal system; and to protect the structural integrity of the base.

(b) A waste pile must be constructed:

1. Of materials that have appropriate chemical properties and strength and of sufficient thickness to prevent failure due to pressure of and physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation; and

2. On a foundation capable of providing support to the liner(s) and to loads placed or moving above the liner(s) to prevent failure of the liner(s) due to settlement or compression.

(c) A containment system must be protected from plant growth which could puncture any component of the system.

(d) A containment system must have a containment life equal to or greater than the life of the pile.

(5) Inspections and testing.

(a) During construction or installation of the waste pile base:

1. Liner systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials); and

2. Manufactured liner materials (e.g., membranes, sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears or blisters.

(6) Containment system repairs; contingency plans.

(a) Whenever there is any indication of a possible failure of the containment system, that system must be inspected in accordance with the provisions of the containment system evaluation and repair plan required by paragraph (d) of this subsection. Indications of possible failure of the containment system include liquid detected in the leachate detection system (where applicable), evidence of leakage or the potential for leakage in the base, erosion of the base, or apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials.

(b) Whenever there is a positive indication of a failure of the containment system, the waste pile must be removed from service. Indications of positive failure of the containment system include waste detected in the leachate detection system (where applicable), or a breach (e.g., a hole, tear, crack, or separation) in the base.

(c) If the waste pile must be removed from service as required by paragraph (b) of this subsection, the owner or operator must:

1. Immediately stop adding wastes to the pile;

2. Immediately contain any leakage which has or is occurring;

3. Immediately cause the leak to be stopped; and

4. If the leak cannot be stopped by any other means, remove the waste from the base.

(d) As part of the contingency plan required in Section 4, the owner or operator must specify:

1. A procedure for complying with the requirements of paragraph (c) of this subsection; and

2. A containment system evaluation and repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the containment system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to containment system failure to deterioration which does not require the waste pile to be removed from service.

(e) No waste pile that has been removed from service in accordance with paragraph (b) of this subsection may be restored to service unless:

1. The containment system has been repaired; and

2. The containment system has been certified by a qualified engineer as meeting the design specifications approved in the permit.

(f) A waste pile that has been removed from service in accordance with paragraph (b) of this subsection and that is not being repaired must be closed in accordance with Section 22(9).

(7) Special requirements for ignitable or reactive waste. Ignitable or reactive waste must not be placed in a pile unless:

(a) Addition of the waste to an existing pile results in the waste of mixture no longer meeting the definition of ignitable or reactive waste under 401 KAR 2:075 and complies with Section 2(8)(b); or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

(8) Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, must not be placed in the same pile unless Section 2(8)(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or the material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with Section 2(8)(b).

(9) Closure. At closure, all hazardous waste and hazardous waste residues must be removed from the pile. Any component of the containment system containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

Section 23. Incinerators. (1) Applicability.

(a) The regulations in this section apply to owners and operators of facilities that incinerate hazardous waste, except as Section 1(1) provides otherwise.

(b) If the Secretary of the Department finds, after an examination of the waste analysis included with Part B of the applicant's permit application, that the waste to be burned:

1. Is either: listed as hazardous waste in 401 KAR 2:075 only because it is ignitable (Hazardous Code I) or that the waste has been tested against the characteristics of hazardous waste under 401 KAR 2:075 and that it meets only the ignitability characteristic; and

2. That the waste analysis included with Part B of the permit application includes none of the hazardous constituents listed in 40 CFR 261, Appendix VIII, filed herein by reference; then the Secretary of the Department may, in establishing the permit conditions, exempt the applicant from all requirements of this section except Section 23(2) and Section 23(8).

(c) The owner or operator of an incinerator may conduct trial burns, subject only to the requirements of 401 KAR 2:060, Section 4.

(2) Waste analysis.

(a) As a portion of a trial burn plan required by or with Part B of his permit application, the owner or operator must have included an analysis of his waste feed sufficient to provide all information required by 401 KAR 2:060, Section 4.

(b) Throughout normal operation the owner or operator must conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit under Section 23(6)(b).

(3) Principal organic hazardous constituents (POHCs).

(a) Principal organic hazardous constituents (POHCs) in the waste feed must be treated to the extent required by the performance standard of Section 23(4).

(b) 1. One (1) or more POHCs will be specified in the facility's permit from among those constituents listed in 40 CFR Part 261, Appendix VIII, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constitutents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constitutents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

2. Trial POHCs will be designated for performance of trial burns in accordance with the procedures specified in 401 KAR 2:060 for obtaining trial burn permits.

(4) Performance standards. An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 23(6), it will meet the following performance standards:

(a) An incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of ninety-nine and ninety-nine hundredths (99.99) percent for each principal organic hazardous constitutent (POHC) designated (under Section 23(3)) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(W_{in}-W_{out}) \times 100\%}{W_{in}}$$

Where: exhaust emissions prior to release to the atmosphere.

Where: W_{in} = Mass feed rate of one (1) principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator; and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(b) An incinerator burning hazardous waste containing more than five tenths (0.5) percent chlorine must remove ninety-nine (99) percent of the hydrogen chloride from the exhaust gas.

(c) An incinerator burning hazardous waste must not emit particulate matter exceeding 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for twelve (12) percent CO_2 using the procedures presented in the Clean Air Act regulations, "Standards of Performance for Incinerators," 40 CFR 60.50, Supart E.

(d) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 23(6)) will be regarded as compliance with this subsection. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this subsection may be "information" justifying modification, revocation, or reissuance of a permit under 401 KAR 2:060.

(5) New wastes: trial burns or permit modifications.

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under Section 23(6) except:

1. In approved trial burns under 401 KAR 2:060; or
2. Under exemptions created by Section 23(1).

(b) Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with Part B of a permit application under 401 KAR 2:060.

(6) Operating requirements.

(a) An incinerator must be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated (in a trial burn or in alternative data as specified in and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards for Section 23(4).

(b) Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed) which will not affect compliance with the performance requirement of Section 23(4) to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

1. Carbon monoxide (CO) level in the stack exhaust gas;
2. Waste feed rate;
3. Combustion temperature;
4. Air feed rate to the combustion system;
5. Allowable variations in incinerator system design or operating procedures; and
6. Such other operating requirements as are necessary to ensure that the performance standards of Section 23(4) are met.

(c) During start-up and shut-down of an incinerator, hazardous waste (except ignitable waste exempted in accordance with Section 23(1)) must not be fed into the incinerator unless the incinerator is operating within the conditions of operation (temperature, air feed rate, etc.) specified in the permit.

(d) Fugitive emissions from the combustion zone must be controlled by:

1. Keeping the combustion zone totally sealed against fugitive emissions; or
2. Maintaining a combustion zone pressure lower than atmospheric pressure; or
3. An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under paragraph (a) of this subsection.

(f) An incinerator must cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

(7) Monitoring and inspections.

(a) The owner or operator must conduct, as a minimum, the following monitoring while incinerating hazardous waste:

1. Combustion temperature, waste feed rate, and air feed rate must be monitored on a continuous basis.
2. CO must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.
3. Upon request by the Secretary of the Department, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the performance standards of Section 23(4).

(b) The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be completely inspected at least daily for leaks, spills, and fugitive emissions. All emergency waste feed cut-off controls and system alarms must be checked daily to verify proper operation.

(c) This monitoring and inspection data must be recorded and the records must be placed in the operating log required by Section 5(4).

(8) Closure. At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.
SUBMIT COMMENT TO: Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Envirnmental Protection
Division of Waste Management

401 KAR 2:073. Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities.

RELATES TO: KRS 224.255, 224.855, 224.866
PURSUANT TO: KRS 13.082, 224.017, 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the department to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This regulation establishes minimum standards for hazardous facilities qualifying for interim status.

Section 1. The general provisions concerning interim status standards for hazardous waste treatment, storage and disposal facilities 40 CFR 265, Subpart A, are adopted, and filed herein by reference.

Section 2. General Facility Standards. The general facility standards contained in 40 CFR 265, Subpart B, are adopted and filed herein by reference.

Section 3. (1) Preparedness and prevention. The provisions concerning preparedness and preventions contained in 40 CFR 265, Subpart C, are adopted and filed herein by reference.

(2) Contingency plan and emergency procedures. The provisions concerning contingency plans and emergency procedures contained in 40 CFR 265, Subpart D, are adopted and filed herein by reference.

Section 4. Manifest System, Recordkeeping and Reporting. The provisions for the manifest system, recordkeeping and reporting contained in 40 CFR 265, Subpart E, are adopted and filed herein by reference.

Section 5. Groundwater Monitoring. The provisions for groundwater monitoring contained in 40 CFR 265, Subpart F, are adopted and filed herein by reference.

Section 6. Closure and Post-Closure. The provisions for closure and post-closure contained in 40 CFR 265, Subpart G, are adopted and filed herein by reference.

Section 7. Financial Requirements. The provisions for financial requirements contained in 40 CFR 265, Subpart H, are adopted and filed herein by reference.

Section 8. Use and Management of Containers. The provisions concerning containers in 40 CFR 265, Subpart I, are adopted and filed herein by reference.

Section 9. Tanks. The provisions concerning tanks contained in 40 CFR 265, Subpart J, are adopted and filed herein by reference.

Section 10. Surface Impoundments. The provisions concerning surface impoundments contained in 40 CFR 265, Subpart K, are adopted and filed herein by reference.

Section 11. Waste Piles. The provisions concerning waste piles contained in 40 CFR 265, Subpart L, are adopted and filed herein by reference.

Section 12. Land Treatment. The provisions concerning land treatment contained in 40 CFR 265, Subpart M, are adopted and filed herein by reference.

Section 13. Landfills. The provisions concerning landfills contained in 40 CFR 265, Subpart N, are adopted and filed herein by reference.

Section 14. Incinerators. The provisions concerning incinerators contained in 40 CFR 265, Subpart O, are adopted and filed herein by reference.

Section 15. Thermal Treatment. The provisions concerning thermal treatment contained in 40 CFR 265, Subpart P, are adopted and filed herein by reference.

Section 16. Chemical, Physical, and Biological Treatment. The provisions concerning chemical, physical and biological treatment contained in 40 CFR 265, Subpart Q, are adopted and filed herein by reference.

Section 17. Underground Injection. The provisions concerning underground injection contained in 40 CFR 265, Subpart R, are adopted and filed herein by reference.

JACKIE SWIGART, Secretary
ADOPTED: December 15, 1981
RECEIVED BY LRC: December 15, 1981 at 4:30 p.m.
SUBMIT COMMENT TO: Director, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOUCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 30:025. Experimental practices.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation governs the granting and approval of experimental practices that encourage advances in mining, reclamation, and postmining land use practices.

Section 1. General. (1) Applicability. This regulation shall apply to any person who conducts or intends to conduct oil shale operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of Title 405, Chapter 30, and such variance is not otherwise obtainable under Title 405, Chapter 30.

(2) This regulation sets forth requirements for the permitting of oil shale operations that encourage advances in mining and reclamation practices or allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(3) Experimental practices need not comply with specific environmental protection performance standards of Title 405, Chapter 30, if approved pursuant to this regulation.

Section 2. Approval Procedures. (1) Approval required. No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the department.

(2) Application requirements. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the department. The permit application shall contain appropriate descriptions, maps, and plans which show:

(a) The nature of the experimental practice;

(b) How use of the experimental practice:

1. Encourages advances in mining and reclamation technology; or

2. Allows a postmining land use for industrial, commercial, residential, and public use (including recreational

facilities), on an experimental basis, when the results are not otherwise attainable under the regulations of Title 405, Chapter 30.

(c) That the oil shale operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

(d) That the experimental practice:

1. Is potentially more or at least as environmentally protective, during and after the proposed oil shale operations, as those required under Title 405, Chapter 30; and

2. Will not reduce the protection afforded public health and safety below that provided by the requirements of Title 405, Chapter 30.

(e) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall:

1. Insure the collection and analysis of sufficient and reliable data to enable the department to make adequate comparisons with other oil shale operations employing similar experimental practices; and

2. Include requirements designed to identify, as soon as possible, potential risks to the environmental and public health and safety from the use of the experimental practice.

(f) Each application shall set forth the environmental protection performance standards of Title 405, Chapter 30 which will be implemented in the event the objective of the experimental practice is a failure.

(3) Public notice. All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the department required under 405 KAR 30:130, Section 5.

(4) Criteria for approval. No permit authorizing an experimental practice shall be issued unless the department finds in writing upon the basis of both a complete application filed in accordance with the requirements of this regulation and Title 405, Chapter 30, that:

(a) The experimental practice meets all of the requirements of subsection (2)(b) through (e);

(b) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved; and

(c) The permit contains conditions which specifically:

1. Limit the experimental practice authorized to that granted by the department;

2. Impose enforceable alternative environmental protection requirements; and

3. Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application with such additional requirements as the department may require.

Section 3. Periodic Review. (1) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every three (3) years by the department or at least once prior to the middle of the permit term. After review the department shall require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety.

(2) Administrative review of modification order. Any person who is or may be adversely affected by an order pursuant to subsection (1) shall be provided with an opportunity for a hearing as established in 405 KAR 30:020.

JACKIE SWIGART, Secretary

ADOPTED: December 14, 1981

RECEIVED BY LRC: December 14, 1981 at 4 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven Taylor, Division of Operations and Enforcement, Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 30:035. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth the general requirements for performance bonds and liability insurance.

Section 1. Applicability. This regulation sets forth the minimum requirements for filing and maintaining performance bonds and insurance for oil shale operations.

Section 2. Requirement to File a Bond. (1) After an application for a new, revised or renewed permit to conduct oil shale operations has been approved but before such permit is issued, the applicant shall file with the department a performance bond payable to the department. A condition of the performance bond will be the faithful completion of all the requirements of the applicable statutes, the pertinent regulations promulgated pursuant thereto, and the provisions of the reclamation plan and permit.

(2) The performance bond liability shall apply to all oil shale operations and related activities conducted within the permit area. Liability shall continue until requirements established by the department have been met. After the amount of the bond has been determined for the permit area, the permittee or applicant shall file the entire performance bond required during the term of the permit.

Section 3. Requirement to File a Certificate of Liability Insurance. Each applicant shall file as a part of the permit application evidence that the applicant has obtained liability insurance.

Section 4. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the department prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S"—Single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant must file the entire bond amount required by the department prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. There shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 30:070 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "C"—Cumulative bonding. A cumulative bond is a bond which covers the entire permit area at all times, which may be filed by the permittee in partial bond amounts as operations progress through the permit area, with credit for successful reclamation on previously reclaimed sections of the permit area.

(a) For purposes of filing partial bond amounts, but not for purposes of bond release or bond forfeiture, the permit area shall be divided into sectional areas which shall be subject to approval by the department. These sections shall be clearly identified on maps submitted in the permit application under 405 KAR 30:130 and the applicant shall describe the approximate time schedule for beginning operations in each section.

(b) Prior to issuance of the permit, the applicant shall file the partial bond amount which the department determines is necessary for the first section of the permit area. The partial bond amount filed for the initial section shall not be less than the minimum bond required for the permit area under 405 KAR 30:040.

(c) The permittee shall not engage in any oil shale operations on any section of the permit area unless and until the partial bond amount determined by the department for that section has been filed with the department. The permittee shall file with the department the partial bond amount required for any section at least thirty (30) days prior to beginning operations in that section. In determining the partial bond amount required to be filed for any section of the permit area, the department may allow credit for reclamation successfully completed on previously reclaimed sections of the permit area according to 405 KAR 30:070.

(d) The boundaries of sections for which the required partial bond amounts have been filed shall be physically marked at the site in a manner approved by the department.

(e) Although the bond amount is filed with the department in partial amounts as additional sections of the permit area are affected, liability under the bond extends at all times to the entire permit area, and the entire accumulated bond amount is applicable to the entire permit area. There shall be no release of bond for completion of a particular phase of reclamation on any part of the permit area until that phase of reclamation has been successfully completed on the entire permit area.

(3) Method "I"—Incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the department. Where the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area must be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under 405 KAR 30:130, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the department the full bond amount required by the department for the first increment of the permit area, which shall be not less than the minimum bond required for the permit area required under 405 KAR 30:040.

(c) The permittee shall not engage in any oil shale operations on any increment of the permit area unless and until the full bond amount required by the department has been filed for that increment. The full bond amount required for any increment shall be filed with the department at least thirty (30) days prior to beginning operations in that increment. No credit shall be given for reclamation on other increments.

(d) The boundaries of each increment for which bond has been filed shall be physically marked at the site in a manner approved by the department.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) There shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 30:070, the increment shall be deleted from the permit area.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven Taylor, Division of Operations and Enforcement, Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 30:050. Bonding requirements for long-term facilities and structures.

RELATES TO: KRS 350.600
PURSUANT TO: KRS 13.082, 224.033, 350.028, 350.050, 350.151, 350.600
NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth procedures to determine bond amounts, periods of liability, types of bonds, and forfeiture for certain long-term facilities and structures. This regulation is applicable to portions of oil shale operations which will disturb the surface for more than five (5) years and certain other structures and facilities.

Section 1. Applicability. (1) Operations subject to the provisions of this regulation are:

(a) Portions of oil shale operations which will continuously disturb the surface for a period in excess of five (5) years and surface construction activities related to drainage treatment and subsidence control measures;

(b) Oil shale processing facilities to be operated for more than five (5) years from the date a permit is first issued;

(c) Oil shale refuse areas to be operated for more than five (5) years;

(d) Oil shale facilities to be operated for more than five (5) years from the date a permit is first issued; and

(e) Long-term oil shale related facilities to be permitted for operation longer than five (5) years in accordance with 405 KAR 30:130.

