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IN THIS ISSUE

NOTE: The April meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—THURSDAY, April 7, 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.

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

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

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Public Hearings Scheduled

DEPARTMENT FOR HUMAN RESOURCES

A public hearing will be held on April 6, 1982, at 9:00 a.m. at the Vital Statistics Conference Room, 1st Floor, DHR Building, Frankfort, on the following regulations:

902 KAR 4:020. Care of eyes. [8 Ky.R. 938]
904 KAR 1:012: Inpatient hospital services. [8 Ky.R. 939]

DEPARTMENT OF INSURANCE

A public hearing will be held on April 1, 1982, at the Department of Insurance, 151 Elkhorn Court, Frankfort, on the regulations listed below at the following times:

9:00 a.m. 806 KAR 26:010. Proxies, consents and authorization. [8 Ky.R. 926]
9:15 a.m. 806 KAR 9:170. Minimum score of examination for license. [8 Ky.R. 954]
9:30 a.m. 806 KAR 9:070. Examination retake limits. [8 Ky.R. 926]
9:45 a.m. 806 KAR 9:011. Repeal of 806 KAR 9:010. [8 Ky.R. 954]
10:00 a.m. 806 KAR 38:060. Cancellation of enrollees' coverage. [8 Ky.R. 959]
10:45 a.m. 806 KAR 2:020. Interest and rewards prohibited. [8 Ky.R. 925]
11:00 a.m. 806 KAR 17:070. Filing procedures for health insurance rates; experience data on individual Medicare supplement policies. [8 Ky.R. 955]

A public hearing will be held on May 3, 1982, at the Department of Insurance, 151 Elkhorn Court, Frankfort, on the regulations listed below at the following times:

9:00 a.m. 806 KAR 9:091. Repeal of 806 KAR 9:090. [8 Ky.R. 1130]
9:15 a.m. 806 KAR 12:070. Application requirements. [8 Ky.R. 1130]
10:00 a.m. 806 KAR 17:060. Minimum standards for Medicare supplement policies. [8 Ky.R. 1055]

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held on April 29, 1982, at 10:00 a.m. at the 1st Floor Auditorium, State Office Building, High & Clinton Streets, Frankfort, on the following regulations:

401 KAR 50:015. Documents incorporated by reference. [8 Ky.R. 1035]
401 KAR 50:035. Permits and compliance schedules. [8 Ky.R. 1037]
401 KAR 50:055. General compliance requirements. [8 Ky.R. 1041]
401 KAR 51:010. Attainment status designations. [8 Ky.R. 1044]
401 KAR 51:017. Prevention of significant deterioration of air quality. [8 Ky.R. 1112]
401 KAR 51:052. Review of new sources in or impacting upon non-attainment areas. [8 Ky.R. 1120]
401 KAR 51:055. Controlled trading. [8 Ky.R. 1125]
401 KAR 59:018. New stationary gas turbines. [8 Ky.R. 1046]
401 KAR 59:101. New bulk gasoline plants. [8 Ky.R. 1049]
401 KAR 59:175. New service stations. [8 Ky.R. 1050]
401 KAR 59:210. New fabric, vinyl and paper surface coating operations. [8 Ky.R. 910]
401 KAR 59:212. New graphic arts facilities using rotogravure and flexography. [8 Ky.R. 912]
401 KAR 61:055. Existing loading facilities at bulk gasoline terminals. [8 Ky.R. 1051]
401 KAR 61:056. Existing bulk gasoline plants. [8 Ky.R. 1052]
401 KAR 61:085. Existing service stations. [8 Ky.R. 1054]
401 KAR 61:120. Existing fabric, vinyl and paper surface coating operations. [8 Ky.R. 913]
401 KAR 61:122. Existing graphic arts facilities using rotogravure and flexography. [8 Ky.R. 915]
401 KAR 63:031. Leaks from gasoline tank trucks. [8 Ky.R. 1129]

A public hearing will be held on May 3, 1982, at 10:00 a.m. at the Auditorium, Capital Plaza Tower, Frankfort, on the following regulations:

401 KAR 2:050. Waste management definitions. [8 Ky.R. 1002]
401 KAR 2:060. Hazardous waste site or facility permit process and application. [8 Ky.R. 1008]
401 KAR 2:063. General standards for hazardous waste sites or facilities. [8 Ky.R. 1079]
401 KAR 2:070. Standards applicable to generators of hazardous waste. [8 Ky.R. 1025]
401 KAR 2:073. Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. [8 Ky.R. 1108]
401 KAR 2:075. Identification and listing of hazardous wastes. [8 Ky.R. 1030]
401 KAR 2:170. Hazardous waste recycling facility permits and standards. [8 Ky.R. 1110]

PUBLIC SERVICE COMMISSION

A public hearing will be held on April 21, 1982, at 9:00 a.m. at the Public Service Commission, 730 Schenkel Lane, Frankfort, on the following regulation:

807 KAR 5:006. General rules. [8 Ky.R. 932]

Emergency Regulations Now In Effect

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-127
February 19, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Manpower Services

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating by regulation the policies of the Department with respect to the provisions of the Weatherization Assistance Program permitted through Title XXVI, Section 2605K, of the Low-Income Home Energy Assistance Act; and

WHEREAS, the Secretary has promulgated a regulation providing for the implementation of the Weatherization Assistance Program which provides for weatherization of housing units occupied by the elderly, handicapped, homebound and/or low-income persons; and

WHEREAS, the Weatherization program is designed to alleviate life and/or health threatening situations to households whose well-being within their residence is in danger because of inclement weather; and

WHEREAS, the Weatherization Assistance Program is also designed to make repair and alterations to an eligible household's residence which when complete will reduce the cost of home energy through a reduction in home energy consumption; and

WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation; and

WHEREAS, the Secretary has, therefore, found that an emergency exists with respect to the said proposed regulation, and that, therefore, said proposed regulation should, pursuant to the provisions of law, be effective immediately 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 an emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation of the Department for Human Resources providing for the Weatherization Program, and direct that said regulation shall be effective upon filing 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 Manpower Services

903 KAR 2:010E. Weatherization Assistance Program.

RELATES TO: KRS 194.010, 194.050
PURSUANT TO: KRS 13.082, 194.010, 194.050
EFFECTIVE: February 19, 1982
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 authorized by KRS 194.010 to develop and operate human services programs for the citizens of the Commonwealth which shall include all related federal programs in which the state elects to participate. KRS 194.050 authorizes the Secretary for the Department for Human Resouces to formulate, promote, establish and execute policies, plans and programs and to adopt, administer and enforce all applicable state laws and all rules and regulations necessary to protect and maintain the health, welfare and sufficiency of the citizens of the Commonwealth. To this end the Secretary shall adopt, administer and enforce such rules and regulations as are necessary to qualify for the receipt of federal funds. The Commonwealth of Kentucky has agreed to meet the requirements set forth in Section 2605(b) of the "Low-Income Home Energy Assistance Act of 1981," and accordingly, will receive a federal grant to assist eligible households to meet the costs of home energy. Included in this act (2605K) is the provision that funds may be made available to low-income persons for weatherization of residences. The regulation sets forth the eligibility criteria for participation in the Weatherization Assistance Program and defines various administrative responsibilities necessary through the act.

Section 1. Application. Each person requesting weatherization assistance shall be required to complete an application provided by the department, and the person shall provide such information deemed necessary to permit the department's agents to determine eligibility and benefit amount consistent with the criteria contained herein. The department may require proof of domicile and other pertinent considerations listed by the applicant.

Section 2. Definitions. Terms used in this regulation are defined as follows:

(1) "Energy crisis intervention" is an emergency situation brought on through adverse weather and energy supply shortage.

(2) "Household" shall include all individuals who occupy a housing unit as their legal residence.

(3) "Housing unit" shall be one (1) or more rooms when occupied as separate and distinct living and/or sleeping quarters.

(4) "Home energy" means a source of heating or cooling in residential dwellings.

(5) "Poverty level" means with respect to a household the income poverty guidelines as prescribed by the Office of Management and Budget.

(6) "Weatherization" is the act of repairing, altering or constructing items within a housing unit which when accomplished will eliminate or substantially reduce the "life or health threatening situation" to a household and/or reduce energy costs of a housing unit substantially.

(7) "Elderly person" means an individual who is sixty (60) years of age or older.

(8) "Handicapped person" means an individual who is handicapped as described in Section 7(b) of the Rehabilitation Act of 1973.

(9) "State" means the Commonwealth of Kentucky.

(10) "Life or health threatening situation" means a housing unit in a state of disrepair and/or disfunctioning of equipment or systems within the unit which causes a

resident to be in danger of harm through inclement weather conditions, inadequate or faulty electrical, heating, cooling, plumbing, sewage, and structural systems.

(11) "Homebound" means a person who because of the infirmities of age, or this in conjunction with other disorders is unable to leave his/her home unaided by others.

(12) "Service provider" means the agency, government or non-profit, administratively responsible to accept applications for weatherization assistance and which provides assistance to an eligible household pursuant to the provisions of this regulation.

Section 3. Eligibility Criteria. A housing unit shall be eligible for weatherization, subject to the availability of federal funds specifically referenced for this purpose, if each of the following criteria is met:

(1) The housing unit shall be occupied by one (1) or more elderly, handicapped, homebound or low-income persons who use the unit as his/her legal domicile, and:

(a) The income of the household shall not exceed 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget and the household does not have liguid assets in excess of $3,000. Excluded from assets are cars, household or personal belongings, primary residence, prepaid burial policies, and cash surrender value of insurance policies.