(2) Such operations conducted within a permit area for a mine including areas or facilities not subject to this regulation may be bonded as a separate increment of the mine permit area. If bonded separately, provisions of this regulation shall apply to that increment. If bonded as part of the permit area which included areas or facilities not subject to this regulation, bond liability shall continue in accordance with 405 KAR 30:040.

Section 2. Amount of Bond Required. (1) The department shall determine the bond amount necessary to complete reclamation of the area in accordance with 405 KAR 30:040.

(2) The area considered in the reclamation plan shall include the entire area disturbed.

(3) The amount of bond necessary to obtain a permit is the entire performance bond required during the term of the permit.

Section 3. Period of Liability. Liability under performance bonds shall be as set forth in 405 KAR 30:040, Section 5.

Section 4. Type of Bond. Performance bonding may be authorized by the department in accordance with the methods listed in 405 KAR 30:060.

Section 5. Applicability of Other Regulations. Except to the extent that provisions of Title 405, Chapter 30 conflict with this regulation, all other provisions of Title 405, Chapter 30, shall apply to bonding requirements for facilities subject to this regulation.

Section 6. Bond Forfeiture. The department may forfeit a bond pursuant to this regulation if the department determines that a permittee is subject to forfeiture under the criteria of 405 KAR 30:080.

JACKIE SWIGART, Secretary

ADOPTED: December 14, 1981

RECEIVED BY LRC: December 14, 1981 at 4 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven Taylor, Division of Operations and Enforcement, Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 30.121. Oil shale exploration.

RELATES TO: KRS 61.870 through 61.884, 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 224.035, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth requirements for conducting oil shale exploration.

Section 1. Exploration of Less Than 250 Tons. (1) Any person who intends to conduct oil shale exploration during which less than 250 tons of oil shale will be removed in the area to be explored shall, at least twenty-one (21) days prior to conducting the exploration, file with the department a written notice of intention to explore.

(2) The notice shall include:

(a) The name, address, and telephone number of the person seeking to explore;

(b) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(c) A precise description of the exploration area;

(d) A statement of the period of intended exploration;

(e) The names and addresses of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(f) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities; and

(g) A statement as to whether the proposed oil shale exploration will be conducted within an area which has been designated unsuitable for mining pursuant to 405 KAR 30:200.

(3) The department shall, in accordance with Section 3, place such notices on public file and make them available for public inspection and copying at the appropriate regional office of the bureau.

(4) Any person who conducts oil shale exploration activities pursuant to this section which substantially disturb any natural land surface shall comply with 405 KAR 30:125.

(5) If the department determines that the area of proposed oil shale exploration will be within an area designated unsuitable for mining pursuant to 405 KAR 30:200, the exploration shall be subject to approval by the department. The department shall, within fifteen (15) days of receipt of the applicant's written notice filed pursuant to subsection (1) of this section, provide written notice to the applicant that either:

(a) The exploration is approved; or

(b) The exploration threatens to interfere with the values for which the area has been designated unsuitable for mining, and therefore is not approved until the applicant has submitted to the department an acceptable plan to conduct the exploration so as not to interfere with such values; or

(c) The exploration is incompatible with the values for which the area was designated unsuitable for mining, and therefore is not approved.

(6) Any person whose interests are or may be adversely affected by any actions of the department pursuant to

subsection (5) of this section shall have recourse to administrative and judicial review.

Section 2. Exploration of More Than 250 Tons. (1) General. Any person who intends to conduct oil shale exploration in which more than 250 tons of oil shale are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the department in accordance with this section.

(2) Contents of application for approval. Each application for approval in the number and form required by the department, shall contain, at a minimum, the following information:

(a) The name, address, and telephone number of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(c) An exploration and reclamation operations plan, including:

1. A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (e) of this subsection, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and known archeological resources located within the proposed exploration area;

2. A narrative description of the methods to be used to conduct oil shale exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

3. An estimated timetable for conducting and completeing each phase of the exploration and reclamation;

4. The estimated amounts of oil shale to be removed and a description of the methods to be used to determine those amounts;

5. A description of the measures to be used to comply with the applicable requirements of 405 KAR 30:125;

6. A statement as to whether the proposed oil shale exploration will be conducted within the area which has been designated unsuitable for mining pursuant to 405 KAR 30:200. If so, the application shall include a description of the measures to be taken so as not to interfere with the values for which the area was designated unsuitable.

(d) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(e) 1. A USGS 7½-minute topographic map marked showing the area of land to be affected and location of drill holes or excavations, and

2. A map at a scale of 1:6000 (one (1) inch equals 500 feet) or larger, showing the areas of land which may be affected by the proposed exploration and reclamation. The map shall also specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or oil shale exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC sec. 1531 et seq.); and

(f) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(3) Public notice and opportunity to comment. Public notice of the complete application and opportunity to comment shall be provided as follows:

(a) As contemporaneously as possible with receipt of written notification from the department under subsection (4)(a) of this section that the application is determined to be complete, public notice of the filing of the complete application with the department shall be published by the applicant in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county in which the exploration area is located.

(b) The public notice shall state the name and business address of the person seeking approval, the date of the filing of the complete application, the address of the department at which written comments on the application may be submitted, the closing date of the public comment period under paragraph (c) of this subsection, and a description of the general area of exploration.

(c) Any person with an interest which is or may be adversely affected shall have the right to file with the department written comments on the complete application within thirty (30) days of the publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within twenty-one (21) days of receipt of an application for approval of oil shale exploration, the department shall provide written notification to the applicant as to the completeness of the application. The date of such written notification shall be deemed the date of filing of the complete application. A determination by the department that the application is complete shall not be construed to mean that the application is technically sufficient.

(b) The department shall act upon a complete application within sixty (60) days after the filing of the complete application.

(c) The department shall approve a complete application filed in accordance with this regulation if it finds in writing that the applicant has demonstrated that the exploration and reclamation described in the application:

1. Will be conducted in accordance with KRS 350.600, 405 KAR 30:125, and this regulation;

2. Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

3. Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the department and the agency with management responsibility over such areas; and

4. If located within an area designated unsuitable for mining, will not be incompatible with the values for which the area was designated unsuitable for mining.

(5) Terms of approval and bond requirement.

(a) Each approval issued by the department may contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS 350.600, 405 KAR 30:125, and this regulation.

(b) Length of approval. An exploration approval shall

be valid for two (2) years. A valid exploration approval shall carry with it the right of successive renewal upon expiration of the term of the approval.

(c) Bond requirement. If an application reveals that there will be a substantial disturbance to the natural land surface, a bond shall be posted in accordance with the requirements of 405 KAR 30:040, Section 1.

(6) Notice and hearing.

(a) The department shall notify the applicant and any other party who has requested such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with interests which are or may be adversely affected by a decision of the department pursuant to paragraph (a) of this subsection shall have the opportunity for administrative and judicial review.

Section 3. Public Availability of Information. All information submitted to the department under this regulation shall be made available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, and 405 KAR 30:150.

Section 4. Compliance. All oil shale exploration and reclamation operations which substantially disturb the natural land surface or which remove more than 250 tons of oil shale shall be conducted in accordance with this regulation and 405 KAR 30:125, and any conditions on approval for exploration and reclamation imposed by the department.

JACKIE SWIGART, Secretary

ADOPTED: December 14, 1981

RECEIVED BY LRC: December 14, 1981 at 4 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven Taylor, Division of Operations and Enforcement, Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 30:125. Oil shale exploration performance standards.

RELATES TO: KRS 350.600

PURSUANT TO: KRS 13.082, 151.125, 224.033, 224.035, 350.028, 350.050, 350.600

NECESSITY AND FUNCTION: KRS 350.600 requires the Department for Natural Resources and Environmental Protection to develop regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This regulation sets forth performance standards applicable to oil shale exploration operations which substantially disturb the land surface.

Section 1. General Responsiblity of Persons Conducting Oil Shale Exploration. (1) Each person who conducts oil shale exploration which substantially disturbs the natural land surface and in which 250 tons or less of oil shale are removed shall file the written notification to explore required under 405 KAR 30:121, Section 1, and shall comply with Section 3 of this regulation.

(2) Each person who conducts oil shale exploration which substantially disturbs the natural land surface and in which more than 250 tons of oil shale are removed in the area described by the written approval from the department shall comply with the procedures described in the exploration and reclamation operations plan approved under 405 KAR 30:121, Section 2, and shall comply with Section 3 of this regulation.

Section 2. Required Documents. Each person who conducts oil shale exploration which substantially disturbs the natural land surface and which removes more than 250 tons of oil shale shall, while in the exploration area, possess written approval of the department for the activities granted under 405 KAR 30:121, Section 2. The written approval shall be available for review by the authorized representative of the department or the Bureau of Surface Mining Reclamation and Enforcement upon request.

Section 3. Performance Standards for Oil Shale Exploration. The performance standards in this section are applicable to oil shale exploration which substantially disturbs land surface.

(1) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 405 KAR 30:121, Section 2(2)(c)1, shall not be disturbed during oil shale exploration.

(2) The person who conducts oil shale exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under 405 KAR 30:130.

(3) (a) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts oil shale exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(b) Any new road in the exploration area shall comply with the provisions of 405 KAR 30:260.

(c) Existing roads may be used for exploration in accordance with the following:

1. All applicable federal, state, and local requirements shall be met.

2. If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then subsection (7) of this section shall apply to all areas of the road which are altered or which result in such additional contributions.

3. If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of 405 KAR 30:260 are met for the design, construction, alteration, and maintenance of the road.

(d) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:

1. To a condition equal to or better than their pre-exploration condition; or

2. To the condition required for permanent roads under 405 KAR 30:260.

(4) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the department.

(5) Revegetation of areas disturbed by oil shale exploration shall be performed by the person who conducts the exploration or his agent. If more than 250 tons of oil shale are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the department and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(a) All disturbed land shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(6) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during oil shale exploration activities. Overland flow of water shall be diverted in a manner that:

(a) Prevents erosion;

(b) To the extent possible using the best technology currently available, prevents additional contributions or suspended solids to streamflow or runoff outside the exploration area; and

(c) Complies with all other applicable state or federal requirements.

(7) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirement of 405 KAR 30:270.

(8) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that may remain to:

(a) Provide additional environmental quality data;

(b) Reduce or control the on and off-site effects of the exploration activities; or

(c) Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.

(9) Oil shale exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in 405 KAR 30:330. The department may specify additional measures which shall be adopted by the person engaged in oil shale exploration.

(10) Toxic or acid-forming materials shall be handled and disposed of in accordance with the plan approved by the department under 405 KAR 30:121, Section 2(2)(c).

Section 4. Requirements for a Permit. Any person who extracts oil shale for commercial sale during oil shale exploration operations must obtain a permit for those operations from the department under 405 KAR 30:130. No permit is required if the department makes a prior determination that the sale is to test for oil shale properties necessary for the development of oil shale operations for which a permit application is to be submitted at a later time.

JACKIE SWIGART, Secretary
ADOPTED: December 14, 1981
RECEIVED BY LRC: December 14, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steven Taylor, Division of Operations and Enforcement, Bureau of Surface Mining Reclamation and Enforcement, Department for Natural Resources, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities

804 KAR 4:020. Compliance with Federal Consumer Credit Protection Act.

RELATES TO: KRS 360.210 to 360.265
PURSUANT TO: KRS 360.260(2)
NECESSITY AND FUNCTION: By April 1, 1982, creditors must begin complying with an amended Federal Consumer Credit Protection Act. Since it is the expressed legislative intent of KRS 360.210 to 360.265 to require disclosure of items of information substantially similar to the requirements of any applicable federal law, the purpose of this regulation is to state the Department's position that compliance with the federal Truth-in-Lending law is sufficient; and that Kentucky law places no additional disclosure requirements on creditors.

Section 1. Compliance with the requirements or exemptions from compliance with the Federal Consumer Credit Protection Act Title I (Truth in Lending Act) and Title V (General Provisions), Public Law 90-321; 82 Stat. 146 et seq. and any amendments thereto, and all regulations prescribed pursuant to said Law shall be deemed to be in compliance with the requirements of KRS 360.210 to 360.265.

TRACY FARMER, Secretary
ADOPTED: December 11, 1981
RECEIVED BY LRC: December 15, 1981 at 4:05 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities

808 KAR 10:200. Investment advisers' minimum liquid capitalization.

RELATES TO: KRS 292.330(5)
PURSUANT TO: KRS 13.082, 292.500(3)
NECESSITY AND FUNCTION: To protect the public interest by establishing a minimum liquid capitalization for investment advisers.

Section 1. The minimum liquid net capital to be maintained by an investment adviser shall be $5,000 unless the investment adviser charges prepaid fees or has custody of client funds, in which case the minimum liquid net capital to be maintained by such investment adviser shall be $20,000.

Section 2. The minimum capitalization established in Section 1 may be reduced or waived by the director upon a showing that such minimum capitalization is not necessary in the public interest given the limited nature of the adviser's activities.

TRACY FARMER, Secretary
ADOPTED: December 11, 1981
RECEIVED BY LRC: December 15, 1981 at 4:05 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andrew J. Palmer, General Counsel, Department of Banking and Securities, 911 Leawood Drive, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board

902 KAR 20:009. Facility specifications; hospitals.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1),(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the structural specifications and plant requirements for new construction and alteration and maintenance of hospital facilities. Hospital facilities licensed prior to the effective date of this regulation shall meet the structural specifications in force on the date of their most recent licensure inspection.

Section 1. Definitions. (1) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(2) "Certificate of need" means an authorization by the Board to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.

(3) "License" means an authorization issued by the Board for the purpose of operating a hospital facility.

(4) "Licensure agency" means the Division for Licensing and Regulation in the office of the Inspector General, Department for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need from the Board, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities for a hospital, the licensee or applicant shall submit plans to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted, together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction. Appropriate local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications for Hospitals. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts scaled (one-half (½) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, plans shall show the facilities and general arrangements of those buildings.

(2) Second stage, preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural.

1. Plans of basement, floors and roof showing space assignment, sizes, and outline of fixed and movable equipment;
2. All elevators and typical sections;
3. Plot plan showing roads, parking, and sidewalks;
4. Areas and bed capacities by floors.

(b) Mechanical.

1. Single line layout of all duct and piping systems;
2. Riser diagrams for multistory construction;
3. Scale layout of boilers and major associated equipment and central heating, cooling, and ventilating units.

(c) Electrical.

1. Plans showing space assignments, sizes and outlines of fixed equipment such as transformers, main switch and switchboards, and generator sets;
2. Simple riser diagram for multistory building construction, showing arrangement of feeders, subfeeders, bus work, load centers, and branch circuit panels.

(d) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;
2. Description of the air-conditioning, heating, and ventilation systems and their controls; duct and piping systems; and dietary, laundry, sterilizing and other special equipment;
3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage, contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site

(if any), new building structures, roadways, walks, and parking areas;
b. Plan of each basement, floor, and roof;
c. Elevations of each facade;
d. Sections through building;
e. Required scale and full-size details;
f. Schedule of doors, windows, and room finishes;
g. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;
h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following: dumbwaiters: electric, hand, hydraulic; elevators: freight, passenger, patient; loading dock devices; pneumatic tube systems.
2. Structual drawings.
a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;
b. Dimensions of special openings;
c. Details of all special connections, assemblies, and expansion joints.
3. Mechanical drawings.
a. Heating, steam piping, and air-conditioning systems. Radiators and steam heated equipment such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.
b. Plumbing, drainage, and standpipe systems—Size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram for all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.
4. Electrical drawings.
a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;
b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;
c. Light outlets, receptacles, switches, power outlets and circuits;
d. Telephone layout showing service entrance telephone switchboard, strip boxes, telephone outlets and branch conduits;
e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;
f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;
g. All other electrically operated systems and equipment.
(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:
1. Cover or title sheet;
2. Index;
3. Sections describing materials and workmanship in detail for each class of work.
(c) Access to work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) Section 4 may be administered independently from other sections of this regulation.
(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.
(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:
(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;
(b) Requirements for plumbing pursuant to 815 KAR 20:010-191, as amended;
(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010;
(d) Requirements for elevators pursuant to 803 KAR 4:010;
(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.
(4) Prior to occupancy the facility shall have final approval from appropriate agencies.
(5) All facilities shall be currently approved by the Fire Marshal's office in accordance with the Life Safety Code before relicensure is granted by the licensing agency.

Section 5. Facility Requirements and Special Conditions. (1) A copy of the narrative program as submitted in the Certificate of Need application for each project shall be provided by the sponsor and shall describe the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.
(2) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.
(3) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:
(a) Maximum room capacity shall be four (4) patients.
(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, or vestibules shall be 100 square feet in one (1) bed rooms and eighty (80) square feet per bed in multi-bed rooms.
(c) Multi-bed rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall

with not less than a four (4) foot space provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of the opposite bed in multi-bed rooms.

(d) Window. All patient rooms must have windows operable without the use of tools and shall have sills not more than three (3) feet above the floor. Window area shall be at least eight (8) percent of patient room floor area.

(e) Nurses' calling system. See Section 32(7).

(f) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room.