(b) The owner of the housing unit shall issue a right of entry to the agency administering the program.

(c) The owner of the housing unit, if rented to an eligible household, shall agree in writing to refrain from raising the rental on the housing unit based on the increased value of the work performed through the weatherization project.

(d) The housing unit of an eligible household shall meet the definition of "life and/or health threatening situation."

(2) The housing unit eligible for weatherization shall be prioritized according to Section 8, contained herein.

Section 4. Distribution and Payment of Funds. (1) The Department for Human Resources shall allot funds available for the weatherization program based on the relative need for weatherization of housing units occupied by low-income persons taking into account the following factors:

(a) Relative poverty of the area;

(b) Relative number of low-income homes in the area;

(c) Relative number of homebound;

(d) Previous program performance of the service provider.

(2) The service provider shall not allot in excess of $1,500 for any single housing unit.

(3) The service provider may not use more than fifteen (15) percent of weatherization funds for rental housing units.

(4) The service provider shall be reimbursed for services performed on a monthly basis.

Section 5. Emergency Procedures. (1) The service provider shall establish emergency procedures to permit immediate assistance where the "life and health threatening situation" is of an imminent dangerous consequence.

(2) An emergency situation requiring immediate assistance without regard to prioritization shall be reported to the grantee within seven (7) working days with full documentation of the emergency circumstance.

Section 6. Training, Technical Assistance, Monitoring and Auditing. (1) The training, technical assistance, and monitoring of the weatherization program shall be through the auspices of the Bureau for Manpower Services or its designee, and shall be designed to ensure effective and efficient provision of assistance to eligible persons consistent with the terms of this regulation.

(2) A fiscal audit of the expenditure of federal funds for purposes herein contained shall be conducted annually.

Section 7. Assurances and Certification. (1) The Department for Human Resources shall require assurances of the solvency of the provider organization and that the organization has the legal authority to apply for a grant and possesses the expertise to discharge the responsibilities noted herein.

(2) In addition to those assurances referenced in Section 7(1), the provider organization shall agree to:

(a) Comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from pariticpation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance.

(b) Comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where the primary purpose of a grant is to provide employment or discriminatory employment practices will result in unequal treatment of persons who are or should be benefitting from the grant-aided activity.

(c) Comply with provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.

(d) Comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act, and with applicable state labor laws.

(e) Comply with the regulations, policies, guidelines, and requirements, including Office of Management and Budget Circular No. A102 as it relates to the application, acceptance, and use of federal funds for this federally-assisted program.

(f) Provide safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain.

(g) Provide such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of and accounting for federal funds used in this program.

(h) Maintain necessary documents, records, books and papers to enable the Department for Human Resources to audit expenditure of federal funds.

(i) Agree to repay to the state those amounts identified in an audit not to have been expended in accordance with this regulation.

(j) Develop procedures for a timely and fair administrative hearing to households denied assistance under provisions of this regulation. An unreasonable delay in acting on an application for assistance shall constitute grounds for a hearing.

(k) Perform all weatherization work consistent with local and state building codes, and that materials and workmanship conform to quality standards.

Section 8. Weatherization Priority Ranking Form. A household and housing unit eligible for assistance under provisions of this regulation shall receive a priority ranking

based on factors herein indicated and shall receive assistance in sequence to the indicated ranking.
(1) Number in household.
(2) Conditions of home.
(3) Family income.
(4) Cost of fuel as a percentage of family income.
(5) Special circumstances.

ANNA GRACE DAY, Acting Commissioner
ADOPTED: February 16, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: February 19, 1982 at 4:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-155
February 25, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible, under KRS 194.050 and KRS 205.520, for promulgating, by regulation, the policies of the Department with regard to the provision of Medical Assistance; and

WHEREAS, the Secretary has found that, 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 it is necessary to implement a new regulation concerning payments for hospital inpatient services; and

WHEREAS, the Secretary has promulgated a regulation on Payments for Hospital Inpatient Services which provides for the establishment of a uniform rate year, peer grouping of hospitals with upper limits by peer group, and application of an occupancy factor by peer group; and

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

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, do hereby acknowledge the finding of emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation on Payments for Hospital Inpatient Services, and hereby direct, in accordance with KRS 13.085(2), that said regulation 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 1:013E. Payments for hospital inpatient services

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: March 1, 1982
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 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 hospital inpatient services.

Section 1. Hospital Inpatient Services. *The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in comformity with applicable state and federal laws, regulations, and quality and safety standards.* [The department shall reimburse participating hospitals for hospital inpatient services on the basis of reasonable cost.]

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the department in setting payment rates are specified in the department's "Inpatient Hospital Reimbursement Manual" which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the department will apply the Medicare standards and principles described in 42 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

[Section 2. Determination of Reasonable Cost. The department shall determine reasonable cost in the following manner: (1) To determine the reasonable cost for each hospital participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department shall apply the same standards, cost reporting period, cost reimbursement principles, and the method of cost apportionment currently applicable to such hospitals under Title XVIII; however, the inpatient routine service costs for medical assistance recipients shall be determined subsequent to the application of the Title XVIII method of apportionment and the calculation shall exclude the applicable Title XVIII inpatient routine service charges under the departmental method or patient days under the combination methods as well as Title XVIII inpatient routine service costs (including any nursing salary cost differential).]

[(2)To determine the reasonable cost for each hospital not participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department will apply the standards and principles described in 20 CFR sections 405.402 through 405.455 (excluding the inpatient routine nursing salary cost differential) and

either of the following, depending on the bookkeeping methods and preference of the hospital involved:]

[(a) One of the available alternative cost apportionment methods in 20 CFR section 405.404.]

[(b) The "Gross Reasonable Cost Compared to Actual Charges Method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient costs are divided by the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient.]

Section 3. Compliance with Federal Medicaid Requirements. The department will comply with the requirements shown in 42 CFR 447.250 through 447.272.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. The prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the department of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the department from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the department, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending capital costs and return on equity capital are excluded, the trending factor to be used will be derived from the percentage of change in the aggregate per diem cost of all participating hospitals between the last two (2) state fiscal years preceding the rate year. In determining this trending factor, only cost reports relative to the two (2) fiscal years being compared will be utilized.

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

(5) Peer grouping. Hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, and 201 beds and up.

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

(7) Use of upper limits. An upper limit will be established on all costs (except equity return and Medicaid capital cost) at 110 percent of the weighted median per diem cost for hospitals in each peer group, using the latest available cost data; upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. Exceptions have been made for the University of Kentucky and University of Louisville hospitals in recognition of special costs relating to the educational functions. For these two (2) hospitals, the upper limit is established at 150 percent of the weighted median cost. In addition, the upper limit is established at 120 percent for those hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served).

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

Section 5. Implementation Date. This payment system shall be implemented March 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: February 24, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: March 1, 1982 at 4:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-166
March 1, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible, under KRS 194.050 and KRS 205.520, for promulgating, by regulation, the policies of the Department with regard to the provision of Medical Assistance; and

WHEREAS, the Department and the Kentucky Association of Health Care Facilities have entered into an agreement to resolve a court action brought by the Association against the Department; and

WHEREAS, the Secretary has found that the terms of the agreement must be implemented by regulation; and

WHEREAS, the Secretary has promulgated a regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services which sets a uniform rate year for facilities, updates costs to the beginning of the rate year, and removes the upper limits on payments to intermediate care facilities for the mentally retarded; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation and that, therefore, said regulation should, in accordance with the provisions of KRS 13.085(2), become effective immediately 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 regulation on Amounts Payable for Skilled Nursing and Intermediate Care Facility Services, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Status.

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

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance

904 KAR 1:036E. Amounts payable for skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: March 2, 1982
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 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 skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR *447.250* [447.272] through 42 CFR *447.272* [447.316]. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application or the reimbursement principles developed by the department and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The department's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The department's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the department. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. *The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of April 30 of each year and trending the facility costs to July 1 of the rate year. (Unaudited and/or budgeted cost data may be used if a full year's audited data is unavailable.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 110 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 110 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 110 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.* [Such maximum payment rate may be reviewed annually by the department and may be adjusted as deemed appropriate with consideration given to the factors of facility costs, program objectives and budgetary resources.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges, or where an

evaluation by the department of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the department will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (newly participating facilities), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for property costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities when *either* [any] of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant[;] or, second, when a multi-level facility (one providing more than one (1) type of care, converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of *additional or* converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. [; or, third, when the facility changes ownership. (However, stock transfers which are not considered changes of facility ownership, or changes of ownership based on sales or purchase agreements entered into prior to April 1, 1981, and which are finalized by transfer of legal ownership prior to October 1, 1981, shall not cause the facility to be classified as a newly participating facility for purposes of this subsection.)] *Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.*

[(c) Effective May 1, 1981, the following additional upper limit (within the class) shall be applicable with regard to otherwise allowable costs, by cost center, for all facilities (except ICF-MRs): for administrative and general and owner's compensation (combined), the upper limit shall be 105 percent of the median per diem cost.]

(c) [(d)] For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the clsss) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted *by trending, indexing* [for the inflation] and *the* occupancy factor[s]. The median for each cost center for each class shall be determined annually using the *same* [latest] cost data [available] for the class *which was used in setting the maximum payment amount.* The Division for Medical Assistance shall notify all participating facilities of the median *per diem cost center* upper limits currently in effect.

(d) [(e)] Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include [membership dues,] political contributions, the cost of travel outside the state (and all costs related thereto), and legal fees for unsuccessful lawsuits *against the department.*

(10) To determine the gain or loss on the sale of a facility

for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (⅔) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the department) as the department may require to justify and document all costs to and services performed by the facility. The department shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Departmental approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13) The department shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the department will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the department).

(16) The department may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the department to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. [The department shall, under normal circumstances, be expected to determine the prospective rate and make notification to the facility within an additional sixty (60) days after actual receipt of the required documents. These] *This* time limit[s] may be extended [as necessary for the procuring of additional documentation, resolution of disputed facts,] at the specific request of the facility (with the department's concurrence)[, and at such times as the rate review and appeal process is utilized by a facility and the determination and/or notification is held awaiting completion of that process]. *The department may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.*

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be *trended to the beginning of the uniform rate year and* increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The department may impose a lower occupancy rate for newly constructed or newly participatingfacilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The department may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will

then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective *7-1-81* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$24.99 & below [$21.99 & below]*	—	—
25.00 - 25.99 [22.00 - 22.99]	$1.38	$ .87
26.00 - 26.99 [23.00 - 23.99]	1.29	.75
27.00 - 27.99 [24.00 - 24.99]	1.18	.62
28.00 - 28.99 [25.00 - 25.99]	1.06	.47
29.00 - 29.99 [26.00 - 26.99]	.92	.31
30.00 - 30.99 [27.00 - 27.99]	.76	.13
31.00 - 32.55 [28.00 - 28.99]	.53	—

Maximum Payment *$32.55* [$29.80]

* For a basic per diem of *$24.99* [$21.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective *1-1-82* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$29.99 & below*	—	—
30.00 - 31.99	$1.38	$ .87
32.00 - 33.99	1.29	.75
34.00 - 35.99	1.18	.62
36.00 - 37.99	1.06	.47
38.00 - 39.99	.92	.31
40.00 - 41.99	.76	.13
42.00 - 43.99	.53	—

[Maximum Payment $90.00]

* For a basic per diem of $29.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective *1-1-82* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$31.99 & below [$28.99 & below]*	—	—
32.00 - 33.99 [29.00 - 30.99]	$1.38	$ .87
34.00 - 35.99 [31.00 - 32.99]	1.29	.75
36.00 - 37.99 [33.00 - 34.99]	1.18	.62
38.00 - 39.99 [35.00 - 36.99]	1.06	.47
40.00 - 41.99 [37.00 - 38.99]	.92	.31
42.00 - 43.99 [39.00 - 40.99]	.76	.13
44.00 - 45.99 [41.00 - 42.99]	.53	—

Maximum Payment *$48.75*** [$45.00**]

* For a basic per diem of *$31.99* [$28.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

** The maximum payment for hospital based skilled nursing facilities *is set at $75.65* [was initially set at $80.00, such amount to be adjusted as shown in Section 4(6)].

(6) The prospective rate is then compared, *as appropriate,* with the maximum payment. [This shall be twenty-nine dollars and eighty cents ($29.80) per patient per day for routine services for the period beginning 4/1/81 for general intermediate care facilities; ninety dollars ($90) per patient per day for routine services for the period beginning 4/1/81 for intermediate care facilities for the mentally retarded, and forty-five dollars ($45) per patient per day for routine services for the period beginning 12/1/79 for non-hospital based skilled nursing facilities. The maximum payment shall be eighty dollars ($80) per patient per day for routine services for the period beginning 12/1/79 for hospital based skilled nursing facilities, the rate to be adjusted proportionately in relation to the non-hospital based skilled nursing facility maximum payment so that the rates will be identical after a period of five (5) years (beginning 12/1/79).] If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 110 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities [and intermediate care facilities for the mentally retarded] have special requirements that must be considered. [Current maximum payment rates are somewhat in excess of 110 percent since the department is allowing for a period of adjustment from the prior method of determining the maximum payment rates.] The department has determined that the maximum payment rates shall be reviewed annually against the criteria of 110 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 110 percent of the median is a lower dollar amount than has been currently set.

Section 5. Rate Review and Appeal. Participating facilities may appeal departmental decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division for Medical Assistance, a re-evaluation of the point at issue. This request must be received within twenty (20) days following notification of the prospective rate by the program. The director shall review the matter and notify the facility of any action to be taken by the department (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Bureau for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division for Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division for Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Center for Program Development, Bureau for Social Insurance. *A date for the rate review panel to convene will be established* [The panel shall meet to consider the issue] within fifteen (15) days after receipt of the written request. *[, and] The panel* shall issue a binding decision on the issue within *ten (10)* [five (5)] days of the hearing of the issue. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the department's expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the department in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the department's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable [prior year] costs are *trended and* adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable [prior year] routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable [prior year] costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the department will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on *allowable* [prior year] costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the department.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

Section 7. Implementation of Uniform Rate Year. The first uniform rate year shall be July 1, 1981-June 30, 1982. For general ICFs, payments based on the uniform rate year shall begin effective July 1, 1981. For ICF-MRs and SNFs,

payments based on the uniform rate year shall begin effective January 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: February 25, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: March 2, 1982 at 2:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-165
March 1, 1982

EMERGENCY REGULATION
Department for Human Resources
Bureau for Social Insurance

WHEREAS, the Secretary of the Department for Human Resources is responsible for promulgating by regulation the policies of the Department with respect to the provision of the Home Energy Assistance Program; and

WHEREAS, the Secretary has promulgated a regulation providing for the reallocation of funds for use in the Home Energy Assistance Program on a statewide basis; and

WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation during the winter months; and

WHEREAS, the Secretary has found that an emergency exists with respect to said regulation, and that, therefore, said regulation should, in accordance with the provisions of KRS 13.085(2), be effective immediately 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 an emergency by the Secretary of the Department for Human Resources with respect to the filing of said regulation of the Department for Human Resources providing for the Home Energy Assistance Program, and direct that said regulation shall become effective upon filing with the Legislative Research Commission as provided in Chapter 13 of the Kentucky Revised Statutes.

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

DEPARTMENT FOR HUMAN RESOUCES
Bureau for Social Insurance

904 KAR 2:100E. Home energy assistance program; eligibility, criteria.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: March 2, 1982
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 authorized by KRS 194.050 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to offset the rising costs of home energy that are excessive in relation to household income. This regulation sets forth the eligibility and payments criteria for each of two (2) components of energy assistance, regular and crisis, under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and payment amount in accordance with the procedural requirements prescribed by the department.

Section 2. Definitions. Terms used in HEAP are defined as follows: (1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) "Household" is defined as one (1) or more persons who share common living arrangements in a principal residence within the Commonwealth of Kentucky.

(4) A "fully vulnerable household" is any household which pays all energy costs directly to the energy provider or any household which rents nonsubsidized housing whose energy costs are included in the rent payment.

(5) "Regular component" is that portion of benefits reserved as energy assistance for heating for households containing at least one (1) member who is elderly (age sixty (60) or older) or disabled (as defined by Titles II, XVI, and XIX of the Social Security Act).

(6) "Crisis component" is that portion of benefits reserved for use as emergency energy assistance after the regular component is terminated for eligible households in emergency or crisis situations.

Section 3. Eligibility Criteria. A household must meet the following conditions of eligibility for receipt of a HEAP payment:

(1) The household must be fully vulnerable for energy cost.

(2) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(3) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and CETA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$359	$4,310
2	474	5,690
3	589	7,070
4 or more	704	8,450

(4) Applicants for the crisis component must attest financial inability to obtain or retain energy for heating and that the applicant is or will be without energy for heat within the next fifteen (15) days or has received a final termination notice.

(5) The household must have total liquid assets at the time of application of not more than $3,000. Excluded assets are cars, household or personal belongings, primary residence, cash surrender value of insurance policies, and prepaid burial policies.

Section 4. Payment Levels. Payment amounts are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) For the regular component, payments to eligible households will be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
$ 0-$250	$225	$250
$251-$500	$189	$213
over $500	—	$175

Scale B.
Energy Sources: Wood, Natural Gas, Coal

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or more
$ 0-$250	$175	$200
$251-$500	$138	$163
over $500	—	$125

(2) Benefit amounts for crisis component applicants shall not exceed the amount required to alleviate the crisis, subject to the maximums in the above benefit scales. Payment shall be made for only one (1) crisis per household. Payment amounts shall be determined by whether the energy provider uses a continuous (e.g., monthly, bimonthly) or noncontinuous (e.g., gets payment at time of each delivery) billing cycle and by whether the applicant has arrearages as follows:

(a) If the energy provider uses a continuous billing cycle, arrearages plus current month charges billed will be paid not to exceed the maximum per household.

(b) If the energy provider uses a continuous billing cycle, payment will be made for the delivery of fuel not to exceed the maximum. Arrearages will not be paid unless there is no other available vendor, and the available vendor will deliver fuel only on receipt of payment for arrearages. In such instances payment for arrearages plus current delivery may not exceed the maximum per household.

(3) If the applicant incurs an indirect fuel cost through a rent payment, the amount of the payment shall be the amount of rent owed for arrearages and the current month, not to exceed the maximum in the benefit chart.

(4) If the Department for Human Resources receives only a percentage of the federal funds authorized by Congress, benefits to eligible households in the regular component may be reduced proportionately.

Section 5. Payment Methods. Payments to eligible households will be made as follows:

(1) Payment authorization under the regular component is of two (2) types:

(a) If the recipient utilizes an energy provider who has a continuous billing cycle, payment is authorized by a two-party check paid payable to the provider and the recipient, except that a direct provider payment may be authorized if necessary to obtain energy.