(g) Wardrobe or closet for each patient. Minimum clear dimensions shall be eight (8) inches deep by one (1) foot and eight (8) inches wide with full length hanging space, clothes rod and shelf.

(h) Cubicle curtains, or equivalent built-in devices shall be provided to furnish complete privacy for each patient at any one time in multi-bed rooms.

(i) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room. At least sixty (60) percent of the beds in a nursing unit shall be located in rooms designed for one (1) or two (2) beds.

(2) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit and shall include:

(a) Nurses' station for charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(b) Clean workroom or clean holding area. The clean workroom shall contain a work counter, handwashing and storage facilities. The clean holding room shall be part of a system for storage and distribution of clean and sterile supplies and shall be similar to the clean workroom except that the work counter and handwashing facilities may be omitted.

(c) Soiled workroom or soiled holding room. The soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for handwashing, work counter, waste receptacle, and linen receptacle. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(d) Lounge and toilet room(s) for staff including lockers for storage of personal effects readily accessible. (May serve more than one (1) nursing unit.)

(e) Multi-purpose room for conferences, demonstrations and consultation. (May serve more than one (1) nursing unit.)

(f) Room for examination and treatment of patients. It shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet. (May serve more than one (1) nursing unit.) Room may be eliminated if all patient rooms are single-bed rooms. The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and examination table. The emergency treatment room may be used for this purpose, if it is conveniently located on the same floor as the patient rooms.

(g) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of preparation room or unit, a self-contained medicine dispensing unit, or by another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff. Controlled substances locker must be under double lock. A handwashing facility shall be provided.

(h) Clean linen storage. Enclosed storage space (may be designated area within the clean workroom). If a closed cart system is used, storage may be in an alcove.

(i) Nourishment station. This shall contain a sink equipped for handwashing. Equipment for serving between scheduled meals, refrigerator, storage cabinets, and icemaker-dispenser units to provide patient service and treatment. (May serve more than one (1) nursing unit on the same floor.)

(j) Patients' bathing facilities. At least one (1) shower stall or one (1) bathtub for each twelve (12) patients not individually served. At least one (1) bathing facility on each patient floor shall have space for a wheelchair patient with an assisting attendant. At least one (1) sitz bath shall be provided in post partum units.

(k) Stretcher and wheelchair parking area or alcove. (May serve more than one (1) nursing unit on the same floor.)

(l) Janitor's closet for storage of housekeeping supplies and equipment with a floor receptor or service sink. (May serve more than one (1) nursing unit on the same floor.)

(m) Equipment storage room with sufficient space for equipment such as I.V. stands, inhalators, air mattresses, and walkers. (May serve more than one (1) nursing unit on the same floor.)

(n) Emergency equipment storage. Space for equipment such as crash carts shall be provided and be under direct control of the nursing staff in close proximity to the nurses' station and out of traffic. (May serve more than one (1) nursing unit on the same floor.)

(3) Patient toilet rooms. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms, but not more than four (4) beds. (The lavatory may be omitted from the toilet room if one (1) is provided in each patient room.)

(4) Isolation room. Isolation room(s) for the particular use of those prone to infections as well as those suffering from infections shall be provided. Each isolation room shall have:

(a) Only one (1) patient per room;

(b) Separate toilet room with bath or shower and lavatory for the exclusive use of the patient allowing for direct entry from the patient bed area; and

(c) Facilities outside and immediately adjacent to the patient room for maintaining aseptic conditions.

Section 7. Intensive Care Unit. Hospitals which have intensive care units shall meet the following requirements:

(1) Patient rooms. Cardiac intensive care patients shall be placed in single-bed rooms. Medical and surgical intensive care patients may be housed in a single-bed room or in multi-bed rooms. In the latter case, at least one (1) single-bed room shall be provided in each unit. All beds shall be arranged to permit direct visual observation arranged to permit direct visual observation by nursing staff. Each pa-

(a) Clearance between beds in multi-bed rooms shall not be less than seven (7) feet with a minimum of three (3) feet to the side of beds and at least four (4) feet from the foot of the beds. Single-bed rooms or cubicles shall have a minimum clear area of 120 square feet with a minimum dimension of ten (10) feet.

(b) View panels shall be provided in the doors and walls for nursing staff observation of patients. A means shall be provided to obstruct the view panels when the patient requires visual privacy. Glazing for view panels shall be safety glass, wire glass or clear plastic to reduce the hazard from accidental breakage, except where wire glass is required for fire safety purposes.

(c) An I.V. solution support shall be provided for each patient so that the solution is not suspended directly over the patient.

(d) A lavatory equipped for handwashing shall be provided in each private patient room. In multi-bed rooms there shall be at least one (1) lavatory for each six (6) beds.

(e) Nurses' calling system. See Section 32(7).

(f) Each cardiac intensive care patient shall be provided a toilet facility which is directly accessible from the bed area. The water closet shall have sufficient clearance around it to facilitate its use by patients needing assistance. Portable water closets are permitted within the patient room. If portable units are used, facilities for servicing and storing them shall be conveniently located to the cardiac care unit.

(g) Each room shall have a window or each bed shall have visual access to a window. In the latter case, by use of vision panels in partitions, one (1) window may serve more than one (1) patient. The window sill height shall not exceed three (3) feet above the floor.

(2) Service areas. The size and location of each service area will depend upon the number of beds to be served. One (1) area may serve two (2) or more intensive care units. The following service areas shall be located in or be readily available to each intensive care unit:

(a) Nurses' station. It shall be located to permit direct visual observation of each patient served.

(b) Handwashing facilities. These shall be located convenient to the nurses' station and medicine area.

(c) Charting facilities. These shall be separated from the monitoring service.

(d) Staff's toilet room. This room shall contain a water closet and lavatory equipped for handwashing.

(e) Individual closets or compartments for the safekeeping of coats and personal effects belonging to the nursing staff. They shall be located at or near the nurses' station.

(f) Clean workroom or a system for storage and distribution of clean and sterile supplies. The clean workroom shall contain a work counter, handwashing facility, and storage facilities.

(g) Soiled workroom or soiled holding room. The soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for handwashing, work counter, waste receptacle and soiled linen receptacles. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(h) Facilities for washing or flushing bedpans. These shall be provided within the unit.

(i) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit or by another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control, contain a work counter, refrigerator, and locked storage for biologicals and drugs. It shall contain a minimum floor area of fifty (50) square feet. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff. Controlled substances must be under double lock and a handwashing facility shall be provided.

(j) Clean linen storage. A separate closet or designated area within the clean workroom shall be provided. If a closed cart system is used, storage may be in an alcove.

(k) Nourishment station. This shall contain a sink equipped for handwashing, equipment for serving between scheduled meals, refrigerator, storage cabinets and icemaker-dispenser units to provide ice for patients' service and treatment.

(l) Emergency equipment storage. Space shall be provided for a crash cart and similar emergency equipment.

(m) Equipment storage room. Space for necessary equipment such as inhalators shall be provided.

(n) Patients' storage facilities. Individual lockers shall be provided for the storage of patients' clothing and personal effects. These lockers may be located outside the intensive care unit. Lockers shall be of size to permit hanging of full length garments.

(o) Waiting room. A separate waiting room shall be provided for family members and others who may be permitted to visit the intensive care patients. A toilet room, public telephone, and seating accommodations for long waiting periods shall be provided.

Section 8. Obstetrical Suite. (1) General. If an obstetrical suite is included in the narrative program, it shall be located and arranged to preclude unrelated traffic through the suite. The number of delivery rooms, labor rooms, recovery beds, and the sizes of the service areas shall depend upon the estimated obstetrical workload.

(2) Delivery room(s). Each room shall have a minimum clear floor area of 300 square feet exclusive of fixed and movable cabinets and shelves with a minimum dimension of sixteen (16) feet.

(3) Labor room(s). These rooms shall be single-bed or two (2) bed rooms with a minimum clear area of 100 square feet per bed. Labor beds shall be provided at the rate of two (2) for each delivery room. Each labor room shall contain a lavatory equipped for handwashing and have direct access to a toilet room. One (1) toilet room may serve two (2) labor rooms. Labor rooms shall be arranged so that doors are visible from a nurses' work station and shall be directly accessible to facilities for medication, handwashing, carting and storage for supplies and equipment. At least one (1) shower for use by labor room patients shall be provided. Controls shall be located outside of the wet area for use by nursing staff.

(4) Recovery room. It shall contain not less than two (2) beds, charting facilities located to permit staff surveillance of all beds, facilities for medicine dispensing, handwashing facilities, clinical sink with bedpan flushing device, and storage for equipment and supplies. The recovery room may be omitted in hospitals with an annual birth rate of less than 1,500.

(5) Service areas in each obstetrical suite. The services shall include:

(a) Control station located to permit visual surveillance of all traffic which enters the obstetrical suite.

(b) Supervisor's office or station.
(c) Sterilizing facilities with high-speed autoclave(s) conveniently located to serve all delivery rooms.
(d) Drug distribution station for storage and preparation of medication for patients. It shall contain a work counter, storage facilities, and a sink equipped for handwashing. Controlled substances shall be under double lock.
(e) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each delivery room. However, two (2) scrub stations may serve two (2) delivery rooms if the scrub stations are located adjacent to the entrance to each delivery room.
(f) Soiled workroom for the exclusive use of the obstetrical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for handwashing, waste receptacle and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink may be omitted.
(g) Clean workroom or a clean supply room. A clean workroom is required when clean materials are assembled within the obstetrical suite prior to use. A clean workroom shall contain a work counter, sink equipped for handwashing, and space for clean and sterile supplies. A clean supply room shall be provided when the facility utilizes a central system for the clean-up, distribution of clean and sterile supplies and central storage.
(h) Anesthesia workroom for cleaning, testing and storage of anesthesia equipment. It shall contain a work counter and sink.
(i) Anesthesia storage facilities.
(j) Medical gas supply with storage space for reserve medical gas cylinders shall be provided.
(k) Equipment storage room(s) for equipment used in the obstetrical suite.
(l) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel (technicians, nurses, aides, and doctors) working within the obstetrical suite. The areas shall contain lockers, showers, toilets, lavatories equipped for handwashing and space for putting on scrub suits and boots. These areas shall be arranged to provide a one (1) way traffic pattern, so that personnel entering from outside the obstetrical suite can shower, change and go directly into the obstetrical suite. Space for removal of scrub suits and boots in change area shall be designed so that personnel using it will avoid physical contact with clean personnel.
(m) Lounge and toilet facilities for obstetrical staff. A nurses' toilet room shall be provided near the labor rooms and recovery room(s).
(n) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the obstetrical suite.
(o) Stretcher storage area. This area shall be out of direct line of traffic.

Section 9. Newborn Nursery Unit. (1) General. Each nursery shall provide:
(a) Lavatory for handwashing at the rate of one (1) for each eight (8) infants;
(b) Emergency nurses' call system;
(c) Oxygen;
(d) Isolation nursery; and
(e) Glazed observation windows to permit viewing infants from public areas, from workrooms and between adjacent nurseries.
(2) Full-term nursery. Each room shall contain not more than eight (8) bassinets (this may be increased to sixteen (16) if the extra bassinets are of the isolation type) with a minimum area of twenty-four (24) square feet per regular bassinet and forty (40) square feet per isolation type bassinets. No nursery shall open directly into another nursery.
(3) Workroom. Each nursery shall be served by a connecting workroom. It shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, refrigerator, lavatory or sinks equipped for handwashing, and storage. One (1) workroom may serve a number of full-term nurseries provided that required services are convenient to each.
(4) Examination and treatment room. It shall contain a work counter, storage and lavatory equipped for handwashing.
(5) Premature and special care nursery. A premature nursery is required only for hospitals with twenty-five (25) or more maternity beds. Each nursery shall have a minimum area of forty (40) square feet per bassinet. The premature nursery shall have its own workroom including lavatory. (A work area within the premature nursery may be used but this area shall be in addition to the required bassinet area.)
(6) Formula room. This room is intended for the sole purpose of preparing the infant formula and shall have no direct access to the nursery or workroom. It may be located elsewhere in the hospital. The following shall be provided unless commercially-prepared formula is used:
(a) Work counter with built-in sink with gooseneck-type spout and knee or foot control;
(b) Lavatory;
(c) Hot plate;
(d) Refrigerator;
(e) Sterilizer (autoclave); and
(f) Bottle washer.
(7) If commercially prepared formula is to be used or other modifications are proposed in formula preparation and processing, the formula room shall include such space and equipment as are necessary to accommodate formula processing, handling, and storage requirements.
(8) Janitor's closet. This closet for exclusive use in the nursery shall contain floor receptor or service sink and space for supplies and cleaning equipment.

Section 10. Pediatric Unit. If provided as a separate unit it shall include: (1) Patient rooms. Pediatric patient rooms shall conform to the same requirements as Section 6(1)(b) and (c) except that patient rooms used for cribs shall contain at least sixty (60) square feet of clear area for each crib with no more than six (6) cribs in a room.
(2) Nursery. Each nursery serving pediatric patients shall contain no more than eight (8) bassinets. The minimum clear floor area per bassinet shall be forty (40) square feet. Each room shall contain a lavatory equipped for handwashing, nurses' emergency calling system and glazed view windows for observation of infants from public areas and the workroom.
(3) Nursery workrooms. Each nursery shall be served by a connecting workroom. It shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, storage facilities and a lavatory or sink equipped for handwashing. One (1) workroom may serve more than one (1) nursery.
(4) Examination and treatment room for nursery(ies)

may be located in a separate room or a designated part of the workroom. It shall contain a work counter, storage facilities and a lavatory equipped for handwashing.

(5) Service areas. The service areas shall conform to the requirements in Section 6(2) and shall meet the following additional conditions:

(a) Multi-purpose or individual room(s) shall be provided for dining, educational, and play purposes. A total floor area of twenty (20) square feet per pediatric patient bed based on fifty (50) percent of the total number of pediatric patients shall be provided. Special provisions shall be made to minimize the impact noise transmission through the floor of the multi-purpose room(s) to occupied spaces below.

(b) Space for preparation and storage of infant formula shall be provided in the unit or in a convenient location nearby.

(c) Toilet room. A toilet room shall be provided for each sex, with minimum ratio of one (1) toilet for each eight (8) beds excluding bassinets.

(d) Storage closets or cabinets for toys and for educational and recreational equipment shall be provided.

(e) Storage space shall be provided for replacement of cribs and adult beds to provide flexibility for interchange of patient accommodations.

Section 11. Psychiatric Unit. If included as a separate unit, it shall be designed as other nursing units except that care must be taken to provide for patients needing close supervision to prevent the patient's escape, suicide, or hiding. The unit shall contain:

(1) Patient room. Each patient room shall meet the following requirements:

(a) Minimum floor area of 100 square feet in one (1) bed rooms and eighty (80) square feet per patient in multi-bed rooms.

(b) Maximum of two (2) patients per room.

(c) Patient toilet rooms. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms.

(d) Lavatory. A lavatory shall be provided in each patient room. If the patient room is served by its own private toilet room the lavatory may be located in the toilet room.

(e) Window. Sill height shall not be higher than three (3) feet above the floor. Windows in psychiatric units shall be of security type or a type that can only be opened by keys or tools that are under the control of staff. Degree of security required shall be as determined by program, but operation of sash shall be restricted to inhibit possible tendency for escape or suicide. Where glass fragments may create a hazard, safety glazing and/or other appropriate security features shall be incorporated.

(f) A nurses' calling system is not required. If a call system is included, provisions shall be made to permit removal of call buttons and/or use of blank plates as appropriate.

(g) The visual privacy provided each patient shall isolate patients from one another but not from observation by staff.

(h) Bedpan flushing devices may be omitted from patient room toilets.

(2) Service areas. These areas shall conform to the requirements in Section 6(2) and shall meet the following additional conditions:

(a) Provide separate space for occupational therapy at the rate of fifteen (15) square feet per patient and a minimum area of 400 square feet.

(b) A minimum of two (2) separate social spaces, one (1) appropriate for noisy activities and the other for quiet activities shall be provided. The combined area shall not be less than thirty (30) square feet per patient with not less than 120 square feet for each of the two (2) spaces, whichever is greater. This space may be shared by dining activities.

(c) Storage for recreational and occupational therapy equipment.

(d) Storage for patients' belongings.

(e) Bathing facilities. Bathtubs or showers shall be provided at the rate of one (1) for each four (4) beds which are not individually served. At least one (1) bathing facility shall have space for a wheelchair patient with an assisting attendant.

(3) Seclusion room(s). A seclusion room shall be provided for patients requiring security and protection from either himself or others. The room shall be located in a manner affording direct supervision of the patient by the nursing staff. It shall be a single room and be constructed to minimize the patient's hiding, escape, injury or suicide. There shall be a minimum of one (1) seclusion room for every twenty-four (24) beds. The seclusion room(s) is intended for short-term occupancies by patients who may have become violent or suicidial; therefore, special fixtures, hardware, etc., including ground fault interrupters for electrical circuits and tamper-proof screws shall be used. Doors shall swing outward and shall have provisions for staff observation while maintaining privacy from public and other patients.

Section 12. Surgical Suite. (1) General. If a surgical suite is included in the narrative program, it shall be located and arranged to preclude unrelated traffic through the suite. The number of operating rooms and recovery beds, including the size of the service areas, shall be based on the expected surgical workload.