(b) When there is no continuous billing cycle or heating is included as an undesignated portion of rent, payment shall be made by a check payable to the recipient.

(2) Payment authorization under the crisis component is made by two-party check to the provider/landlord and recipient unless the provider/landlord refuses to accept a two-party check. In this instance, the check shall be made payable to the recipient only.

(3) At the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed maximums. The household will decide how to divide payment if more than one (1) provider is used.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. The department shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the regular component shall be accepted beginning January 4, 1982, and ending no later than January 15, 1982, at the close of business.

(2) Applications for the crisis component shall be accepted beginning January 18, 1982.

(3) Applications shall be processed in the order taken until funds are expended. HEAP shall be terminated by the Secretary when actual and projected program expenditures have resulted in utilization of available funds.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

Section 9. Allocation of Funds. (1) Fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Sixty (60) percent of benefit funds shall be reserved for use in the regular component. Funds shall be allocated for use in each Area Development District (ADD) based on the number of Supplemental Security Income recipients in the ADD. Funds unobligated by the close of business January 15, 1982, shall be available for use in the crisis component.

(3) Forty (40) percent of benefit funds shall be reserved for use in the crisis component. Funds shall be allocated for use in each Area Development District based on the number of households with income at or below 100 percent of poverty level. *Funds unspent by the close of business February 28, 1982, shall be available for use statewide.*

(4) As prescribed by the Secretary, up to $150,000 of *administrative* [benefit] funds may be set aside for use in select geographic areas, for the purpose of purchasing alternative means of energy. To the extent this benefit is provided a recipient, it will replace the benefit that household would otherwise receive.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

JOHN CUBINE, Commissioner
ADOPTED: February 25, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: March 2, 1982 at 2:30 p.m.

Amended Regulations Now In Effect

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

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)
EFFECTIVE: March 1, 1982
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. Soil 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 originally [previously] permitted acreage. No permit modification shall be granted pursuant to this subsection until at least thirty (30) days have expired following publication of a notice of permit modifications, and the conditions specified in 401 KAR 2:090, Section 2(2), have been met.*

(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.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Banking and Securities
As Amended

808 KAR 4:020. Compliance with Federal Consumer Credit Protection Act.

RELATES TO: KRS 360.210 to 360.265
PURSUANT TO: KRS 360.260(2)
EFFECTIVE: March 1, 1982
NECESSITY AND FUNCTION: By *October* [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, *15 U.S.C. § 1601 et seq.*, [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 *existing* 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.

Proposed Amendments

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:090. Types of appointments.

RELATES TO: KRS 18.110, 18.140, 18.210, 18.250
PURSUANT TO: KRS 13.082, 18.170, 18.190, 18.210
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the Commissioner of Personnel to prepare and recommend to the board rules which provide for the manner of the completing appointments and promotions. KRS 18.210 requires the commissioner to prepare and submit to the board rules which provide for various types of appointments, such as probationary, emergency, provisional, reinstatement, and for such other rules, not inconsistent with KRS Chapter 18, as may be proper and necessary. This rule is necessary to comply with these statutory requirements.

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by transfer, promotion, or demotion, shall be filled by probationary appointment, re-employment, reinstatement, temporary appointment, emergency appointment or provisional appointment.

Section 2. Probationary Appointment. The appointment to a permanent position in the classified service through certification in accordance with 101 KAR 1:080 from an open competitive register shall constitute probationary appointment.

Section 3. Provisional Appointment. When a vacancy is to be filled in a position of a class for which there are less than three (3) eligibles available for certification, the appointing authority, with the prior approval of the commissioner, may make a provisional appointment to fill the position. A provisional appointee must be certified by the commissioner as meeting at least the minimum qualifications established for the class of position. No such provisional appointment shall be continued longer than six (6) months nor shall successive provisional appointments of the same person be made to the same position.

Section 4. Emergency Appointment. The appointment of an employee without regard to the examination requirements of these rules to any position by reason of a governmental emergency shall constitute an emergency appointment. An emergency appointment may not exceed thirty (30) working days in duration and is non-renewable. Emergency appointments shall have the prior consent of the commissioner.

Section 5. Temporary Appointments. The appointment of a person to a temporary position shall constitute a temporary appointment. Such appointments shall be subject to the prior approval of the commissioner. Each appointee must be approved by the commissioner as meeting at least the minimum qualifications established for the class. Such appointment shall be for a specified period of time not to exceed six (6) months and shall not be renewable.

Section 6. Re-employment. An employee with status who has been laid off by reasons of lack of funds or work, curtailment of program, abolishment of position or organization unit, or material change in duties or organization, and through no fault of his own, may request that his name be placed on a re-employment list for the class in accordance with 101 KAR 1:070, Section 7. The name of an employee with status, who has been dismissed for reasons found to be insufficient by the board after hearing the appeal, may be placed on the re-employment list at the discretion of the board. In either case, eligibility to remain on the re-employment list shall expire one (1) year from the effective date of the layoff or separation. The appointment of a person from such list shall constitute re-employment. A person so re-employed shall be subject to the successful completion of a probationary period in accordance with 101 KAR 1:100.

Section 7. Reinstatement. (1) An employee with permanent status who has resigned or been laid off through no fault of his own may be reinstated to *his former class, or to any class for which he is qualified having the same or lower pay grade that is currently assigned to the employee's former class,* [any class of position for which he is qualified with the same or lower entrance rate of pay] within five (5) years from the effective date of his separation. Such reinstatement shall be made only with the prior approval of the commissioner and shall be subject to the successful completion of a probationary period in accordance with 101 KAR 1:100. The commissioner's approval of a reinstatement shall include a finding that the candidate meets the current qualifications for the class. If the reinstatement is to a different class series the applicant must pass the appropriate examination prior to reinstatement. Age and education requirements may be waived by the commissioner upon recommendation of the appointing authority for reinstatement.

(2) An employee with status who has been dismissed for reasons found by the board after hearing the employee's appeal to be political, religious, or ethnic reasons, or reasons due to race, sex, age (between forty (40) and seventy (70), or handicap, shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his separation.

(3) An employee with status who has been dismissed for reasons found by the board after hearing the employee's appeal to be without just cause shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his separation.

Section 8. Seasonal Appointment. The appointment of a person to a position which recurs on a seasonal basis may be made of any applicant meeting the established minimum qualifications. Such appointments shall be subject to the prior approval of the commissioner and shall be made only after the seasonal recurring needs have been established by the appointing authority and shall not exceed eleven (11) months.

Section 9. Unclassified Service. Appointing officers may fill positions in the unclassified service in the manner in which positions in the classified service are filled.

PHILIP TALIAFERRO, Chairman
ADOPTED: March 12, 1982
APPROVED: DEE MAYNARD, Commissioner
RECEIVED BY LRC: March 15, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner Dee Maynard, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:110. Promotion, transfer, demotion and detail to special duty.

RELATES TO: KRS 18.110, 18.190, 18.210, 18.220, 18.270
PURSUANT TO: KRS 13.082, 18.170, 18.190, 18.210
NECESSITY AND FUNCTION: KRS 18.190 requires the personnel board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 requires the commissioner of personnel to prepare and recommend to the board rules which provide for the manner of completing appointments and promotions. KRS 18.210 requires the commissioner to prepare and submit to the board rules which provide for promotions and transfers; and for discharge and reduction in rank. This rule is necessary to comply with these statutory requirements.

Section 1. Promotion. (1) Vacancies in the classified service shall be filled by promotion whenever practicable and in the best interest of the service. Promotions shall be based upon merit and shall be made in accordance with the procedures established in these rules.

(2) A promotion is the filling of a vacancy by the advancement of an employee with status from a position having a lower minimum salary. Promotions may be made on either a competitive or non-competitive basis at the discretion of the commissioner after consultation with the appointing authority. An employee who is promoted shall be required to serve a probationary period as provided in 101 KAR 1:100. Serving a probationary period upon promotion shall not affect the employee's status in the lower class of position. Appropriate consideration will be given to the qualifications, performance appraisals, conduct, and seniority of applicants for promotion.

(3) To fill a vacancy by competitive promotion, the commissioner of personnel shall examine all qualified, applying, status employees. The commissioner shall prepare a register in the same manner as for open competitive appointments. 101 KAR 1:080 shall govern the selection and appointment.

(4) When an appointing authority nominates a status employee for a non-competitive promotion, the commissioner of personnel may test the nominee. If he finds the nominee qualified, the commissioner may authorize the promotion.

(5) Any employee promoted from a classified to an unclassified position retains his status in the classified service. On separation from the unclassified service, he reverts to *a position in that* [the] class *which he had status in the agency from which he was terminated if a vacancy in that class exists* [in which he holds status]. *If no such vacancy exists, he shall be considered for employment in any vacant position in that agency for which he is qualified pursuant to re-employment procedures and KRS 18.217.* [If there is no vancancy to which he can revert, 101 KAR 1:120, Section 2, applies.]

Section 2. Transfer. (1) The movement of an employee from one position to another of the same grade having the same salary ranges and the same level of responsibility within the classified service shall be deemed a transfer. A transfer may be an inter-agency or intra-agency action. If the employee requests a transfer in writing, such transfer will be deemed to have been made on a voluntary basis and from which there shall be no appeal. If the employe has not requested the transfer in writing, such transfer will be deemed to have been made on an involuntary basis, and the employee shall have the right to appeal such transfer in accordance with 101 KAR 1:130. The employee must meet the minimum requirements of the job class to which transferred.

(2) No employee, certified to a vacancy in a local area on a strictly local area basis in accordance with the provisions of 101 KAR 1:080, Section 4(3), shall be transferred from that position until the probationary period has been completed.

(3) No probationary employee may be transferred between agencies nor between geographical locations to a position having the same salary range and level of responsibility, unless approved by the commissioner of personnel.

(4) No employee may transfer to a different department without prior approval both of the commissioner of personnel and of the personnel officer or head of his present department.

(5) An employee's promotion to a different department must be approved in writing by the personnel officer or head of his present department, or by the commissioner of personnel. If the promotion is approved by his present department, the department must file it with the department of personnel.

(6) Following notification of a transfer, an employee must report for work, or make himself known to be available for work, at either his old work station or the new one to which assigned.

(7) If the transfer is on an involuntary basis, the employee shall be notified of his transfer in writing prior to the effective date of such transfer. The notice shall include the reason for the transfer, the employee's obligation to report to one of his work stations in accordance with subsection (6) of this section, and the employees right of appeal under 101 KAR 1:130.

Section 3. Demotion. (1) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range and less discretion or responsibility.

(2) An employee with status may be demoted only for cause, after the employee has been presented with the reasons for such demotion in writing, and has been allowed at least five (5) working days to reply thereto in writing, or, upon request, to appear personally with counsel and reply to the appointing authority or his deputy. A copy of the statement of reasons and the reply shall be filed with the

commissioner. An employee with status may appeal his demotion in accordance with 101 KAR 1:130.

(3) If, for personal or other reasons, an employee requests in writing that he be assigned to a position of a lower class, the appointing authority may make such a voluntary demotion. Voluntary demotions may be intra-agency, or inter-agency; involuntary demotions shall be intra-agency only. If the action is intra-agency, approval of the appointing authority and the commissioner is required; if inter-agency the prior approval of both appointing authorities and the commissioner is required. There shall be no appeal from demotions made on a voluntary basis.

Section 4. Detail to special duty. When the services of a permanent employee are needed in a position within the department other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the commissioner of personnel. For detail to special duty the commissioner of personnel may waive the minimum requirements when requested by the appointing authority in writing.

PHILIP TALIAFERRO, Chairman
ADOPTED: March 12, 1982
APPROVED: DEE MAYNARD, Commissioner
RECEIVED BY LRC: March 15, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner Dee Maynard, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:140. Service regulations.

RELATES TO: KRS 18.170, 18.190, 18.210
PURSUANT TO: KRS 13.082, 18.170, 18.190, 18.210
NECESSITY AND FUNCTION: KRS 18.170 requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18. KRS 18.190 and 18.210 require the Commissioner of Personnel to prepare and submit to the board rules which provide for annual leave, sick leave, special leaves of absence, and for other conditions of employment. This rule is necessary to comply with these statutory requirements.

Section 1. Attendance. Hours of Work. The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes. The normal work day shall be from 8:00 a.m. to 4:30 p.m., local time, Monday through Friday. Employees in other than Frankfort state office buildings shall be subject to such hours of work as set by the appointing authority.

Section 2. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary and emergency employees, shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Days
0—5 years	1 leave day per month; 12 per year
5—10 years	1¼ leave days per month; 15 per year
10—15 years	1½ leave days per month; 18 per year
15 years and over	1¾ leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. In computing years of total service for the purpose of allowing annual leave, only those months for which an employee earned annual leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18.310, 18.320, or 18.990. Employees serving on a part-time basis who work at least 100 hours a month shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Hours
0—5 years	4 leave hours per month; 48 per year
5—10 years	5 leave hours per month; 60 per year
10—15 years	6 leave hours per month; 72 per year
15 years and over	7 leave hours per month; 84 per year

In computing years of total service for the purpose of allowing annual leave for part-time employees, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to annual leave.

(2) Annual leave for full-time employees may be accumulated and carried forward from one calendar year to the next not to exceed the following maximum amounts:

Years of Service	Maximum Amount
0—5 years	Thirty (30) work days
5—10 years	Thirty-seven (37) work days
10—15 years	Forty-five (45) work days
15—20 years	Fifty-two (52) work days
Over 20 years	Sixty (60) work days

Annual leave for part-time employees who work at least 100 hours a month may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Years of Service	Maximum Amount
0—5 years	120 hours
5—10 years	148 hours
10—15 years	180 hours
15—20 years	208 hours
Over 20 years	240 hours

However, leave in excess of the above maximum amounts may be carried forward for a period of six (6) months if the appointing authority justifies in writing the reasons which

made it impossible to allow an employee to take accumulated annual leave in a timely manner. *Years of service for the purpose of determining the maximum amount of annual leave which may be accumulated and carried forward shall be computed as provided in subsection (1) above.* Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence on account of sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2(2) above, when separated by proper resignation, layoff, retirement or when granted leave without pay in excess of thirty (30) working days. The effective date of the separation shall be the last work day and the employee's amount of accumulated annual leave shall be listed in the remarks section of the advice effecting the separation. A supplemental pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts as set forth in Section 2(2) above.

(11) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave not to exceed the maximum amounts as set forth in Section 2(2) above.

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or one-half (½) hours.

Section 3. Sick Leave. (1) Each employee in the state service, except an emergency, part-time, or per-diem employee, shall be allowed sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work of the work days in a month to qualify for sick leave with pay. Employees serving on a part-time basis who work at least 100 hours a month shall be allowed four (4) hours sick leave for each month of service. Employees serving on a part-time basis who work less than 100 hours a month or on a per-diem basis shall not be entitled to sick leave.

(2) Full-time employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Part-time employees who work at least 100 hours a month completing ten (10) years of total service with the state shall be credited with forty (40) additional hours of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for part-time employees who work at least 100 hours a month for the purpose of crediting forty (40) additional hours of sick leave, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* The total service must be verified [in writing] before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18.310, 18.320, or 18.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is disabled by pregnancy and/or confinement;

(d) Is required to care for a sick or injured member of his immediate family for a reasonable period of time;

(e) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(f) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy and confinement, and the total continuous leave does not exceed two (2) years. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit; if there is no such position available, the rules pertaining to lay-off apply. An employee who is unable to return to work at the end of two (2) years of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be ter-

minated by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half (½) hours.

(9) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. The employee's amount of accumulated sick leave shall be listed in the remarks section of the advice effecting the separation. Former employees who are reinstated or re-employed may have up to ten (10) days of their accumulated and unused sick leave balances revived upon appointment and placed to their credit upon request of the appointing authority and approval of the commissioner. Any additional balance may be revived after sixty (60) days of work upon similar request.

(11) In cases of absence due to illness or injury for which Workmen's Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence:

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others, and who, on request, fails to produce a satisfactory medical certificate.

Section 4. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, federal, state, or political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff in court action. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 5. Compensatory Leave. Accumulated compensatory time shall be granted by the appointing authority in accordance with agency needs and requirements and, insofar as practicable, in accordance with the employee's request. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing the employee's compensatory time balance, an appointing authority may direct an employee to take accumulated compensatory time off from work.

Section 6. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

Section 7. Voting Leave. Appointing authorities shall allow all employees ample time to vote. Such absence shall not be charged against leave.

Section 8. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence for a period not to exceed twenty-four (24) months for the following purposes, with or without pay: for assignment to and attendance at college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service; or for purposes other than above that are deemed to be in the best interests of the state.

(3) An appointing authority, with approval of the commissioner, may grant an employee entering active military duty a leave of absence without pay for a period of such duty.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefore to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action and will serve to interrupt continuous service as defined in 101 KAR 1:050.

Section 10. Performance Appraisal. Quality and quantity of work shall be considered in determining salary advancements, in promotions, in determining the order of layoff, in re-employment, and as a means of identifying employees who should be promoted, demoted, or dismissed. *Ratings of the employee's work performance shall correspond to five (5) levels of performance as defined below:*

Outstanding—The employee exceeds performance standards for objectives with such consistency or to such a substantial degree that performance on the job is outstanding.

Above Standard—The employee consistently meets all performance standards for objectives and frequently exceeds one (1) or more of the standards on several objectives such that performance is above that required and expected of the normal employee.

Satisfactory—The employee consistently meets the performance standards for objectives identified for the position.

Below Standard—Performance on the job is below the standard expected of a satisfactory employee. The employee consistently does not meet one (1) or more of the performance standards for the objectives.

Not Satisfactory—There are serious deficiencies in the employee's performance on the job. The employee consistently fails to meet all the performance measures for some objectives or fails to meet one (1) or more of them to such a degree that performance is far below the standard expected of a normal employee.

Any status employee who believes he has been unfairly rated shall have the right to have his rating reviewed through a procedure developed by the Commissioner which shall contain the following components:

(1) A written request by the employee shall be submitted to the second line supervisor within three (3) working days of the receipt of the rating and the immediate and second line supervisor must then review the employee's comments and documentation, and determine whether the rating should be changed and respond in writing within three (3) working days from the receipt of the request; and

(2) If the employee is not satisfied with the results in the first step, he/she shall have the right to request in writing to the appointing authority that within three (3) working days a review committee be established. This committee shall consist of three (3) members, one (1) chosen by the employee, one (1) chosen by the supervisor, and one (1) by the appointing authority. The review committee must then review the rating and documentation and determine if the rating is valid and respond in writing within ten (10) working days of the receipt of the request. If the procedure indicated above is not followed, then the employee may appeal this lack of correct review procedure to the Personnel Board. The rating itself may be a basis for an appeal to the Personnel Board where there is a complaint of discrimination because of race, color, religion, national origin, sex, age forty (40) to seventy (70) or handicap.