(2) Operating room(s). Each operating room shall have a minimum clear floor area of 360 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of eighteen (18) feet. Storage space for splints and traction equipment shall be provided for rooms equipped for orthopedic surgery. At least two (2) x-ray film illuminators in each operating room shall be provided.

(3) Rooms for surgical cystoscopy and other endoscopic procedures. These room shall have a minimum clear area of 250 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of fifteen (15) feet. Facilities for the disposal of liquid wastes shall be provided.

(4) Recovery room(s). Room(s) for post anesthesia recovery of surgical patients shall be provided and shall contain a drug distribution station, handwashing facilities, charting facilities, clinical sink and storage space for supplies and equipment. Design shall provide for a minimum of three (3) foot clearance to each side of the recovery beds.

(5) Medical preparation and holding area. Room(s) shall be provided for medical preparation of patients and holding prior to surgery. It shall contain a drug distribution station, handwashing facilities and charting facilities. Design shall provide for a minimum of three (3) foot clearance to each side of the beds. This area may be eliminated if the medical preparation of patients prior to surgery is done in the patient bedrooms.

(6) Service areas in each surgical suite. The services shall include:

(a) Control station located to permit visual surveillance

of all traffic which enters the surgical suite;

(b) Sterilizing facilities with high speed autoclave(s) located nearby the operating rooms;

(c) Drug distribution station for storage and preparation of medication for patients. It shall contain a work counter, storage facilities, and a sink equipped for handwashing. Controlled substances shall be under double lock;

(d) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each operating room. However, two (2) scrub stations may serve two (2) operating rooms if the scrub stations are located adjacent to the entrance to each operating room;

(e) Soiled workroom for the exclusive use of the surgical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for handwashing, waste receptacle, and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted;

(f) Clean workroom or a clean supply room. A clean workroom is required when clean materials are assembled within the surgical suite prior to use. A clean workroom shall contain a work counter, sink equipped for handwashing, and storage space for clean and sterile supplies. A clean supply room shall be provided when the facility utilizes a central system for the clean-up, distribution of clean and sterile supplies and central storage;

(g) Anesthesia workroom. For cleaning, testing and storage of anesthesia equipment. It shall contain a work counter and sink;

(h) Anesthesia storage facilities;

(i) Medical gas supply with storage space for reserve medical gas cylinders shall be provided;

(j) Storage room(s) for equipment and supplies used in the surgical suite.

(k) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel (orderlies, technicians, nurses and doctors) working within the surgical suite. The areas shall contain lockers, showers, toilets, lavatories equipped for handwashing and space for putting on scrub suits and boots. These areas shall be arranged to provide a one (1) way traffic pattern so that personnel entering from outside the surgical suite can shower, change and go directly into the surgical suite. Space for removal of scrub suits and boots in the change area shall be designed so that personnel using it will avoid personal contact with clean personnel;

(l) Outpatient surgery change areas. If the narrative program includes an outpatient surgery load, a separate area shall be provided where outpatients can change from street clothing into hospital gowns and are prepared for surgery. This shall include a waiting room, lockers, toilets and clothing change or gowning area with a traffic pattern similar to that of the staff clothing change area;

(m) Outpatient recovery. If the program narrative includes outpatient surgical services, provisions shall be made for a separate post-recovery area for outpatients;

(n) Patient's holding area. In facilities with two (2) or more operating rooms, a room or alcove shall be provided to accommodate stretcher patients waiting for surgery. This area shall be under the visual control of the surgical suite control station. If a separate room for medical preparation of patients is provided as called for under Section 11(5), this holding area will not be required;

(o) Stretcher storage areas. This area shall be out of direct line of traffic;

(p) Lounge and toilet facilities for surgical staff. These facilities shall be located to permit use without leaving the surgical suite. A nurses' toilet room shall be provided near the recovery room(s); and

(q) A janitor's closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for exclusive use in the surgical suite.

Section 13. Outpatient and Emergency Care. (1) General. Facilities for emergency and outpatient clinic care shall be provided if included in the narrative plan.

(2) Emergency patient care services. The extent of the emergency services to be provided in the hospital will depend upon the community needs and the availability of other organized programs for emergency care within the community. The facilities shall be located to prevent outpatients from traversing inpatient areas and shall include:

(a) Entrance at grade level which is sheltered from the weather and has convenient access for ambulances and wheelchairs.

(b) Reception and control area located near the entrance, waiting area(s) and treatment room(s).

(c) Public waiting area with toilet facilities, public telephone and drinking fountain.

(d) Examination and treatment room(s). Handwashing facilities shall be provided in each room. Each room shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet.

(e) Emergency room for minor surgical procedures. It shall contain a handwashing facility and shall have a minimum floor area of 240 square feet. The minimum dimension shall be fifteen (15) feet.

(f) Clean workroom. It shall contain a work counter, sink equipped for handwashing, and storage space for clean and sterile supplies.

(g) Soiled workroom. It shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for handwashing, waste receptacle and linen receptacle.

(h) Drug distribution station for storage and preparation of medication. It shall contain a work counter, storage facilities, and sink equipped for handwashing. Controlled substances shall be under double lock.

(i) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.

(j) Staff toilet room.

(k) Patient's toilet room. It shall be located convenient to the treatment room(s).

(l) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(m) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the emergency department.

(n) Equipment storage room.

(3) Outpatient department. If outpatient services are provided, the extent of the administrative, clinical and diagnostic facilities to be provided will depend on the estimated patient load as described in the program narrative. The planning of outpatient facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment. Facilities shall be located so that outpatients do not traverse inpatient areas and the following shall be provided:

(a) Entrance at grade level which is sheltered from weather and able to accommodate wheelchair access.

(b) Reception and control area located near the entrance and waiting area(s).
(c) Wheelchair storage out of the line of direct traffic.
(d) Public waiting area with toilet facilities, public telephone and drinking fountain.
(e) Interview space(s) for private interviews relating to social service, credit and admissions.
(f) General or individual office(s) for business transaction, records, administrative and professional staffs.
(g) Multi-purpose room(s) for conferences, meetings, and health education purposes. It shall be equipped for the use of visual aids.
(h) General purpose examination room(s) for medical, obstetrical and similar examinations. Each room shall have a minimum floor area of eighty (80) square feet, excluding such spaces as vestibule, toilet, closet and work counter. Examination table shall be placed to provide at least thirty (30) inches clearance to each side and at the foot of the table. A lavatory or sink equipped for handwashing shall be provided in each room.
(i) Special purpose examination rooms. Room sizes for special clinics such as eye, dental, ear, nose and throat examinations shall be determined by the types of equipment used but shall be not less than eighty (80) square feet. A lavatory or sink equipped for handwashing shall be provided in each room.
(j) Observation room(s) for handling of isolation, suspect or disturbed patients. It shall be located convenient to the nurses' station to permit close observation of patients. In facilities having an annual patient load of 15,000 or less, a separate room will not be required if an examination room is modified to accommodate this function.
(k) Patient toilet facilities shall be provided. The number required will depend on the actual patient load of the department.
(l) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.
(m) Staff toilet room located convenient to the nurses' station.
(n) Clean workroom. It shall contain a work counter, sink equipped for handwashing, and storage space for clean and sterile supplies.
(o) Soiled workroom. It shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for handwashing, waste receptacle and linen receptacle.
(p) Drug distribution station for storage and preparation of medication. It shall contain a work counter, sink equipped for handwashing, and storage facilities. Controlled substances shall be under double lock.
(q) Wheelchair and stretcher alcove located convenient to the entrance to the department.
(r) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the outpatient department.
(s) Equipment storage room.

Section 14. Radiology Suite. This suite shall contain the following: (1) Radiographic room(s);
(2) Film processing facilities;
(3) Viewing and administrative area(s);
(4) Film storage facilities;
(5) Toilet room with handwashing facility. It shall be located directly accessible from each fluoroscopy room without entering the general corridor area;
(6) Dressing area(s) for ambulatory patients with convenient access to toilets;
(7) Waiting room or alcove for ambulatory patients;
(8) Holding area for stretcher patients. It shall be located out of the direct line of normal traffic; and
(9) Handwashing facilities shall be provided in each radiographic room unless the room is used only for routine diagnostic screening such as for chest x-rays.

Section 15. Laboratory Suite. Facilities shall be provided for the following and the size of the areas including equipment will depend on the patient workload:
(1) Hematology;
(2) Clinical chemistry. An acid-shower and eye-washing facility shall be provided nearby;
(3) Urinalysis. A specimen toilet with handwashing facility shall be provided nearby;
(4) Cytology;
(5) Bacteriology;
(6) Waiting area for ambulatory patients;
(7) Administrative support areas;
(8) Blood storage facilities;
(9) Blood specimen collection area. It shall contain work counter, handwashing facilities, and space for patient seating;
(10) Glasswashing and sterilizing facilities; and
(11) Recording and filing facilities.

Section 16. Physical Therapy Suite. If the physical therapy suite is included by the narrative program, the following items shall be provided:
(1) Office space;
(2) Waiting space;
(3) Treatment area(s) for thermotherapy, diathermy, ultrasonics, hydrotherapy, etc. Cubicle curtains around each individual treatment area shall be provided for privacy purposes. Handwashing facilities shall be provided but one (1) lavatory or sink may serve more than one (1) treatment cubicle. Facilities for collection of wet and soiled linen or other material shall be provided;
(4) Exercise area(s);
(5) Storage for clean linen, supplies, and equipment;
(6) Patients' dressing areas, showers, lockers and toilet rooms;
(7) Janitor's closet with floor receptor or service sink and storage space for housekeeping supplies and equipment; and
(8) Wheelchair and stretcher storage area.

Section 17. Morgue and Autopsy. (1) If autopsies are performed within the hospital, the following shall be provided:
(a) Refrigerated facilities for body-holding.
(b) Autopsy room. This room shall contain the following:
1. Work counter with sink equipped for handwashing;
2. Storage space for supplies, equipment and specimens;
3. Autopsy table;
4. Clothing change area with shower, toilet and lockers; and
5. A janitor's closet containing a floor receptor or service sink with storage for housekeeping supplies and equipment for exclusive use in this area.
(2) If autopsies will be performed outside the hospital, only a well-ventilated body-holding room shall be provided.

Section 18. Pharmacy or Drug Room. If drugs are used, an adequate supply and other medicinal agents shall be available at all times to meet the requirements of the hospital. They shall be stored in a safe manner and kept properly labeled and accessible. Controlled substances and other dangerous or poisonous drugs shall be handled in a safe manner to protect against their unauthorized use. Controlled substances must be under double lock. There shall be adequate refrigeration for biologicals and drugs which require refrigeration. The existing laws, rules and regulations governing drugs and poisons shall be complied with.

Section 19. Dietary Department. Food service facilities shall be designed and equipped to meet the requirements of the narrative program. The department shall include the following facilities unless an acceptable commercially prepared dietary service, meals, and/or disposables are to be used. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling.

(1) Control station for the receiving of food supplies.

(2) Food preparation facilities. Conventional food preparation systems require space and equipment for preparing, cooking and baking. Convenience food service systems such as frozen prepared meals, bulk packages entrees, and individual package portions, or systems using contractual commissary services require space and equipment for thawing, portioning, cooking and/or baking.

(3) Handwashing facility(ies) located conveniently accessible in the food preparation area.

(4) Patients' meals service facilities. Examples are those required for tray assembly and distribution.

(5) Dishwashing space. It shall be located in the room or alcove separate from the food preparation and service area. Commercial-type dishwashing equipment shall be provided. Space shall also be provided for receiving, scraping, sorting and stacking of soiled dishware and tableware prior to clean-up. The area shall be designed to allow clean dishware and tableware to be removed at a different location than the one used for the soiled dishware and tableware. A handwashing lavatory shall be conveniently located.

(6) Potwashing facilities.

(7) Refrigerated storage to accommodate a three (3) day minimum supply.

(8) Dry storage to accommodate a three (3) day minimum supply.

(9) Storage areas and sanitizing facilities for cans, carts, and mobile tray conveyors.

(10) Waster storage facilities shall be located in a separate room easily accessible to the outside for direct pick-up or disposal.

(11) Dining space for ambulatory patients, staff and visitors.

(12) Office(s) or desk spaces for dieticians or the dietary service manager.

(13) Toilets with handwashing facilities for use by the dietary staff shall be immediately available.

(14) Janitor's closet located within the department. It shall contain a floor receptor or service sink with storage for housekeeping supplies and equipment to be used exclusively in this area.

Section 20. Administrative and Public Areas. The following shall be provided:

(1) Lobby. It shall include:

(a) Storage space for wheelchairs;

(b) Reception and information counter or desk;

(c) Waiting space(s); and

(d) Public toilet facilities designed for use by the physically handicapped.

(2) Interview space(s) for private interviews relating to social services, credit, and admissions.

(3) Director of nurses' office.

(4) Staff toilet rooms.

(5) Medical library facilities.

(6) General or individual office(s) for business transactions, medical and financial records, administrative and professional staff use.

(7) Administrator's office.

(8) Multi-purpose room(s) for conferences, meetings, and health education purposes including provisions for showing visual aids.

(9) Storage for office equipment and supplies.

Section 21. Medical Records Unit. This unit shall include: (1) Medical records administrator/technician office or space;

(2) Active record storage area;

(3) Record review and dictating room; and

(4) Work area for sorting, recording, or microfilming.

Section 22. Central Medical and Surgical Supply Department. The following areas shall be permanently separated from each other: (1) Receiving and decontamination room. It shall contain work space and equipment for cleaning medical and surgical equipment and for the disposal of or processing of unclean material. Handwashing facilities shall be provided.

(2) Clean workroom. This room shall be divided into work space, clean storage area and sterilizing and sanitizing facilities. Handwashing facilities shall be provided.

(3) Storage area for clean supplies and sterile supplies. (May be in a designated area in the clean workroom.)

(4) Equipment storage.

(5) Cart storage, if this type of system is utilized.

(6) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.

Section 23. Central Stores. The following shall be provided: (1) Offstreet unloading facilities.

(2) Control station for receiving supplies.

(3) General storage rooms which are adequate in size to meet the needs of the facility.

Section 24. Laundry. On-site processing and off-site processing. (1) If linen is to processed in the hospital, the following shall be provided:

(a) Soiled linen receiving, holding and sorting room with handwashing facilities.

(b) Laundry processing room with commercial-type equipment which can process seven (7) days of linen needs within a regularly scheduled work week. Handwashing facilities shall be provided.

(c) Storage for laundry supplies.

(d) Clean linen inspection and mending room.

(e) Clean linen storage, issuing and holding room or area.

(f) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.

(g) Cart storage and cart sanitizing facilities.

(h) Arrangement of equipment and procedures shall be in a manner to permit an orderly work flow with a minimum of cross traffic that might mix clean and soiled operations.

(2) If linen is to be processed off the hospital site, the following shall be provided:

(a) Soiled linen holding room with a handwashing facility conveniently accessible.

(b) Clean linen receiving, holding, inspection and storage room(s).

Section 25. Employee's Facilities. (1) Female locker room. This room shall have lounge space, lockers for personal effects and a separate toilet room. The area shall be designed for use by the physically handicapped. In some cases shower facilities may be appropriate depending on the size of the facility.

(2) Male locker room. This room shall have lockers and a separate toilet room. The area shall be designed for use by the physically handicapped. In some cases shower facilities may be appropriate depending on the size of the facility.

Section 26. Engineering Service and Equipment Areas. The following shall be provided:

(1) Room(s) or separate building(s) for boilers, mechanical equipment and electrical equipment;

(2) Engineer's office;

(3) Maintenance shop;

(4) Storage room for building maintenance supplies;

(5) Storage room for central housekeeping equipment and supplies;

(6) Office and administrative support space for person(s) in charge of central housekeeeping; and

(7) Yard equipment storage room.

Section 27. Waste processing services. The following shall be provided:

(1) Storage and disposal. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization removal or by a combination of these techniques.

(2) A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of pathological and infectious waste. Infectious waste shall include, but not be limited to: dressing and material from open wounds, laboratory specimens, and all waste material from isolation patient rooms. Waste tissue and contaminated combustible solids shall be rendered safe by such methods as sterilization or incineration. Culture plates, tubes, sputum cups, contaminated sponges, swabs and the like shall be sterilized before they are washed or discarded. Unpreserved tissue specimens from surgical or necropsy material must be disposed of by incineration.

Section 28. Details and Finishes. All details and finishes shall meet the following requirements:

(1) Details.

(a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.

(b) All doors to patient-room toilets or patient-room bathrooms shall swing outward or be equipped with hardware that will permit access in an emergency.

(c) If required by the narrative program suitable hardware shall be provided on doors to patient toilet rooms in psychiatric nursing units so that access to these rooms can be controlled by the nursing staff.

(d) Windows and outer doors which may be frequently left in an open position shall be provided with screens.

(e) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use by wheelchairs and carts.

(f) The location and arrangement of lavatories and sinks equipped with blade handles for handwashing purposes shall provide a minimum of sixteen (16) inches clearance to each side of the center line of the fixture.

(g) Towel dispensers or other hand drying equipment shall be provided at all lavatories and sinks equipped for handwashing, except scrub sinks.

(h) Grab bars shall be provided at all patients' toilets, showers, tubs, and sitz baths. The bars shall have one and one-half (1½) inches clearance to walls and shall be of sufficient strength and anchorage to substain a concentrated load of 250 pounds for a period of five (5) minutes.

(i) Recessed soap dishes shall be provided at all showers and bathtubs.