Section 11. Records and Reports. (1) Personnel action forms: The commissioner shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The commissioner shall inform the appointing authorities which personnel actions and status changes must be reported to him.

(2) Leave records: Each appointing authority shall install and maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused; and

(c) Special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay. Each appointing authority shall notify his employees of their annual and sick leave balances as of January 1; a summary of which shall be sent to the department by February 1.

(3) Official roster: The commissioner shall prepare and maintain a record of all employees showing for each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave and annual leave.

Section 12. Confidentiality of Records. (1) Except as otherwise provided by law or in the rules, all records of the department shall be considered public records and may be inspected, when in the public interest, upon proper application made to the commissioner during normal working hours.

(2) Unless the board shall determine otherwise, records of the department involving investigation correspondence and data related to the moral character and reputation of applicants for employment or employees in state service; and examination materials, questions, data and examination papers and records relating in any way to competitive examinations and tests conducted and held by the department shall be held confidential.

Section 13. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the Commissioner of Personnel. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

Section 14. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, rules and regulations.

Section 15. Maximum Hiring Age. (1) The maximum hiring age for permanent employment subject to these rules is seventy (70).

(2) Agencies may request that individuals over seventy (70) be tested and/or employed. The request must be justified in writing by the appointing authority, stating the reasons why it serves the public interest, and must have the prior approval of the Commissioner of Personnel. Applicants so approved shall be certified only to those agencies requesting such waivers.

Section 16. Retirement. (1) The normal retirement age for employees subject to these rules shall be seventy (70).

(2) Employees over seventy (70) may be allowed to continue employment from year to year with prior approval of the Commissioner of Personnel when it serves the public interest. Such requests must be justified in writing by the appointing authority.

Section 17. Restoration From Military Leave. (1) State appointing authorities shall comply with the provisions of KRS 61.371, 61.373, 61.375, 61.377, 61.379.

(2) The Department of Personnel shall require proper compliance with these statutes as they pertain to state employees.

(3) The appointing authorities for employees in county, city, or political subdivisions thereof, are responsible for compliance with these statutes, in keeping with normal personnel practices and procedures of each.

(4) Appeals may be filed by an employee or previous employee pursuant to 101 KAR 1:130. The governmental agency from which the appeal is filed shall bear the expense of the hearing of the appeal.

(5) A former employee seeking restoration, who has been rejected or otherwise penalized, must file an appeal

within thirty (30) days, after notification of such rejection or penalization by an appointing authority.

PHILIP TALIAFERRO, Chairman
ADOPTED: March 12, 1982
APPROVED: DEE MAYNARD, Commissioner
RECEIVED BY LRC: March 15, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner Dee Maynard, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:200. Rules for unclassified service.

RELATES TO: KRS 18.220
PURSUANT TO: KRS 13.082, 18.220
NECESSITY AND FUNCTION: KRS 18.220 requires the Commissioner of Personnel to submit to the Governor proposed rules for the unclassified service persons in positions enumerated in KRS 18.140(1)(f), (g), (h), (i), (j), (o), (t), and (u). KRS 18.220 further provides that these rules shall be approved by the Governor and promulgated according to KRS Chapters 12 and 13. In practice, the rules which apply to Merit System employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, and emergency employees, shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Days
0—5 years	1 leave day per month; 12 per year
5—10 years	1¼ leave days per month; 15 per year
10—15 years	1½ leave days per month; 18 per year
15 years and over	1¾ leave days per month; 21 per year

An employee must have worked more than half of the work days in a month to qualify for annual leave. In computing years of total service for the purpose of allowing annual leave, only those months for which an employee earned annual leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18.310, 18.320, or 18.990. Employees serving on a part-time basis who work more than 100 hours a month shall be allowed annual leave with pay at the following rate:

Years of Service	Annual Leave Hours
0-5 years	4 leave hours per month; 48 per year
5-10 years	5 leave hours per month; 60 per year
10-15 years	6 leave hours per month; 72 per year
15 years and over	7 leave hours per month; 84 per year

In computing years of total service for the purpose of allowing annual leave for part-time employees, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* Employees serving on a part-time basis who work less than 100 hours a month or on a per diem basis shall not be entitled to annual leave.

(2) Annual leave for full-time employees may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Years of Service	Maximum Amount
0—5 years	Thirty (30) work days
5—10 years	Thirty-seven (37) work days
10—15 years	Forty-five (45) work days
15—20 years	Fifty-two (52) work days
Over 20 years	Sixty (60) work days

Annual leave for part-time employees who work at least 100 hours a month may be accumulated and carried forward from one (1) calendar year to the next not exceed the following maximum amounts:

Years of Service	Maximum Amount
0-5 years	120 hours
5-10 years	148 hours
10-15 years	180 hours
15-20 years	208 hours
Over 20 years	240 hours

However, leave in excess of the above maximum amounts may be carried forward for a period of six (6) months if the appointing authority justifies in writing the reasons which made it impossible to allow an employee to take accumulated annual leave in a timely manner. *Years of service for the purpose of determining the maximum amount of annual leave which may be accumulated and carried forward shall be computed as provided in subsection (1) above.* Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence on account of sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave.

(9) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) above, when separated by proper resignation, layoff, retirement or when granted leave without pay in excess of thirty (30) working days. The effective date of the separation shall be the last work day and the employee's amount of accumulated annual leave shall be listed in the remarks section of the advice effecting the separation. A supplemental pay voucher shall be submitted on accumulated annual leave.

(10) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts as set forth in Section 1(2) above.

(11) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave not to exceed the maximum amounts as set forth in Section 1(2) above.

(12) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or one-half (½) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, part-time, or per-diem employee, shall be allowed sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the work days in a month to qualify for sick leave with pay. Employees serving on a part-time basis who work more than 100 hours a month shall be allowed four (4) hours sick leave for each month of service. Employees serving on a part-time basis who work less than 100 hours a month or on a per-diem basis shall not be entitled to sick leave.

(2) Full-time employees completing ten (10) years of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. *In those cases where an employee is changed from part-time to full-time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service.* Part-time employees who work at least 100 hours a month completing ten (10) years of total service with the state shall be credited with forty (40) additional hours of sick leave upon the first day of the month following the completion of ten (10) years of service. In computing years of total service for part-time employees who work at least 100 hours a month for the purpose of crediting forty (40) additional hours of sick leave, only those months in which the employee worked at least 100 hours shall be used. *In those cases where an employee is changed from full-time to part-time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing years of total service.* The total service must be verified [in writing] before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18.310, 18.320, or 18.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is disabled by pregnancy and/or confinement;

(d) Is required to care for a sick or injured member of his immediate family for a reasonable period of time;

(e) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(f) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy and confinement, and the total continuous leave does not exceed two (2) years. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified, and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of two (2) years of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be terminated by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or one-half (½) hours.

(9) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(10) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. The employee's amount of accumulated sick leave shall be listed in the remarks section of the advice effecting the separation. Former employees who are reinstated or re-employed may have up to ten (10) days of their accumulated and unused sick leave balances revived upon appointment and placed to their credit upon request of the appointing authority and approval of the commissioner. Any additional balance may be revived after sixty (60) days of work upon similar request.

(11) In cases of absence due to illness or injury for which Workmen's Compensation benefits are received for lost time, sick leave may be utilized to the extent of the difference between such benefits and the employee's regular salary.

(12) Application for sick leave. An employee shall file a written application for sick leave with pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(13) Supporting evidence:

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties or whose health might jeopardize others and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Court Leave. An employee shall be entitled to leave of absence from duties, without loss of time or pay for that amount of time necessary to comply with subpoenaes by any court, federal, state, or political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party plaintiff in court action. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 4. Compensatory Leave. Accumulated compensatory time shall be granted by the appointing authority in accordance with agency needs and requirements and, insofar as practicable, in accordance with the employee's request. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing the employee's compensatory time balance, an appointing authority may direct an employee to take accumulated compensatory time off from work.

Section 5. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from civil duties upon request therefor, to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

Section 6. Voting Leave. Appointing authorities shall allow all employees ample time to vote. Such absence shall not be charged against leave.

Section 7. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence for a period not to exceed twenty-four (24) months for the following purposes, with or without pay: for assignment to and attendance at college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service; or for purposes other than above that are deemed to be in the best interests of the state.

(3) An appointing authority, with approval of the commissioner, may grant an employee entering active military duty a leave of absence without pay for a period of such duty.

Section 8. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefore to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

Section 9. Performance Appraisal. Quality and quantity of work shall be considered in determining salary advancements, in promotions, and as a means of identifying employees who should be promoted, demoted, or dismissed. Ratings of the employee's work performance shall correspond to five (5) levels of performance as defined below:

Outstanding—The employee exceeds performance standards for objectives with such consistency or to such a substantial degree that performance on the job is outstanding.

Above Standard—The employee consistently meets all performance standards for objectives and frequently exceeds one (1) or more of the standards on several objectives such that performance is above that required and expected of the normal employee.

Satisfactory—The employee consistently meets the performance standards for objectives identified for the position.

Below Standard—Performance on the job is below the standard expected of a satisfactory employee. The employee consistently does not meet one (1) or more of the performance standards for the objectives.

Not Satisfactory—There are serious deficiencies in the employee's performance on the job. The employee consistently fails to meet all the performance measures for some objectives or fails to meet one (1) or more of them to such a degree that performance is far below the standard expected of a normal employee.

Any employee who believes he has been unfairly rated shall have the right to have his rating reviewed through a procedure developed by the Commissioner which shall contain the following components:

(1) A written request by the employee shall be submitted to the second line supervisor within three (3) working days of the receipt of the rating and the immediate and second line supervisor must then review the employee's comments and documentation, and determine whether the rating should be changed and respond in writing within three (3) working days from the receipt of the request; and

(2) If the employee is not satisfied with the results in the first step, he/she shall have the right to request in writing to the appointing authority that within three (3) working days a review committee be established. This committee

shall consist of three (3) members, one (1) chosen by the employee, one (1) chosen by the supervisor, and one (1) by the appointing authority. The review committee must then review the rating and documentation and determine if the rating is valid and respond in writing within ten (10) working days of the receipt of the request. If the procedure indicated above is not followed, then the employee may appeal this lack of correct review procedure to the Personnel Board. The rating itself may be a basis for an appeal to the Personnel Board where there is a complaint of discrimination because of race, color, religion, national origin, sex, age forty (40) to seventy (70) or handicap.

PHILIP TALIAFERRO, Chairman
ADOPTED: March 12, 1982
APPROVED: DEE MAYNARD, Commissioner
RECEIVED BY LRC: March 15, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner Dee Maynard, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Proposed Amendment)

200 KAR 2:006. Employees' reimbursement for travel.

RELATES TO: KRS Chapters 42, 44, 45
PURSUANT TO: KRS 13.082, 42.030, 44.060, 45.170, 45.180, 45.300
NECESSITY AND FUNCTION: The [Department of] Finance *and Administration Cabinet* is directed by law to coordinate and supervise the fiscal affairs and procedures of the State and is authorized to adopt regulations for that purpose. The purpose of this regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. General. (1) Affected agencies. Except as otherwise provided by law, this regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement:

(a) Each agency head is responsible for insuring that all travel expense from that agency is as economical as is feasible.

(b) All persons who travel on official state business shall state on the expense voucher the purpose of each trip, shall maintain records to support their claims and shall provide themselves with sufficient personal funds to defray their travel expense.

(c) 1. The Secretary of the [Department of] Finance *and Administration Cabinet* is responsible for insuring that all travel reimbursement conforms to this regulation. He may disallow, reduce or strike from expense vouchers any claims contrary to this regulation. He may also require written justification from agency heads for amounts claimed by their agencies and employees.

2. The Secretary of the [Department of] Finance *and Administration Cabinet* may approve exceptions where he finds such exception in the best interest of the Commonwealth.

(3) Eligibility. Except as provided by state law or by this regulation, no reimbursement can be claimed for expenses of any person other than employees, bona fide wards, or other persons in the official service of the Commonwealth. Only necessary expenses of official travel will be reimbursed.

(4) Interpretation. All final interpretations of this regulation shall be made by the Secretary of the [Department of] Finance *and Administration Cabinet*, and such determinations shall be final and conclusive.

Section 2. Definitions; Work Station. (1) The official work station of employees assigned to an office is the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the Commonwealth, not on employee's convenience. The designation of work station shall not be for the purpose of allowing additional mileage reimbursement for the employee.

(3) If an employee is permanently re-assigned, or is stationed at a new place two (2) months, the new place immediately becomes that employee's official work station concerning travel expense.

Section 3. Authorizations. (1) No travel expense shall be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia must be authorized by the agency head or a designated representative. If four (4) or more persons are to travel to the same out-of-state destination the request shall explain the necessity for the number and shall also be authorized by the Secretary of *the* Finance *and Administration Cabinet.*

(b) Travel to foreign counties must be authorized in advance by the agency head, Secretary of the [Department of] Finance *and Administration Cabinet* and Governor, or by their designated representatives.

(2) Requests for the approval of the Secretary of *the* Finance *and Administration Cabinet* must reach the [Department of] Finance *and Administration Cabinet* at least five (5) working days before the intended start of travel. (Form B120-7, Authorization for Travel.)

Section 4. Transportation. (1) Economy required:

(a) State officers, agents, and employees traveling on state business shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes must be assumed by the individual.

(b) Round-trip, excursion or other reduced-rate rail or plane fares shall be obtained if practical.

(2) State vehicles. State-owned vehicles with their credit cards should be used for state business travel when available and feasible. No mileage payment shall be claimed when state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles may be disallowed if a state vehicle was available and feasible. No reimbursement shall be paid for travel between residence and work station.

(4) Buses, subways. For city travel, employees are encouraged to use buses and subways. Taxi fare may be

allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be coach/tourist class and on this country's airlines. Additional expense for first-class travel will not be reimbursed by the state.

(6) Special transportation:

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation will be allowed only with acceptable justification.

(b) Privately-owned aircraft may be used only when it is to the advantage of the state, measured both by travel costs and travel time.

Section 5. Accommodations. (1)*(a)* Economy required. Lodging costs should be the most economical that are consistent with the state's best interests. Facilities providing special government rates or commercial rates will be used where feasible. Agencies shall contact the *cabinet's* [department's] Division of Accounts travel desk for assistance as needed in obtaining group rates and special state rates.

(b) State-owned facilities shall be used for meetings and/or lodging where available, practicable and economical.

(2) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home will not be reimbursed.

(3) (a) Group lodging, by contract. State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates must be requested. The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set by this regulation under "Reimbursement Rates." The agency shall certify that no employee is claiming individual reimbursement or subsistence for the same costs.

(b) For payment, the agency shall forward a receiving report (Authorization for Payment Form B111-9) with the vendor's bill, the names of affected employees and a copy of the contract to the [Department of Finance,] Division of Accounts. The payment shall not include telephone expenses or personal charges of employees. The state's payment shall be made directly to the hotel, motel, or other establishment.

(4) State parks. A state agency or institution using state park facilities for a group of four (4) or more may pay for rooms and meals by inter-account bill, within the limits of this regulation.

Section 6. Reimbursement Rates. (1) Lodging plus subsistence and other expenses. Except for the Judicial and Legislative branches, their employees, the Governor, and others listed in subsection (2) below, and except where otherwise provided by law, the reimbursement for official travel expense shall be:

(a) Lodging:

1. If lodging cost is the lowest feasible, a claimant who attaches the hotel's or motel's pre-printed, receipted bill shall be reimbursed within limits for that claimant's actual cost of lodging, *as follows:* [.]

2. Maximum anywhere in the United States shall be thirty-five dollars ($35) per day, plus taxes, except *at Kentucky state parks and in* [for] "high-rate" areas listed by the Secretary of the [Department of] Finance *and Administration Cabinet.* Maximum in listed "high-rate" areas shall be fifty-five dollars ($55) per day, plus taxes. *Maximum at any Kentucky state park shall be the park's standard rate.* The state will not pay for lodging within forty (40) miles of claimant's residence or work station.

(b) Subsistence:

1. Subsistence shall include amounts deemed to have been spent for meals, tax, and tips.

2. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work must require overnight absence at a destination more than forty (40) miles from both work station and home and must also *require* [include] absence from work station and home during mealtime. *(*The claimant shall attach to his travel voucher either his lodging receipts or other credible documentation sufficient for audit.*)* [Subsistence for dinner in Kentucky and for breakfast, lunch and dinner outside of Kentucky need not require overnight absence.]

3. The two (2) requirements in subparagraph 2 above do not apply for dinner in Kentucky and for breakfast, lunch and dinner outside of Kentucky.

4. [3.] For travel in Kentucky and United States, except "high-rate" areas listed by the Secretary of the [Department of] Finance *and Administration Cabinet,* subsistence shall not exceed:

Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.).....$ 3

Lunch (authorized travel must include 11 a.m. through 2 p.m.).....$ 3

Dinner (authorized travel must include 5 p.m. through 9 p.m.).....$ 8

5. [4.] For travel to high-rate areas listed by the Secretary of the [Department of] Finance *and Administration Cabinet,* subsistence shall not exceed:

Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.).....$ 4

Lunch (authorized travel must include 11 a.m. through 2 p.m.).....$ 5

Dinner (authorized travel must include 5 p.m. through 9 p.m.).....$11

6. [5.] A state officer or an employee assigned to attend a function of an organization not under the state officer's control may be reimbursed for actual meal cost charged by the organization, instead of subsistence.

(c) Privately-owned vehicles. Reimbursement for official use of a privately-owned vehicle shall be eighteen (18) cents per mile, and payment shall not exceed airplane coach fare.

(d) Commercial transportation. With receipts actual commercial cost will be reimbursed.

(e) Privately-owned aircraft. Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare.

(f) Camping vehicles. Claimants using camping vehicles for lodging shall be reimbursed not more than four dollars ($4) per night, plus parking or camping charges. A receipt for parking or camping charges must be submitted.

(g) Parking and tolls. Actual parking, bridge and toll charges are reimbursable. Toll receipts are not required for in-state travel by two (2) axle vehicles.

(h) Baggage charges. Reasonable expenses are allowed for baggage handling, for delivery to or from a common carrier or lodging and for storage. Charges for overweight baggage may be allowed if the excess was for official business.

(i) Registration fees. Registration fees required in official travel for admittance to meetings will be allowed. If the fee entitles registrants to meals, claims for subsistence shall be reduced accordingly.

(j) Telephone expenses. Telephone and telegraph costs for necessary official business will be allowed. Calls to agency central offices should be made collect or through the state's toll-free numbers.