(j) Mirrors shall not be installed at handwashing fixtures in food preparation areas or in sensitive areas such as nurseries, clean and sterile supplies, and scrub sinks.

(k) Protection requirements of x-ray and gamma-ray installations shall be approved by the Radiation and Product Safety Branch, Office of Consumer Health Protection, Bureau for Health Services, Department for Human Resources.

(l) Ceiling heights shall be as follows:

1. Boiler room not less than two (2) feet and six (6) inches above the main boiler header and connecting piping with a minimum height of nine (9) feet.

2. Corridors, storage rooms, patient toilet rooms, and other minor rooms not less than seven (7) feet and six (6) inches.

3. Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling-mounted surgical light fixtures shall have a height as required to accommodate the equipment or fixtures.

4. All other rooms not less than eight (8) feet.

(m) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas, delivery suites, operating suites, or nurseries unless special provisions are made to minimize such noise.

(n) Rooms containing heat-producing equipment such as boiler rooms, laundries, and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

(o) Noise reduction criteria. Partition, floor, and ceiling construction in patient areas shall comply with Table 1, Section 33.

(2) Finishes.

(a) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and greaseproof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower and bath areas, kitchen and similar work areas, shall have a non-slip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable, and in the immediate area of plumbing fixtures the finish shall be smooth and moisture-resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free of spaces that can harbor rodents and insects.

(d) Wall bases in kitchens, operating rooms, delivery rooms, and other areas subject to frequent wet cleaning methods shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that can harbor harmful bacteria.

(e) Ceilings shall be cleanable and those in sensitive areas such as surgical, delivery, nursery rooms and isolation rooms shall be readily washable and without crevices that can retain dirt particles. These sensitive areas along with the dietary and food preparation areas shall a finished ceiling covering all over-head piping and ductwork. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas and similar spaces, unless required for fire-resistive purposes.

(f) Acoustical type ceilings shall be provided for corridors in patient areas, nurses' stations, labor rooms, dayrooms, recreation rooms, dining areas, and waiting areas.

(g) Ceilings of patient rooms in psychiatric nursing units shall be of monolithic or bonded construction.

Section 29. Elevators. General. All hospitals having patients' facilities, such as bedrooms, dining rooms or recreation areas, or critical services, such as operating rooms, delivery rooms, diagnostic or therapy areas, located on other than the main entrance floor, shall have elevators.

(1) Number of elevators.

(a) At least one (1) hospital-type elevator shall be installed where one (1) to fifty-nine (59) patient beds are located on any floor other than the main entrance floor.

(b) At least two (2) hospital-type elevators shall be installed where sixty (60) to 200 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds.

(c) At least three (3) hospital-type elevators shall be installed where 201 to 350 patient beds are located on floors other than the main entrance floor, or where the inpatient services are located on a floor other than those containing patient beds.

(d) For hospitals with more than 350 beds, the number of elevators shall be determined from a study of the hospital plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a hospital bed and attendant and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. The car door shall have a minimum clear opening of not less than three (3) feet and eight (8) inches.

(3) Leveling. Elevators shall have automatic leveling of the two-way automatic maintaining type with accuracy within plus or minus one-half (½) inch.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

Section 30. Construction. (1) Design. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards, including seismic forces when applicable.

(2) Foundations. Foundations shall rest on natural solid bearing if a satisfactory bearing is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles, augured piles, poured caissons or equivalent designed to support the intended load without detrimental settlement, except that one (1) story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and a certification of compliance with the job specifications. All footings shall extend to a depth not less than one (1) foot below the estimated frost line.

(3) Construction shall meet the standards of safety adopted by the State Fire Marshal's Office.

(3) Natural disasters. Special provisions shall be made in the design of buildings in geographic areas where local experience reflects loss of life or extensive damage to buildings resulting from tornados or floods.

Section 31. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain from the contractor certification in writing that all mechanical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

(2) Incinerators. The design and installation shall comply with the current Kentucky standards for control of air contaminants for incinerators regulations as applicable to hospitals.

(3) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) shall be provided and the combined capacity of the boilers, based upon the published Steel Boiler Institute or Institute of Boiler and Radiator Manufacturer's net rating, must be able to supply 150 percent of the normal requirements for all systems and equipment in the facility.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulation pumps shall be connected and installed to provide normal and standby service.

(c) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(4) Thermal and acoustical installation.

(a) Insulation shall be provided on the following within the building:

1. Boilers, smoke breeching, and stacks;
2. Steam supply and condensate return piping
3. Hot water piping above 120 degrees Fahrenheit at all hot water heaters, generators and convertors;
4. Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;
5. Water supply and drainage piping on which condensation may occur;
6. Air ducts and casings with outside surface temperature below ambient dew point or temperature above eighty (80) degrees Fahrenheit; and
7. Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(b) Insulation on cold surfaces shall include an exterior vapor barrier.

(c) Duct linings shall not be used in systems supplying operating rooms, delivery rooms, recovery rooms, nurseries, isolation rooms and intensive care units unless terminal filters of at least ninety (90) percent efficiency are installed downstream of the lining.

(5) Air conditioning, heating and ventilation systems.

(a) Temperatures and humidities.

1. The designed capacity of the systems shall provide the following temperatures and humidities in the areas noted below:

Area Designation	Temperature F.	RH *	
		(Min)	(Max)
Operating Room	68-76*	50**	60
Delivery Room	70-76*	50**	60
Recovery Room	75	30	60
Intensive Care Room	72-78*	30	60
Nurseries	75	30	60
Special Care Nursery	75-80*	30	60

* Variable temperature range required

** Minimum relative humidity may be reduced to 30% if the facility establishes written policy prohibiting the use of flammable anesthetics.

2. For other areas occupied by inpatients, the indoor winter design temperature shall be seventy-five (75) degrees Fahrenheit. For all other occupied areas, the indoor winter design temperature shall be seventy-two (72) degrees Fahrenheit.

3. For all other occupied areas, the indoor indoor summer design temperature shall be seventy-five (75) degrees Fahrenheit.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates as shown on Table 2, Section 33, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

1. Outdoor air intakes shall be located as far as practical but not less than twenty-five (25) feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical surgical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular or other noxious fumes. The bottom of outside air intakes serving central air systems shall be located as high as practical but not less than six (6) feet above ground level or if installed above the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced in accordance with the pressure relationship as shown in Table 2, Section 33.

3. All air supplied to sensitive areas such as operating rooms, delivery rooms and nurseries shall be delivered at or near the ceiling of the area served and all return/exhaust air shall be removed near floor level. At least two (2) return/exhaust outlets shall be provided in each operating room and delivery room.

4. All room supply, return and exhaust outlets shall be located not less than three (3) feet AFF.

5. Isolation rooms and intensive care rooms may be ventilated by induction units if the induction units contain only a reheat coil and if only the primary air from a central system passes through the reheat coil.

6. All central ventilation of air-conditioning systems shall be equipped with filters having minimum efficiencies as listed below:

Area Designation	Minimum No. of Filters	Filter Efficiences % No. 1	No. 2
Sensitive Areas*	2	25	90
Patient Care, Treatment, Diagnostic and Related Areas	2	25	90**
Food Preparation and Laundry	1	80	—
Administrative, Storage, and Soiled Holding	1	25	—

* Includes operating rooms, delivery rooms, nurseries, recovery units and intensive care units.

** May be reduced to 80% for systems using all-outdoor air.

7. Where two (2) filter beds are required in central ventilation and air-conditioning equipment, Filter Bed No. 1 shall be located upstream of the air-conditioning equipment and Filter Bed No. 2 shall be located downstream of the supply fan, any recirculating spray water system, and water reservoir type humidifiers. Where only one (1) filter bed is required, it shall be located upstream of the air-conditioning equipment unless an additional pre-filter is employed. In this case, the pre-filter shall be located upstream of the equipment and the main filter may be located further downstream.

8. All filter efficiencies as listed above shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Standard 52-76.

9. Filter frames shall be durable and carefully dimensioned, and shall provide an air-tight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakages.

10. A manometer or its equivalent shall be installed across each filter bed serving sensitive areas or central air systems.

11. Ducts which penetrate construction intended for x-ray or other ray protection shall not impair the effectiveness of the protection.

12. Laboratories shall be provided with outdoor air at a rate of two (2) air changes per hour. If this ventilation rate does not provide the air required to ventilate fume hoods and safety cabinets, additional outdoor air shall be provided. A filter with ninety (90) percent minimum efficiency shall be installed in the air supply system at its entrance to the media transfer room.

13. Laboratory hoods for general use shall have a minimum average face velocity of seventy-five (75) feet per minute. Hoods in which infectious or highly radioactive materials are processed shall have a face velocity of 100 feet per minute and each hood shall have an independent exhaust system with the fan installed at the discharge point of the system. Hoods used for processing infectious materials shall be equipped with a means of disinfection.

14. Duct systems serving hoods in which highly radioactive materials and strong oxidizing agents are used shall be constructed of stainless steel for a minimum distance of ten (10) feet from the hood and shall be equipped with washdown facilities.

15. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the rooms and in adjoining areas.

(6) Plumbing systems. All plumbing systems shall be

designed and installed in accordance with the requirements of the current Kentucky plumbing standards regulations applicable to hospitals.

(a) Plumbing fixtures.

1. The material used for plumbing fixtures shall be of non-absorptive acid-resistant material.

2. Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be equipped with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall not exceed four and one-half (4½) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long.

3. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(b) Water supply systems.

1. Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

2. Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

3. Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitor's sinks, bedpan flushing attachments, autopsy tables and all other fixtures to which hoses or tubing can be attached.

4. Flush valves installed on plumbing fixtures shall be of a quiet operating type.

5. Bedpan flushing devices shall be provided in each patient toilet room and in the soiled workrooms located in the patient nursing units.

6. An auxiliary water supply shall be available to provide potable water in case of emergencies.

(c) Hot water heating systems.

1. The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Use		
	Clinical	Dishwasher	Laundry
Gal/hr/bed	6½	4 ..	4½
Temp. F.	125	180*	160**

* Temperature may be reduced to 160 degrees F. if a chloritizer is used. Required temperature must be provided throughout the wash and rinse cycles.

** Required temperature of 160 degrees F. is that measured in the washing machine and shall be supplied so that the temperature will be maintained over the entire wash and rinse cycles.

2. Storage tank(s) shall be fabricated of corrosive-resistant metal or be lined with non-corrosive material.

(d) Drainage systems.

1. Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

2. Piping over operating and delivery rooms, nurseries, food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

3. Floor drains shall not be installed in operating and delivery rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms.

4. Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment shall be installed which conforms to all applicable local and state regulations.

(7) Nonflammable medical gas systems. Installations shall be in accordance with the requirements of NFPA 56-A and 56-F. The number, type, and location of outlets shall be as follows:

Station Outlets for Oxygen and Vacuum (Suction) Outlets

Location	Oxygen	Vacuum
Patient room for adult medical, surgical, and for post-partum care; and pediatric care	A	A
Examination and treatment room in nursing unit	B	B
Patient room for intensive care	C	C
Nursery and pediatric nursery	A	A
General operating room	F	F
Cystoscopy and special procedure room	D	D
Recovery room	E	E
Delivery room	F	G
Labor room	A	A
Emergency treatment room	D	D
Autopsy room	—	D
Anesthesia workroom	—	D

A—One (1) outlet accessible to each bed. One (1) outlet may serve two (2) beds.
B—One (1) outlet. Portable equipment may be considered acceptable in lieu of fixed outlets.
C—Two (2) outlets for each bed or provide one (1) outlet with Y-fitting.
D—One (1) outlet.
E—One (1) outlet for each bed.
F—Two (2) outlets.
G—Three (3) outlets.

Section 32. Electrical Requirements. (1) General.

(a) All material including equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(b) All electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner. Such tests shall show compliance with the governing codes and shall include conductive floors, isolated power centers, grounding continuity, and alarm systems.

(2) Switchboard and power panels. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panelboards shall be enclosed or guarded to provide a dead front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboard shall

be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Overload devices shall be suitable for operating properly in the ambient temperature conditions.

(3) Panelboards. Lighting and appliance panelboards shall be located on the same floor as the circuits they serve.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms shall be mechanically operated to prevent the bulb from coming in contact with the bed linen. Patients' reading lights and other fixed lights not switched at the door shall have switch controls located convenient to the luminaire. A fixed type night light, mounted at approximately sixteen (16) inches above the floor, shall be provided in each patient room. All switches for control of lighting in patient areas shall be of the quiet operating type.

(c) Operating and delivery rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the tables, except portable units, shall be connected to an independent circuit.

(d) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night. Refer to Table 3, Section 33.

(5) Receptacles (convenience outlets).

(a) Anesthetizing locations. Each operating, delivery, and emergency room shall have at least three (3) receptacles. In locations where mobile x-ray is used, an additional outlet distinctively marked for x-ray use shall be provided.

(b) Bedroom. Each patient bedroom shall have duplex receptacles as follows: one (1) on each side of the head of the bed; one (1) for the television, if used; and one (1) on another wall. Receptacles in pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliampere ground fault interrupters.

(c) Nurseries. Each bassinet shall have a minimum of one (1) duplex receptacle. In special care nurseries additional receptacles shall be provided dependent on the types of equipment which will be used to provide medical care.

(d) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart and within twenty-five (25) feet of ends of corridors. Receptacles in corridors of pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliampere ground fault interrupters.

(6) Equipment installation in special areas.

(a) Installation in anesthetizing locations. All electrical equipment, devices, receptacles and wiring shall be in accordance with NFPA No. 56-A as adopted by the State Fire Marshal's Office for hospitals.

(b) X-ray and gamma-ray installations. X-ray stationary installations and mobile equipment shall conform to the current Kentucky standards for radiographic and radioisotope equipment and use regulations applicable to hospitals.

(c) X-ray film illuminator. At least two (2) units shall be installed in each operating room, emergency treatment room, and in the x-ray viewing room for the radiology department.

(7) Nurses' calling system. General. In general patient areas, each room shall be served by at least one (1) calling station and each bed shall be provided with a calling button. Two (2) call buttons serving adjacent beds may be served by one (1) calling station. Calls shall register at an annunciator panel at the nurses' station and shall actuate a visible signal in the corridor at the patient room door, in the clean workroom, soiled workroom, the nourishment station, and the nurses' lounge of the nursing unit. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two (2) or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(b) Patients' emergency. A nurses' call emergency button shall be provided for patients' use at each patient's toilet, bath, sitz bath, or shower room on the nursing unit floors. Such buttons shall be usable by a collapsed patient lying on the floor; inclusion of a pull cord will satisfy this requirement.

(c) Intensive care. In areas such as intensive care where patients are under constant surveillance, the nurses' calling system may be limited to a bedside station that will actuate a signal that can be readily seen by the nurse.

(d) Nurses' emergency. An emergency calling station, which may be used by nurses to summon assistance, shall be provided in each operating, delivery, recovery, emergency treatment and intensive care room, in nurseries and in supervised nursing units for mental patients.

(8) Fire alarms and fire detection systems. The design and installation of these systems must be approved by the State Fire Marshal's Office.

(9) Emergency electrical.

(a) General. To provide electricity during interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines.

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. Generator sets shall be self-sufficient insofar as possible without dependency on public utilities that may be subject to cutoff or outages. Exception: A system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generator(s) will be permitted provided that the number and arrangement of the prime movers are such that when one (1) of them is out of service (due to breakdown or for routine maintenance), the remaining prime mover(s) can operate the required emergency generator(s) and provided that the connection time requirements as listed in Section 32(9)(e) are met. The emergency generator set shall be of sufficient kilowatt capacity to supply all lighting and power load demands of the emergency electrical system. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.
a. Exitways and all necessary ways of approach thereto, including exterior of exits, exit doorways, stairways, and corridors;
b. Surgical, obstetrical, and emergency room operating lights.
c. Nursery, laboratory, recovery room, intensive care areas, nursing station, medication preparation area, and labor rooms.
d. Generator set location, switch-gear location, mechanical room and boiler room;
e. Elevator cabs.
f. Night light in patient rooms.
2. Equipment. Essential to life safety and for protection of important equipment or vital materials:
a. Nurses' calling system.
b. Paging or speaker systems, if intended for issuing instructions during emergency conditions. Alarms required for medical gas systems.
c. Fire pump and jockey pump, if installed.
d. Pump for central suction system.
e. Sewerage or sump lift pump, if installed.
f. Blood bank refrigerator.
g. Selected receptacles in infant nurseries, medicine dispensing areas, cardiac catheterization laboratories, angiographic laboratories, labor, operating, delivery and recovery rooms, dialysis units, intensive care units, emergency treatment rooms, basic laboratory functions, and nurses' stations.
h. Duplex receptacles in patient corridors, and at least one (1) duplex receptacle located on the patient headwall in each patient room.
i. Elevator service that will reach every patient floor. Manual throwover facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors.
j. Ventilation of operating and delivery rooms.
k. Equipment necessary for maintaining telephone service.
3. Heating. Equipment for heating operating, delivery, labor, recovery, intensive care, and general patient rooms; except that service for heating of general patient rooms will not be required under either of the following conditions:
a. The design temperature is higher than twenty (20) degrees Fahrenheit, based on the Median of Extremes as shown in the current edition of the ASHRAE Handbook of Fundamentals.
b. The hospital is supplied by two (2) or more electrical services supplied from separate generating sources, or a utility distribution network having multiple power input sources and arranged to provide mechanical and electrical separation, so that a fault between the hospital and generating sources will not likely cause an interruption of the hospital service feeders.

(e) Details. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and it must be connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting systems; alarms systems; blood banks; nurses' calling systems; equipment necessary for maintaining telephone service; pump for central suction system; and task illumination and receptacles in operating, delivery, emergency, intensive care nursing areas, nurseries, patient rooms and patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. Where stored fuel is required for emergency generator operation, the storage capacity shall be sufficient for not less than twenty-four (24) hours of continuous operation.

Section 33. Table 1—Sound Transmission Limitations in General Hospitals. Table 2—Pressure Relationships and Ventilation of Certain Hospital Areas. Table 3—Lighting Levels for Hospitals.

Table 1. Sound Transmission Limitations in General Hospitals

Location	Airborne Sound Transmission Class (STC) a*		Impact Insulation Class (IIC) b*
	Partitions	Floors	Floors
Patients' room to patients' room	45	45	45
Corridor to patients' room	40	45	45 c*
Public space to patients' room d*	50	50	50 c*
Service areas to patients' room e*	55	55	55 c*

a* Sound transmission class (STC) shall be determined by tests in accordance with the methods set forth in ASTM Standard E-90 and ASTM Standard E-413.

b* Impact insulation class (IIC) shall be determined in accordance with criteria set forth in HUD FT/TS-24 "A Guide to Airborn, Impact and Structureborne Noise Control in Multifamily Dwellings."

c* Impact noise limitation applicable only when corridor, public space, or service area is over patients' room.

d* Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

e* Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patients' rooms, offices, nurses' stations, and similar occupied spaces shall be effectively isolated relating to noise transmission.

Note: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested.

Table 2. Pressure Relationships and Ventilation of Certain Hospital Areas

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Operating room	P	—	5
Emergency operating room	P	—	5
Delivery room	P	—	5
Nursery	P	—	5
Recovery	O	—	2
Intensive Care	P	—	2
Patient room	O	—	1
Patient corridor	O	—	1
Isolation room	O	—	2
Isolation anteroom	N	—	2
Treatment room	O	—	2
X-ray, fluoroscopy room	N	—	2
X-ray, treatment room	O	—	2
Physical therapy and hydrotherapy	N	—	2
Soiled workroom	N	—	2
Clean workroom	P	—	1
Autopsy and darkroom	N	—	3
Toilet room	N	—	—
Bedpan washing room	N	—	2
Bathroom	N	—	2
Janitor's closet	N	—	—
Sterilizer equipment room	N	—	—
Linen and trash chute rooms	N	—	—
Laboratory, general	O	—	2
Laboratory, media transfer	P	—	2
Food preparation centers	O	—	2
Dishwashing room	N	—	2
Dietary dry storage	O	—	—
Laundry, general	O	—	2
Soiled linen sorting and storage	N	—	2
Clean linen storage	P	—	1
Central medical and surgical supply:			
Soiled or decontamination room	N	—	2
Clean workroom and supply storage	P	—	2

P = Positive N = Negative O = Equal — = Optional

Table 2. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating room	12	—	No
Emergency operating room	12	—	No
Delivery room	12	—	No
Nursery	12	—	No
Recovery	6	—	No
Intensive care	6	—	No
Patient room	4	—	—
Patient corridor	4	—	No
Isolation room	8	Yes	No
Isolation anteroom	8	Yes	No
Treatment room	8	—	No
X-ray, fluoroscopy room	8	Yes	No
X-ray, treatment room	8	—	No
Physical therapy and hydrotherapy	8	Yes	No
Soiled workroom	8	Yes	No
Clean workroom	4	—	No
Autopsy and darkroom	12	Yes	No
Toilet room	10	Yes	No
Bedpan washing room	8	Yes	No
Bathroom	10	Yes	No
Janitor's closet	10	Yes	No
Sterilizer equipment room	10	Yes	No
Linen and trash chute rooms	10	Yes	No
Laboratory, general	8	—	No
Laboratory, media transfer	8	—	No
Food preparation centers	10	—	No
Dishwashing room	10	Yes	No
Dietary dry storage	2	—	No
Laundry, general	10	—	No
Soiled linen sorting and storage	10	Yes	No
Clean linen storage	4	—	No
Central medical and surgical supply:			
Soiled or decontamination room	10	Yes	No
Clean workroom and supply storage	8	—	No

Table 3. Lighting Levels for Hospitals

Area	Footcandles*
Administrative and lobby areas, day	100
Administrative and lobby areas, night	20
Chapel or quiet area	30
Corridors and interior ramps	30
Corridor night lighting	10
Dining area and kitchen	50
Doorways	10
Examination and treatment room	
General	50
Examining table	100
Exit stairways and landings	30
Janitor's closet	20
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk or counter, for charts and records	150
Nurses' medicine area, preparations and storage	100
Occupational therapy	30
Patient care unit or room, general	10
Patient care room, reading	50
Patient care room, night light (variable)	.5 to 1.5
Physical therapy	30
Stairways other than exits	50
Toilet and bathing facilities	30
Clean workroom	100
Soiled workroom	100
Nurses' lounge	30
Laundry, general	50

*Minimum on task at anytime.

Section 34. 902 KAR 20:010 and 902 KAR 20:010E, Hospital facilities; construction and alteration, are hereby repealed.

FRANK W. BURKE, Chairman
ADOPTED: December 8, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Scope of Operations and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 2. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who has graduated from a program for medical records administrators accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Qualified dietitian" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a

mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsiblity, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable); and

(k) Discharge and termination of services.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the post-discharge care of the patient. All pertinent information concerning post-discharge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within fifteen (15) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, and shall be responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsbilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for pre-employment and periodic health examination. All employees shall have a chest x-ray or tuberculin skin test prior to employment and annually thereafter.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, social security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physicial plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be current written infection control measures, including:

1. Policies concerning the admission and isolation of patients with specific or suspected infectious diseases, protective isolation of appropriate patients and protective routine for personnel and visitors;
2. Written procedures for the bacteriological testing of all areas of possible infection. Results of all testing shall be recorded and reported to the infection control committee;
3. The method of control used in relation to the sterilization of supplies and water; and
4. Policies for the protection of patients from employees who have a communicable disease.

(e) The hospital shall provide inservice education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.
2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.
3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.
4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.
5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.
6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid containers immediately after use. After use, all needles shall also be rendered unusable. The rigid containers of sharp wastes shall either be incinerated, on site or off site, or disposed of in a sanitary landfill approved pursuant to 401 KAR 2:010.

(h) The hospital shall establish a written policy for the handling and disposal of all infectious and pathological waste. Any incinerator used for the disposal of waste shall be incompliance with 401 KAR 59:020 and 401 KAR 61:010.

1. All unpreserved tissue specimens from surgical or necropsy procedures shall be incinerated, on site or off site.
2. The following waste shall be sterilized before disposal or be disposed of by incineration if they are combustible:

a. Dressings and materials from open or contaminated wounds;
b. Waste materials and disposable linens from isolation rooms;
c. Culture plates;
d. Test tubes;
e. Sputum cups; and
f. Contaminated sponges and swabs.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.
2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.
3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in separate areas ventilated to the exterior of the buildings; this air shall not be allowed to recirculate into the facility.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital.

1. The medical records service shall be directed by a registered records administrator, either on a full-time,

part-time, or consultative basis, or by an accredited record technician on a full-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other resaon. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the address, the birth date, the medical record number, and the date of each inpatient service rendered.

2. There shall be a system for coordinating the inpatient/outpatient medical records of any patient who has received both inpatient and outpatient services.

3. All clinical information pertaining to a patient's stay shall be centralized in the patient's record.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Physician's, or dentist's when applicable, progress notes and nurses' observations;

11. Record of temperature, pulse and respiration;

12. Final diagnosis;

13. Discharge summary, including condition of patient on discharge, and date of discharge; and

14. In case of death, autopsy findings, if performed.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease treated and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending

medical staff member's orders, nursing care plans, and nursing care procedures.

1. Nursing care plans shall be developed for each patient and shall be kept current daily. Plans shall indicate long and short-term goals, nursing care needed, and methods, approaches and modifications necessary to insure best results for the patient.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physican, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall 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 medical staff member within twenty-four (24) hours from the time the order is given.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary. the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian or nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage. handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). The Division for Licensing and Regulation, Office of Inspector General, Department for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and/or revocation of food service permits.

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of

such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. Laboratory services shall be under the direction of a pathologist on a full-time, regular part-time, or a consultative basis. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by a medical staff member.

(b) Anotomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their inservice training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgury shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or desingated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficieny testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and dispostion of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for futher testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review commitee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control

over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and dispostion of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of a physician or dentist, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for physical therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Physical therapy services shall be provided only upon written orders of a medical staff member.

(f) Physical therapy services shall be provided by or under the supervision of a licensed physical therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification,

means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient and/or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a post-anesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The post-anesthetic follow-up note shall be written within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies,

and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered before the infant is removed from the delivery room.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

Section 15. 902 KAR 20:015 and 902 KAR 20:015E, Hospitals; operation and services, are hereby repealed.

FRANK W. BURKE, SR., Chairman
ADOPTED: December 8, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board

902 KAR 20:054. Health maintenance organizations; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2)
PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation of health maintenance organizations and the services to be provided by health maintenance organizations.

Section 1. Scope of Operation and Services. A health maintenance organization provides, directly or through arrangements with others, health care services to individuals voluntarily enrolled with such an organization on a per capita or a predetermined, fixed prepayment rate. These services shall include outpatient services including physician services and primary health care, inpatient services, diagnostic laboratory and radiology services, health education, and emergency medical services.

Section 2. Definitions. (1) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(2) "Commissioner" means the Commissioner of the Department of Insurance.

(3) "Enrollee" means a person who is enrolled in a health maintenance organization.

(4) "Health care services" means any services included in the furnishing to any individual of medical, optometric, or dental care, or hospitalization or incident to the furnishing of such care or hospitalization; as well as the furnishing to any person of any and all other services and goods for the preventing, alleviating, curing, or healing of human illness, physical disability or injury.

(5) "Provider" means a licensed individual physician or group of physicians, licensed health facilities or services, and other licensed health professionals who have entered into an agreement with a health maintenance organization for the purpose of providing health services to enrollees.

(6) "Primary health care" means services that provide the entry point into the health care delivery system for ambulatory persons of all ages. Primary health care emphasizes a preventive health care program and consists of diagnostic and therapeutic services of sufficiently broad scope to accommodate the basic health needs of the enrollee.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for compliance with federal, state and local laws and regulations pertaining to the operation of health maintenance organizations.

(b) All services covered by the benefit plans of the health maintenance organizations shall be provided in accordance with applicable laws and regulations relating thereto. When the health maintenance organization provides health services directly through its own health facilities or clinics, such facilities or clinics shall comply with applicable requirements of the Certificate of Need and Licensure Law. Any service which the health maintenance organization includes in the covered benefits plan shall be provided by duly licensed institutions, services, or practitioners where such licensure is required by law.

(2) Administrator. The health maintenance organization shall have an administrator who shall be responsible for the operation of the health maintenance organization and shall delegate such responsibility in his or her absence.

(3) Certificate of authority. The health maintenance organization shall have evidence that a certificate of authority has been issued and that the coverage of their benefits plan and rate schedules have received approval from the commissioner prior to licensing and relicensing of the organization by the board. The board may revoke the license or take other appropriate action if a health maintenance organization has its certificate of authority revoked or suspended by the commissioner.

(4) Administrative policies and procedures. The health maintenance organization shall have written policies to include:

(a) A current description of its operational and organizational structure.

(b) Procedures for hearing and resolving grievances between the organization (including the staff of the health maintenance organization and providers) and the enrollees of the organization. Such procedures shall assure that grievances and complaints are kept in a separate file and transmitted in a timely manner to appropriate decision making levels within the organization which has authority to take corrective action; and

(c) A written description provided to enrollees of services covered in the benefits plan of the health maintenance organization which also indicates how, where, and from whom services may be obtained.

(d) Written policies and procedures to carry out an ongoing utilization review program for its health services with reference to the quality, appropriateness, and effectivess of such services.

(e) Instructions to enrollees on obtaining medically necessary emergency services other than through health maintenance organization providers when the enrollee's health would be jeopardized before such services could be obtained through such providers.

(5) Enrollee policies. The health maintenance organization shall have written policies regarding the rights and responsibilities of enrollees to assure that each enrollee:

(a) Is fully informed of these rights and of all rules governing enrollee conduct and responsibilities;

(b) Is fully informed of services made available by the health maintenance organization and of the payments applicable for basic and supplemental services;

(c) Is fully informed of his medical condition unless medically contraindicated (as documented in his medical record) and is afforded the right to be fully informed of this medical treatment and other alternatives if available and to refuse to participate in experimental research;

(d) Is encouraged and assisted to understand and exercise his enrollee rights and to this end may voice grievances and recommend changes in policies and services;

(e) Is assured confidential treatment of his records and disclosures, and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by law or third party payment contract; and

(f) Is treated with consideration, respect, and with full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs.

(6) Medical records.

(a) Medical records shall be kept directly by the health maintenance organization or made available by the providers of services through a written agreement. Medical records shall contain at least the following:

1. Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient for each patient contact;

2. Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

3. All orders, reports of treatments rendered and medications given and other pertinent information necessary to monitor the patient's progress; and

4. Signatures of the physician or other health care professionals on each order written or treatment provided.

(b) The health maintenance organization shall maintain the confidentiality of medical record information.

(c) Medical records shall be retained for a minimum of five (5) years or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

Section 4. Provisions of Service. The health maintenance organization shall provide services directly or through contract with appropriately licensed providers.

(1) A health maintenance organization may offer a comprehensive range of health care services, but as a minimum the following basic services shall be provided in the covered benefits plan:

(a) Outpatient services including physician services and primary health care;

(b) Inpatient services;

(c) Diagnostic laboratory and radiology services in support of basic health services;

(d) Health education and education in the appropriate

use of health services and in the contribution each person can make to the maintenance of their own health; and

(e) Emergency medical services.

(2) The health maintenance organization shall have procedures through which enrollees can obtain medically necessary emergency services for which its members have contracted through physicians or services that do not have contracts with the health maintenance organization (e.g., physicians or services outside the geographic area served by the health maintenance organization) when the enrollees condition would be jeopardized before he could obtain such services through a health maintenance organization provider.

(3) When services are not provided directly the health maintenance organization shall have written contracts with all providers which specify the services to be provided and address the responsibility for keeping medical records and for notifying the health maintenance organization of services provided to enrollees. The contract shall include provisions that grant access to the enrollee's medical records when necessary by the health maintenance organization and the licensure agency and assure that services will be provided by appropriate licensed personnel in appropriately licensed facilities.

(4) Within the area served by the health maintenance organization basic health care services for which the enrollees have contracted shall:

(a) Be available and accessible to each of the health maintenance organization's enrollees promptly as appropriate with respect to its geographic location, hours or operation, and provisions for after-hours services (medically necessary emergency services must be available and accessible twenty-four (24) hours a day, seven (7) days a week) including some provision for evening hours. "Accessible" shall mean that no special type of transportation is required other than public or personal transportation.

(b) Be provided in a manner which assures continuity.

Section 5. 902 KAR 20:057E and 902 KAR 20:057, Health Maintenance Organizations Operations and Services, are hereby repealed.

FRANK W. BURKE, SR. Chairman
ADOPTED: December 14, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 4:00 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Frank W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services, Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services

902 KAR 20:086. Operation and services; intermediate care facilities for the mentally retarded and developmentally disabled.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1)(2), 222.210 et seq.

PURSUANT TO: KRS 13.082, 216B.040, 216B.105(3)

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105(3) mandate that the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD).

Section 1. Scope of Operation and Services. Intermediate care facilities for mentally retarded and developmentally disabled persons provide services for all age groups on a twenty-four (24) hour basis, seven (7) days a week, in an establishment with permanent facilities including resident beds for persons whose mental or physical condition requires developmental nursing services along with a planned program of active treatment. The facility provides special programs as indicated by individual care plans to maximum the resident's mental, physical, and social development in accordance with the normalization principle. The intermediate care facilities for the mentally retarded and developmentally disabled must comply with the facility specifications for intermediate care facilities, 902 KAR 20:056.

Section 2. Definitions. (1) "Active treatment" means daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or habilitative services offered by or procured by contract or other written agreement by the institution for its residents.

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

(4) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(5) "Developmental disability" means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifestd before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.

(6) "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene, and sex education while also meeting his physical and medical needs.

(7) "Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).

(8) "Interdisciplinary team" means the group of persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the residents. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.

(9) "License" means an authorization issued by the Board for the purpose of offering intermediate care MR/DD services.

(10) "MR/DD" means the mentally retarded and the developmentally disabled persons.

(11) "Normalization principle" is the utilization of means which are as culturally normative as possiblee in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.

(12) "Qualified dietitian or nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.

(13) "Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.

(14) "Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate.

(15) "Qualified social worker" means a person who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in social work from an accredited program or a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker.

(16) "A qualified mental retardation professional" means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:

(a) A psychologist with a master's degree from an accredited program;

(b) A licensed physician;

(c) An educator with a degree in education from an accredited program;

(d) A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:

1. Social work from an accredited program; or
2. A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker;

(e) A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association;

(f) A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;

(g) A registered nurse;

(h) A therapeutic recreation specialist who is a graduate of an accredited program and is licensed in the state, if required, or who has:

1. A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or
2. An associate degree in recreation and one (1) year of experience in recreation; or
3. A high school diploma, or an equivalency certificate and:

a. Two (2) years of experience in recreation; or

b. One (1) year of experience in recreation plus completion of comprehensive inservice training in recreation; or

4. Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or

(i) A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification.

(17) "Restraint" means any chemical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.

(18) "Seclusion" means the retention of a resident alone in a locked room.

(19) "Time out" means a procedure which involves removing the person from a reinforcing situation, for a period of time when the person engages in a specified inappropriate behavior.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and delegating such responsibility in his absence. The administrator shall not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the residents. The contract shall be in writing.

(4) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological resident registry showing date of admission, name of resident and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(5) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Services including medical, nursing, habilitation, pharmaceutical (including medication stop orders policy), and residential services;

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the

Department for Human Resources pursuant to KRS Chapter 209 and KRS 199.335; and

(c) Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and

(d) Missing resident procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for or other unauthorized absence.

(6) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) Patients shall be admitted only upon the approval of a physician. The facility shall admit only persons who have a physical or mental condition which requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of a physician, a psychologist, a registered nurse, a social worker and other professionals, at least one (1) of whom is a qualified mental retardation professional. The interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual, not more than three (3) months before admission, covering physical, emotional, social, and cognitive factors; and

2. Prior to admission define the need for service without regard to availability of those services. The team shall review all available and applicable programs of care, treatment, and training and record its findings.

(c) If admission is not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives.

(d) Before admission, the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the facility and fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services offered.

(e) The facility shall provide and maintain a system for identifying each resident's personal property and facilities for safekeeping of his declared valuables. Each resident's clothing and other property shall be reserved for his own use.

(8) Discharge planning. Prior to discharge the facility shall have a postinstitutional plan which identifies the residential setting and support services which would enable the resident to live in a less restrictive alternative to the current setting. Before a resident is released, the facility shall:

(a) Offer counseling to parents or guardians who request the release of a resident concerning the advantages and disadvantages of the release;

(b) Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and

(c) Prepare and place in the resident's record a summary of findings, progress, and plans.

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of health care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of a resident, and shall establish responsibility for notifying the other institution promptly of the impending transfer of a resident and shall arrange for appropriate and safe transportation.

(b) When the resident's condition exceeds the scope of services of the facility, the resident, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for residents to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the resident, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any resident.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the resident.

(f) If the resident is transferred to another health care facility or other community resource, a transfer form shall accompany the resident. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with a history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for resident care, and pertinent social information on the resident and family.

(10) Medical records.

(a) The facility shall maintain a record for each resident for:

1. Planning and continuous evaluation of the resident's habilitation program;

2. Furnishing documentary evidence of each resident's progress and response to his habilitation program; and

3. Protecting the rights of the residents, the facility and the staff.

(b) All entries in the resident's record shall be legible, dated and signed.

(c) At the time a resident is admitted, the facility must enter in the individual's record the following information:

1. Name, date of admission, birth date and place, citizenship status, marital status, and social security number;

2. Father's name and birthplace, mother's madien name and birthplace, and parents' marital status;

3. Name and address of parents, legal guardian, and next of kin if needed;

4. Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

5. Reason for admission or referral problem;

6. Type and legal status of admission;

7. Legal competency status;

8. Language spoken or understood;

9. Sources of support, including social security, veterans' benefits, and insurance;

10. Religious affiliation, if any;

11. Reports of the preadmission evaluations; and

12. Reports of previous histories and evaluations, if any.

(d) Within one (1) month after the admission of each

resident, the ICF/MR must enter the following in the resident's record:

1. A report of the review and updating of the preadmission evaluation;

2. A prognosis that can be used for programming and placement; and

3. A comprehensive evaluation and individual program plan, designed by an interdisciplinary team.

(e) The facility must enter the following information in a resident's record during his residence:

1. Reports of accidents, seizures, illnesses, and treatments for these conditions;

2. Records of immunizations;

3. Records of all time periods that restraints were used, with justification and authorization for each;

4. Reports of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident;

5. Observations of the resident's response to his program to enable evaluation of its effectiveness;

6. Records of significant behavior incidents;

7. Records of family visits and contacts;

8. Records of attendance and absences;

9. Correspondence pertaining to the resident;

10. Periodic updates of the information recorded at the time of admission; and

11. Appropriate authorizations and consent.

(f) The ICF/MR must enter a discharge summary in the resident's record at the time he is discharged.

(11) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure of registration where required by law, health records, records of in-service training and on-going education, and the employee's name, address and social security number.

(c) Staffing requirements. The facility shall have adequate personnel to meet the needs of the residents on a twenty-four (24) hour basis. The number of classification of personnel required shall be based on the number of residents, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this regulation.

(d) The licensee shall have a qualified mental retardation professional who is responsible for:

1. Supervising the delivery of each resident's individual plan of care;

2. Supervising the delivery of training and habilitation services;

3. Integrating the various aspects of the facility program;

4. Recording each resident's progress; and

5. Initiating a periodic review of each individual plan of care for necessary changes.

(e) Each resident living unit, regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justifying otherwise:

1. For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is 1 to 2;

2. For units serving moderately retarded residents requiring habit training, the overall ratio is 1 to 2.5; and

3. For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is 1 to 5.

(f) When the staff/resident ratio does not meet the needs of the residents, the Division of Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis of this determination.

(g) A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, fire or other emergencies.

(h) Volunteers shall not be counted to make up minimum staffing requirements.

(i) Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training and experience in the field of developmental disabilities and mental retardation. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse preferably with a baccalaureate degree, at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

1. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job description of each level of nursing personnel;

2. Nursing service personnel at all levels of experience and competence shall be assigned responsibilities in accordance with their qualifications, delegate authority commensurate with their responsibility, and provide appropriate professional nursing supervision; and

3. Participating in the development and implementation of resident care policies.

(j) The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

(k) Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

(l) Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(m) Health requirements. All employees shall have a test for tuberculosis either prior to or within the first week of employment and annually thereafter. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(n) The facility shall have a staff training program adequate for the size and nature of the facility with a person designated the responsibility for staff development and training. The program shall include:

1. Orientation for each new employee to acquaint him with the philosophy, organization, program, practices, and goals of the facility;

2. Inservice training for any employee who has not achieved the desired level of competence;

3. Continuing inservice training for all employees to update and improve their skills; and

4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services. (1) The professional interdisciplinary team shall assure that the health needs of residents are met and that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:

(a) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.

(b) Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.

(c) Re-evaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care.

(2) Communicable diseases.

(a) No resident shall knowingly be admitted to the facility with a communicable disease which is reportable to the health department, pursuant to KRS Chapter 214 and applicable regulations except a (non-infectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(b) If, after admission, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(3) Use of control and discipline of residents.

(a) The facility must have written policies and procedures for the control and discipline of residents that are available in each living unit and to parents and guardians.

(b) The facility shall not allow:

1. Corporal punishment of a resident;

2. A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or

3. Seclusion of a resident.

(c) On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment.

(d) The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use.

(e) An order for physical restraint may not be in effect longer than twelve (12) hours. Appropriately trained staff must check a resident placed in a physical restraint at least every thirty (30) minutes and keep a record of these checks. A resident who is in a physical restraint must be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint. Mechanical devices used for physical restraint must be designed and used in a way that causes the resident no physical injury and the least possible physical discomfort. Restraints that require lock and key shall not be used.

(f) Mechanical supports used as protective devices must be designed and applied under the supervision of a qualified professional, and in accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

(g) The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.

(h) Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a qualified mental retardation professional;

2. Conducted only with the consent of the affected resident's parents or legal guardian; and

3. Described in written plans that are kept on file in the ICF/MR.

(i) A physical restraint used as a time-out device may be applied only during behavior modification exercises and only in the presence of the trainer.

(j) Time-out devices and aversive stimuli may not be used for longer than one (1) hour, and then only during the behavior modification program and only under the supervision of the trainer.

(4) Medical supervision of residents. The facility shall maintain policies and procedures to assure that each resident shall be under the medical supervision of a physician.

(a) The resident (or his guardian) shall be permitted his choice of physician.

(b) The physician shall visit the residents as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician.

(c) A complete medical evaluation to include social, physical, emotional, and cognitive factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission.

(d) Medical re-evaluation at least annually shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care.

(e) Formal arrangements shall be made to provide for medical emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care.

(5) Health services. Health services shall include:

(a) The establishment of a nursing care plan as part of the total habilitation program for each resident. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals, and nursing care needs;

(b) Nursing care to achieve and maintain the highest degree of function, self-care and independence with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti.

2. Excerises. Nursing personnel shall assist residents in maintaining maximum range of motion.

3. Bowel and bladder training. Nursing personnel shall

make every effort to train incontinent residents to gain bowel and bladder control.

4. Training in habits of personal hygiene, family life, and sex education that includes but is not limited to family planning and venereal disease counseling.

5. Ambulation. Nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician.

6. Administration of medications and appropriate treatment.

7. Written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. Conformance with physician's orders. All medications administered to residents shall be ordered in writing. Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. The pharmacist or nurse shall review the resident's medication profile on a regular basis. The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state approved training program. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or a registered nurse.

a. The nursing station shall have items required for the proper administration of medication readily available.

b. Medications prescribed for one (1) resident shall not be administered to any other resident.

c. Self-administration of medications by residents shall not be permitted except for drugs on special order of the resident's physician and a predischarge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

d. Medication errors and drug reactions shall be immediately reported to the resident's physician and pharmacist and an entry thereof made in the resident's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each resident shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged residents until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record in which is recorded the name of the resident; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician administering it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Department for Human Resources.

(7) Personal care services.

(a) Each resident shall be trained to be as independent as possible to achieve and maintain good personal hygiene including:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) Each resident who does not eliminate appropriately and independently must be in a regular, systematic toilet training program and a record must be kept of his progress in the program.

(c) A resident who is incontinent must be bathed or cleaned immediately upon voiding or soiling, unless specifically contraindicated by the training program, and all soiled items must be changed.

(d) The staff shall train and when necessary assist the residents to dress in their own street clothing (unless otherwise indicated by the physician).

(8) Dental services.

(a) Comprehensive dental service shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.

1. Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under supervision of the dentists, health educators, and oral hygiene aides.

2. A dental professional shall participate, as appropriate, on the interdisciplinary team serving the facility.

3. There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services delivered are within the facility.

(b) Dental records shall be a part of each patient's record.

(c) A dentist shall be responsible for insuring that direct care staff are instructed in the proper use of oral hygiene methods for residents.

(9) Social services.

(a) Social services shall be available either on staff or by formal arrangement with community resources for all residents and their families, including evaluation and counseling with referral to, and use of, other planning for community placement, discharge and follow up services rendered by or under the supervision of a social worker.

(b) The social worker of the intermediate care facility, providing services for the mentally retarded and developmentally disabled, shall be under the supervision of a social worker who is a qualified mental retardation professional.

(c) Social services shall be recorded in the resident's record and periodically evaluated in conjunction with the resident's total plan of care.

(d) A plan for such care shall be recorded in the resident's record and periodically evaluated in conjunction with the resident's total plan of care.

(e) Social services records shall be maintained as an integral part of case record maintained on each resident.

(10) Recreation services. The facility shall coordinate recreational services with other services and programs provided to each resident and shall:

(a) Provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs.

(b) Keep resident records that include periodic surveys of the residents' recreation interests and the extent and level of the residents' participation in the recreation program.

(c) Have enough qualified staff and support personnel available to carry out the various recreation services with the qualifications as defined in the definitions.

(11) Speech pathology and audiology services. The facility shall provide speech pathology and audiology services as needed to maximize the communication skills of residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team.

(12) Occupational therapy.

(a) Occupational therapy shall be provided by or under the supervision of a qualified occupational therapist to residents as required by the resident's needs.

(b) The occupational therapist shall act upon the program designed by the professional interdisciplinary team of which the therapist is a member.

(13) Physical therapy.

(a) Physical therapy shall be provided by or under the supervision of a licensed physical therapist to residents as required by the resident's needs.

(b) The physical therapist shall act upon the program designed by the professional interdisciplinary team of which the therapist is a member.

(14) Psychological services. Psychological services as needed shall be provided by a licensed or certified psychologist pursuant to KRS Chapter 319 who shall participate in the evaluation and periodic review, individual treatment, and consultation and training of program staff as a member of the interdisciplinary team.

(15) Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for residents who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting residents to and from the facility if necessary for the resident's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(16) Residential care services. All facilities shall provide residential care services to all residents including: room accommodations, housekeeping and maintenances services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the resident comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

6. Each living room or lounge area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

7. Dining room furnishings shall be adequate in number, well constructed, and of satisfactory design for the residents.

8. Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by

another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of residents or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Residents' personal clothing shall be laundered by the facility as often as necessary. Residents' personal clothing shall be laundered by the facility unless the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident owner and returned to the correct resident.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the residents including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietitian on a full-time, part-time or consultant basis to the facility. The qualified dietitian shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting resident care. The company shall comply with all of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietitian or nutritionist, consultation by a qualified dietitian or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours on duty, and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with the physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The diet manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietitian shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. 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. Between meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. (A file of tested recipes, adjusted to appropriate yield, shall be maintained.) Food shall be cut, chopped or ground to meet individual needs. If a resident refuses food served, nutritious substitutions shall be offered.

e. All opened containers or left-over food items shall be covered and dated when refrigerated.

5. Serving of food. When a resident cannot be served in the dining room, trays shall be provided and shall rest on firm supports. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

a. Correct positioning of the resident to receive his tray shall be the responsibility of the direct care staff. Residents requiring help in eating shall be assisted according to their training plan.

b. Adaptive self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code). The Division for Licensing and Regulation, Office of the Inspector General, Department for Human Resources shall carry out the provisions of this Act as they relate to inspections, follow-up and recommendations for issuance and revocation of food service permits.

Section 5. 902 KAR 20:085 and 902 KAR 20:085E,

Special services for mentally retarded and developmentally disabled, are hereby repealed.

FRANK W. BURKE, SR., Chairman
ADOPTED: December 8, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Franke W. Burke, Sr., Chairman, Kentucky Health Facilities and Health Services, Certificate of Need and Licensure Board, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsiblity to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, hereinafter referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private non-profit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women, when the unborn child is deprived of parental support due to death, absence, incapacity or unemployment of the father;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment.

Section 2. The Medically Needy. Other individuals, meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Department for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under subsections (1) through (6) of Section 1, or as medically needy under Section 2 are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty dollars ($50) during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii).

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the

family received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Parents may be included for assistance in the cases of families with children including adoptive parents and alleged fathers where circumstances indicate the alleged father has admitted the relationship prior to application for assistance. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(10) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member.

(12) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403, which are hereby incorporated by reference.

(13) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(14) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(15) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a non-medical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a state institution for mental illness unless he is under age eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19)) or is sixty-five (65) years of age or over.

Section 5. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 6. Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the department shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if

retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if non-homestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for non-homestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) If retention would result in ineligibility, the department will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) of this subsection shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

Section 7. 904 KAR 1:003 and 904 KAR 1:003E, Technical eligibility, are hereby repealed, effective November 1, 1981.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 11, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3)
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, hereinafter referred to as AFDC, in accordance with title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Residence and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity of a natural or adoptive parent. A married child living with her/his spouse in the home of her/his parents is not deprived of parental support or care. A married child living in the home of her/his parents but divorced or legally separated from her/his spouse is deprived of parental support if she/he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.

(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his/her function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, military service, deportation or single parent adoption. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(3) Incapacity defined. Incapacity is any condition of mind or body which makes a parent physically or mentally unable to provide the necessities of life for his/her needy child. The condition must be anticipated to continue for at least thirty (30) days beyond the date of application and may be presumed to continue during a period in which the parent is undergoing diagnostic studies and/or evaluation of rehabilitation potential. Incapacity of the parent must prevent him/her from working in an occupation in which he/she previously engaged, or another job for which he/she is equipped and which is accessible in the county or community where he/she normally resides. If a job opportunity exists in the community or county, it shall be considered accessible regardless of its immediate availability. Scarcity of work does not establish incapacity unless there is a causal relationship between the parent's unemployment and actual physical or mental disability. Lack of paid work experience does not preclude the parent from being considered incapacitated.

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-

great; a stepfather, stepmother, stepbrother, stepsister.

(3) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(4) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(5) A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

(6) A child placed in foster care is not required to be living in the home of a relative to be eligible to receive AFDC-FC in his/her foster home.

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19). Full and part-time is defined in accordance with 45 CFR 233.90. A child is considered in regular attendance in months in which he/she is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he/she has indicated an intention not to re-enter school.

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Strikers. (1) Benefits shall be denied to any family for any month in which any legally liable caretaker relative, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual's needs shall be considered in determining amount of benefits if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 7. Work Registration. (1) Unless exempt under the criteria, as specified in Title VI of the Social Security Act and 45 CFR Section 224.20(b) needs of an individual for whom application has been made may not be included in the AFDC assistance grant if he/she refuses to register for the Work Incentive Program, (WIN) or if registered, refuses to participate without good cause. Participation in a strike shall not constitute good cause.

(2) Individuals exempt from WIN registration pursuant to 45 CFR 224.20(b) are as follows:

(a) An individual under age sixteen (16);

(b) A child age sixteen (16) to age eighteen (18), if enrolled as a full-time student; or to age nineteen (19), if a full-time student who meets the requirements set forth in Section 4 of this regulation;

(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;

(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;

(e) An individual age sixty-five (65) or over;

(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible;

(g) A parent or other caretaker relative of a child under six (6) who personally provides full-time care of the child with only very brief and infrequent absences from the child;

(h) A person so far remote from a work incentive project that his/her effective participation is precluded;

(i) An individual who is employed not less than thirty (30) hours per week, in unsubsidized employment expected to last a minimum of thirty (30) days, except when there is a temporary break in employment expected to last longer than ten (10) days.

Section 8. Cooperation in Child Support Activities. (1) Inclusion of the specified relative in the AFDC budget is dependent upon cooperation in child support activities pursuant to 45 CFR 232.40 and refusal, except for "good cause," results in removal of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he/she is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) Pursuant to 45 CFR Part 232.40, the Department for Human Resources will provide written notice to the applicant or recipient that he/she may claim good cause for refusing to cooperate.

(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticapted to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself/herself to such an extent that it would reduce his/her capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicants's/recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him/her for adoption and discussion has not gone on for more than three (3) months and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 9. Potential Entitlement for Other Programs. All applicants/recipients must apply for any statutory benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 10. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 11. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Department for Human Resources of any child support owed for the child up to the amount of AFDC payments made to the recipient.

Section 12. Eligibility Criteria for Foster Care. To be eligible for foster care, the child must meet the technical requirements of the regular AFDC program as set forth in this regulation. In addition, the child must have been:

(1) Removed from the home after April 30, 1961; and

(2) Committed to the department by a judicial determination under the authority of KRS 208.200 or 208.080 specifying that the child is delinquent, neglected, needy, or dependent (as stated in KRS 208.020), or if prior to June 1976, KRS 205.430, that continuance in or return to the home of a relative would be contrary to his/her welfare; and

(3) Receiving AFDC as of the month in which court action was initiated, or if not, would have received AFDC if application had been made; or if not living with a relative at the time of court action, did live with such relative within six (6) months prior to the month of initiation of court action and was eligible or would have been eligible for AFDC if application had been made.

Section 13. 904 KAR 2:005 and 2:005E, AFDC; Technical requirements, are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 11, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 14, 1981 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:007. Repeal of 904 KAR 2:008.

RELATES TO: KRS 205.215
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources was authorized by KRS 205.215 to provide short-term assistance to families with children in crisis situations as provided for in Title IV-A of the Social Security Act. A regulation, 904 KAR 2:008, Program for Emergency Assistance, was promulgated to set forth eligibility criteria and type and amounts of assistance. Due to the shortage of revenues the Commonwealth of Kentucky is facing and under the executive authority the Governor of the state has to alter the Commonwealth's budget to prevent a deficit situation, it is necessary to terminate the Emergency Assistance Program. This regulation acts specifically to repeal the implementing regulation previously referenced.

Section 1. 904 KAR 2:008, Program for emergency assistance, is hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:016. Standards for need and amount, AFDC.

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 13.082, 205.200(2)
NECESSITY AND FUNCTION: The Department for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006E, Section 3. The incapacitated natural or adoptive parent of the child(ren) who is living in the home and legally married to the specified relative may be included as second parent if the technical eligibility factors are met. The decision regarding application for or continued inclusion of an individual child rests with the parent or other specified relative.

(2) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(3) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month.

Section 2. Resource Limitations. The amount of real and personal property that can be reserved by each assistance unit shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (1) as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed $1,500 equity value; and

(e) Items valued at less than fifty dollars ($50) each.

(2) Disposition of resources. An applicant/recipient must not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to

total resources, exceeds the resource limitation, the application is denied or assistance discontinued. The time period of ineligibility shall be based on the amount of excess transferred property and begins with the month of transfer. If the amount of excess transferred property does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of natural parent(s), and stepparent(s) living in the home, shall not exceed 150 percent of the assistance standard set forth in Section 8. Disregards specified in Section 4, subsection (1), shall apply. If total gross income exceeds the 150 percent income limitation standard as shown below, the assistance group is ineligible.

Number of Eligible Persons	Monthly Gross Income Limitation Standard
1 Child	$200
2 Persons	$243
3 Persons	$282
4 Persons	$353
5 Persons	$413
6 Persons	$465
7 or more Persons	$518

(2) Applicant eligibility test. If the gross income is below 150 percent of the assistance standard and the applicant has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4, subsections (1) and (2), shall be compared to the assistance standard set forth in Section 8. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4, subsections (1), (2), and (3). If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible.

(4) A period of ineligibility shall be established for recipients whose income exceeds the limits set forth in subsection (1) or (3) of this section in accordance with 45 CFR 233.20(a)(3)(D).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received in the month of application or redetermination by the assistance group, natural parent(s) and/or stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test.

(a) Disregards applicable to stepparent income, as set forth in Section 5;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v) and 45 CFR 233.20(a)(11)(i)(b)(1)(i);

(d) Work Incentive Program (WIN) and Comprehensive Employment and Training Act Program (CETA) incentive payments;

(e) Reimbursement for training-related expenses made by a manpower agency to applicants in institutional and work experience training;

(f) Value of food coupons;

(g) Non-emergency medical transportation payments;

(h) Principal of loans obtained to meet needs not included in the assistance plan, e.g., home repair, farm expansion;

(i) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans administered by the United States Commissioner of Education;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce for household consumption;

(n) Experimental housing allowance program payment made under annual contributions contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended; and HUD Section 8 payments for existing housing under Title 24 part 882;

(o) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(p) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(q) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Title II and III, pursuant to Section 418 of Public Law 93-113;

(s) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113;

(t) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(u) Any payment from Department for Human Resources, Bureau for Social Services, for child foster care, adult foster care, or subsidized adoption;

(v) Energy assistance payments;

(w) Earned income tax credit payments.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received by a person employed by CETA under the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Project (YCCIP), and the Youth Employment and Training Program (YETP);

(b) Earnings received from participation in Job Corps by an AFDC child;

(c) Earnings of a child in full-time school attendance or in half-time school attendance, if not working full time;

(d) Standard work expense deduction of seventy-five

dollars ($75) for full-time employment. A forty dollar ($40) deduction is allowed for part-time employment; and

(e) Child care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment or $110 per child or incapacitated adult per month for part-time employment.

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2), as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty dollars ($30) and one-third (⅓) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. This disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income unless he/she has not been a recipient for twelve (12) consecutive months in accordance with 45 CFR 233.20(a)(11)(ii).

(4) Exceptions. Disregards in subsection (2)(d) and (e) and subsection (3)(b) shall not apply, in accordance with 45 CFR 233.20(a)(11)(iii) in any instance where an individual, without good cause:

(a) Reduces or terminates employment;

(b) Refuses to accept employment;

(c) Fails to make a timely report of income; or

(d) Requests assistance be terminated for the sole purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

Section 5. Stepparent Income and Resources. (1) Income. The gross income of a stepparent living in the home is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five dollars ($75) of the gross earned income of the stepparent who is employed full time or the first forty dollars ($40) of the gross earned income of the stepparent who is employed part time;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability;

(c) Any amount actually paid by the stepparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent receiving Supplemental Security Income under Title XVI.

(2) Resources. Resources belonging exclusively to the stepparent are deemed available to the natural parent and considered in determining eligibility of the natural parent for inclusion in the assistance group. Resources of a stepparent receiving SSI under Title XVI shall not be considered.

Section 6. Alien Income and Resources. The gross non-AFDC income and resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. The provisions of this section shall not apply to those aliens indentified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor and spouse is considered available to the assistance group subject to the following disregards:

(a) Twenty percent (20%) of the total monthly gross earned income, not to exceed $175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are claimed by the sponsor as dependents in determining his/her federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to non-household members who are claimed as dependents in determining his/her federal personal income tax liability; and

(d) Actual payments of alimony or child support paid to non-household members.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he/she were an AFDC applicant, less $1,500.

Section 7. Earned Income Tax Credit. In the case of an applicant or recipient of AFDC, earned income shall include the amount of advance payments of the earned income credit for which he/she is eligible determined in accordance with 45 CFR 233.20(a)(6)(ix).

Section 8. Assistance Standard. The AFDC assistance standard, including amounts for food, clothing, shelter, utilities and non-medical transportation from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Number of Eligible Persons	Monthly Standard
1 Child	$133
2 Persons	$162
3 Persons	$188
4 Persons	$235
5 Persons	$275
6 Persons	$310
7 or more Persons	$345

Section 9. Foster Care. (1) Payment rates. Payment rates are based on the Department for Human Resources per diem payment rates. The department's rates are based on the age and needs of the child.

(a) A child in foster family care who is eligible for AFDC foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment (as determined by the Bureau for Social Services):

Age	Regular	Special	Extraordinary
0-5	$144	$167	$228
6-12	160	183	228
13-over	175	198	228

(b) A child in a private child caring institution who is eligible for AFDC foster care payments receives payment in one (1) of the following monthly amounts according to the child's age and needs assessment (as determined by the Bureau for Social Services):

Age	Regular	Special
0-5	$151	$212
6-12	175	212
13-over	192	212

(2) Income limitations. Gross income shall not exceed 150 percent of the payment rate set forth in subsection (1). If that gross income exceeds the 150 percent income limitation standard as shown below, the child(ren) is ineligible.

	Foster Family Care			Institutional Care	
Age	Regular	Special	Extraordinary	Regular	Special
0-5	216	251	342	227	318
6-12	240	275	342	263	318
13+	263	297	342	288	318

Section 10. 904 KAR 2:010 and 2:010E, AFDC; standards for need and amount, are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 15, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 15, 1981 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:046. Adverse action; conditions.

RELATES TO: KRS 205.200(2), 205.245
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer public assistance programs under Title IV-A and XIX of the Social Security Act, namely Aid to Families with Dependent Children, hereinafter referred to as AFDC, and Medical Assistance, hereinafter referred to as MA. In addition, the department has responsibility to provide supplementation to certain aged, blind and disabled individuals as required by Title XVI, as amended, and by KRS 205.245. 45 CFR section 205.10(a)(4) and 45 CFR section 206.10(a)(4) require that applicants or recipients be provided adequate notice of adverse action in written form citing applicable state regulations. This regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued.

Section 1. Reasons for Adverse Action. An application is denied or assistance discontinued or decreased when:
(1) Income or resources exceed the standards for the specific assistance program, or when income of a recipient increases;
(2) The applicant or recipient does not meet technical eligibility criteria or has failed to comply with a technical requirement as set forth in 904 KAR Chapters 1 and 2;
(3) The applicant or recipient has failed to provide sufficient information or clarify conflicting information for a determination of eligibility despite receipt of written notice detailing the additional information needed for a determination;
(4) The applicant/recipient has failed to keep the appointment for an interview;
(5) Other reasons:
(a) Request of client, or voluntary written withdrawal of application;
(b) Bureau staff unable to locate applicant or recipient;
(c) Applicant or recipient no longer domiciled in Kentucky;
(d) Change in program policy has adversely affected the recipient.

Section 2. Denial of Applications. Whenever an application is denied, the applicant is given written notification of the denial including the reason for the denial and the right to a fair hearing.

Section 3. Decreases and Discontinuances. Whenever a change in circumstances indicates that a money payment should be reduced or discontinued, or that medical entitlement should be discontinued or curtailed to any or all members, the recipient is given ten (10) days advance notice of the proposed action in writing, explaining the reason for the proposed action, and extending the opportunity to confer with the worker or to request a fair hearing. Hearing requests received during the advance notice period result in delay of the decrease or discontinuance pending the hearing officer's decision.

Section 4. Exceptions to the Advance Notice Requirement. An advance notice of proposed action is not required, but written notice is given, whenever the decrease or discontinuance results from:
(1) Information reported by the recipient and the recipient has signed a waiver of the notice requirement indicating understanding of the consequences;
(2) The bureau has received a clear written statement, signed by the recipient, that he no longer wishes assistance;
(3) AFDC-FC is being discontinued;
(4) The bureau has received factual information that the aged, blind or disabled recipient has died;
(5) Whereabouts of the recipient are unknown and mail addressed to him has been returned indicating no known forwarding address, however a returned check will be made available to him if his whereabouts become known during the payment period covered by the returned check;
(6) It has been established that assistance has been accepted in another state;
(7) The AFDC child has been removed from the home by judicial order and placed in foster care;
(8) The aged, blind or disabled supplementation recipient has entered a chronic care facility resulting in vendor payment status;
(9) The recipient has entered a penal institution or if under sixty-five (65) a tuberculosis hospital, or if between twenty-one (21) and sixty-five (65), a mental hospital;
(10) A special allowance, or time limited assistance is terminated and the recipient has been informed in writing at the time the allowance or assistance was granted of the automatic termination at the end of a specified period or under specific conditions.

Section 5. 904 KAR 2:045 and 904 KAR 2:045E, Condi-

tions under which adverse action is taken, are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: December 2, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: December 4, 1981 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 2:082. Repeal of 904 KAR 2:081 and 904 KAR 2:081E.

RELATES TO: KRS 205.810
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources was authorized by KRS 205.810 to provide short-term assistance to single or married adults in crisis situations and in financial need. Regulations, 904 KAR 2:081 and 2:081E, were promulgated to set forth eligibility criteria and amounts of assistance available to the Crisis Oriented Program for Emergencies and the effective dates of the program. Due to the shortage of revenues the Commonwealth of Kentucky is facing and under the executive authority the Governor of the state has to alter the Commonwealth's budget to prevent a deficit situation, it is necessary to terminate the Crisis Oriented Program for Emergencies. This regulation acts specificially to repeal the implementing regulations previously referenced.

Section 1. 904 KAR 2:081 and 2:081E, Crisis oriented program for emergencies (COPE), are hereby repealed.

WILLIAM L. HUFFMAN, Commissioner
ADOPTED: November 25, 1981
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: November 25, 1981 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the December 2, 1981 Meeting

(Subject to subcommittee approval at the January 6, 1982 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Wednesday, December 2, 1981, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senator James Bunning and Representatives James E. Bruce, Albert Robinson and Gregory Stumbo.

Guests: Dave Nicholas, Department of Finance; Gary Bale, Steve Marcum, Michael Luscher, and Jim Burnette, Department of Education; John Tinsley, Department of Transportation; Dorothy Miller, Board of Examiners for Social Work; Larry Wilson, Department of Natural Resources; Richard Lewis and Catherine Staib, Department of Alcoholic Beverage Control; Don McCormick and Peter Pfeiffer, Department of Fish and Wildlife Resources; Greg Lawther, Sharon Rodriguez, Ked Fitzpatrick and Donna Smith, Department for Human Resources; Richard Bartlett, Louisville Emergency Medical Services; Herbert Beasley and Leon Moon, Kentucky Ambulance Providers Association; Wilbur Gibson, Edmonson County Judge Executive; Michael Borders, Barren River Emergency Medical Service; Alex Martin, Bowling Green Medical Center; Nell Thomas and Peggy Oliver, Trigg County Ambulance Service; Etta Ruth Kepp, Environmental Quality Commission; Ken Hart and Bill Underwood, Kentucky Coal Journal; and Katie Nienaber.

Press: Sy Ramsey, AP.

LRC Staff: Susan Harding, Cindy De Reamer, O. Joseph Hood and Garnett Evins.

The following regulations were deferred until the January meeting:

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
Licensing
804 KAR 4:220. Riverboats.

DEPARTMENT OF TRANSPORTATION
Bureau of Vehicle Regulation
Motor Vehicle Dealers
601 KAR 20:070. Suitable premises; signs, multi-businesses.

The following regulations were accepted by the subcommittee and ordered filed:

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Examiners of Social Work
201 KAR 23:070. Specialty certification.

CABINET FOR DEVELOPMENT
Department of Fish and Wildlife Resources
Fish
301 KAR 1:055. Angling; limits and seasons.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Existing Source Standards
401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations.

DEPARTMENT OF EDUCATION
Bureau of Administration and Finance
Buildings and Grounds

702 KAR 4:010. Construction project application.

702 KAR 4:020. Plans and specifications for construction.

702 KAR 4:040. Contract completion; changes; retainage.

702 KAR 4:060. Construction criteria.

702 KAR 4:070. Mechanical, electrical, sanitary, heating and ventilation design.

702 KAR 4:090. Property disposal.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
Advertising Distilled Spirits and Wine

804 KAR 1:030. Prohibited statements.

804 KAR 1:100. General advertising practices. (As amended.)

804 KAR 1:101. Repeal of 804 KAR 1:010, 804 KAR 1:020, 804 KAR 1:040, 804 KAR 2:025 and 804 KAR 3:070. (As amended.)

Advertising Malt Beverages

804 KAR 2:015. Prohibited statements.

Alcoholic Beverage Control Board

804 KAR 6:010. Procedures.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board

902 KAR 20:115. Ambulance services.

902 KAR 20:120. Non-emergency health transportation service.

Bureau for Social Insurance
Medical Assistance

904 KAR 1:049. Payments for family planning services.

Food Stamp Program

904 KAR 3:040. Issuance procedures.

904 KAR 3:060. Administrative fraud hearings. (As amended.)

On motion of Representative Stumbo, seconded by Representative Bruce the meeting was adjourned at 12:15 p.m., until Wednesday, January 6, 1982, at 10 a.m., in Room 103 of the Capitol Annex.

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