(k) Other. Where justified, other necessary miscellaneous expenses of official travel may be allowed by the Secretary of the [Department of] Finance *and Administration Cabinet.*

(2) Actual and necessary expense:

(a) With pre-printed receipts for items over two dollars ($2), the actual and necessary cost of official business travel (including lodging, meals, related taxes, gratuities and commercial transportation) may be reimbursed to the following:

1. Governor and Lieutenant Governor, other state-wide elected Constitutional officials, cabinet secretaries, the Governor's staff, state employees traveling on assignment with the Governor or Lieutenant Governor, authorized persons traveling outside the United States and to non-paid members of statutory boards and commissions.

2. Reimbursement for official use of a privately-owned vehicle shall be eighteen (18) cents per mile, and such payment shall not exceed airplane coach fare.

(b) The Governor and cabinet secretaries may be reimbursed for their actual costs of entertaining official business guests and shall certify such costs to the [Department of] Finance *and Administration Cabinet.*

(c) With certification by the cabinet head, employees of the *Commerce* [Development] Cabinet [and the Department of Public Information] may be reimbursed for their actual costs of entertaining the state's official business guests concerning economic development and industrial and travel promotion.

(d) The Secretary of the [Department of] Finance *and Administration Cabinet* may question and reduce claims if amounts appear excessive.

Section 7. *Forms.* (1) Travel expense voucher (Form B120-6):

(a) Use:

1. This form shall be used to claim all reimbursement for travel expense.

2. The voucher shall include the expense of only one (1) person except where an employee pays the expenses for a ward of the Commonwealth or other person for whom the claimant is officially responsible. Such persons' names and status or official relationship to the claimant's agency must be listed on the voucher.

3. A travel voucher shall ordinarily cover one (1) month or one (1) major trip. The purpose of each trip shall be shown on the voucher. If monthly expenses total less than ten dollars ($10), a voucher may cover as much as six (6) months within the same fiscal year.

4. Each travel expense voucher shall show the claimant's social security number.

(b) Preparation:

1. The travel voucher may be either typed or legibly prepared in ink. All receipts shall be stapled to the back at the upper left corner and shall be forwarded to the Department of Finance with the expense voucher.

2. If leave interrupts official travel, the travel voucher shall show the dates of leave.

(c) Computing mileage. Mileage for in-state travel will be based on Department of Transportation official mileage map or on [Department of] Finance *and Administration Cabinet* mileage chart if the department if the department issues such. Out-of-state mileage will be based on Rand McNally mileage maps. If point of origin is the claimant's residence, mileage will be paid between residence and travel destination or between work station and travel destination, whichever is shorter, except that commuting mileage between home and work station will not be paid.

(d) Vicinity travel. Vicinity travel and authorized travel within claimant's work station shall be listed on separate lines on the expense voucher.

(e) Signatures. Travel vouchers shall be signed and dated by the employee submitting the claim, the employee's supervisor and the agency head or authorized representative.

(f) Receipts. Except for mileage and subsistence, claimants shall furnish for each expenditure over two dollars ($2) the pre-printed, receipted bill from the hotel, motel, restaurant, or other establishment. The receipt must establish the amount, date, location and essential character of the expenditure.

(2) Authorization for out-of-state travel (Form B120-7). This form shall be used to request authorization for travel to foreign countries and for out-of-state travel by groups of four (4) or more persons.

(3) Contract for rooms and meals (Form B120-16). This form shall be used for group accommodations as described in this regulation under "Accommodations."

GEORGE E. FISCHER, Secretary
ADOPTED: March 9, 1982
RECEIVED BY LRC: March 9, 1982 at 12:00 noon.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Cattie Lou Miller, Commissioner, Department for Administration, Finance and Administration Cabinet, Room 238, Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 9:010. Approval of projects; expenditure of funds; title.

RELATES TO: KRS Chapter 42
PURSUANT TO: KRS 42.360
NECESSITY AND FUNCTION: Pursuant to the authority vested in the Secretary of the *Finance and Administration Cabinet* [Executive Department for Finance and Administration] by KRS 42.360, this regulation establishes procedures relating to submission and approval of proposed capital projects, the expenditure of moneys from the Area Development Fund and title to real property and to capital projects in the Area Development Districts.

Section 1. (1) The board of directors of each area development district shall select from among capital projects proposed by eligible beneficiary agencies, projects consistent with goals, objectives and priorities of adopted local or regional development plans and shall submit recommended projects to the Department *of* [for] Local Government for approval by the *Finance and Administration Cabinet* [Executive Department for Finance and Administration].

(2) The board of directors shall give priority consideration to proposed projects which have funds allocated in ad-

dition to area development funds and shall consider need and long-term benefits in selection of projects.

(3) Boards of directors of two or more area development districts may propose joint capital projects to be financed by funds allocated to each participating area development district.

Section 2. All project proposals shall be submitted on forms prescribed by the *Department of Local Government* [Executive Department for Finance and Administration], and no proposal shall be considered officially submitted until complete information and documentation required has been received by the Department *of* [for] Local Government.

Section 3. Each proposal submitted by an area development district shall be accompanied by the following documentation:

(1) Minutes of area development district board meeting specifying project approval and amount of area development funds allocated to the project;

(2) Statement that the beneficiary agency is a county or an incorporated city; or

(a) That it is a special district with a copy of the court order, containing a reference to the authorizing statute, by which the district was established; or

(b) That it is an agency created under the Interlocal Cooperation Act, with a copy of the executed agreement approved by the Attorney General; or

(c) That it is a combination of any of the foregoing, with a copy of the agreement creating the combination; or

(d) That it is a non-profit corporation organized for a public purpose and performing governmental functions and services, with a copy of the official articles of incorporation and by-laws.

(3) Statement by the chief executive officer of the beneficiary agency that such agency is capable of administering the project for its estimated life expectancy.

(4) If funds from other sources are to be used for the project, the availability of such funds shall be shown by:

(a) Resolution, minutes of legislative body or adopted budget of a local government.

(b) Copy of grant or loan award notice from a federal or state agency, or a letter from the awarding agency which states the amount of funds and date of availability that such grant or loan will be made.

(5) Itemized cost estimates, prepared within thirty (30) days prior to the date of submission, by a licensed architect or engineer; or a price quote on each item obtained within thirty (30) days prior to the date of submission from one or more vendors or contractors.

(6) Statement of assurances by the chief executive officer of the beneficiary agency that all applicable laws and regulations have been met.

(7) Attestation of county clerk that written assurances required by KRS 42.355 are recorded in the office of the clerk of the county in which the project is located.

(8) Any proposal to acquire real property or acquire interest in real property shall be accompanied by a licensed attorney's statement which sets forth the present holder of title, book and page number of the deed by which the holder received title and set forth any liens, mortgages and claims against the property.

(9) When the beneficiary agency owns property rights by lease, the proposal shall be accompanied by a copy of the executed lease which must be for a term longer than the life expectancy of the project, generally not less than a twenty-five (25) year period.

(10) Proposals to extend new water, sewer or other utilities shall be accompanied by easements, right-of-ways or attorney determination and certification of existence of same.

(11) Proposals for purchase of real property which are eligible for direct grant funding shall be accompanied by an appraisal.

(12) Proposals for purchase of real property which are not eligible for direct grant funding shall be accompanied by an appraisal(s), survey, and attorney's title report, each of which shall be acceptable to the Finance and Administration Cabinet.

[Section 4. (1) In the event the capital project involves improvement or renovation of real property, the beneficiary agency shall submit the following documentation establishing the right to use and possession for the life of the project:]

[(a) Statement by licensed attorney which sets forth the present holder of title, the book and page number of the deed by which the holder received title and any liens, mortgages or claims against the property.]

[(b) If the beneficiary agency does not hold fee simple title to the realty, copy of lease, easement or other grant of use or possession, and statement of estimated useful life of project and basis for such estimate.]

[(2) In the event the capital project involves the acquisition of real property, the beneficiary agency shall submit the following documentation to establish that a marketable title, free of encumbrances, will be acquired:]

[(a) Title report prepared by a licensed attorney in a form acceptable to the Attorney General.]

[(b) Survey of realty by a registered land surveyor.]

[(c) Appraisal by one or more qualified appraisers.]

Section *4.* [5.] (1) In the event a direct grant is made the beneficiary agency shall maintain and furnish the following documentation:

(a) Proof of advertisement for bids, indicating the date or dates of publication.

(b) Certification by the chief executive officer of the beneficiary agency that all bids received were opened at the time and place stated in the advertisement and that the tabulation is true and correct as stated.

(c) Copy of the letter awarding each contract, indicating the date of such award.

(d) Copy of each executed contract and any change orders to the contract.

(e) Specifications upon which bid and award was based.

(2) In the event the *Finance and Administration Cabinet* [Executive Department for Finance and Administration] delegates award of contracts to a beneficiary agency, the beneficiary agency shall submit all documents applicable to state capital improvement projects and public works contracts as required by the *Finance and Administration Cabinet* [Executive Department for Finance and Administration].

Section *5.* [6.] (1) Except for direct grants, a project may be given conditional approval pending submission of any documentation or other information required by these regulations, but final payment shall not be made on any project until all documentation has been submitted.

(2) Beneficiary agencies receiving direct grants in aid as authorized by KRS 42.355(4) shall expend granted funds only for the payment of the costs of the capital project for which such grant was made. Grantee beneficiary agencies shall be liable to repay to the area development fund any

granted funds expended by the agency in violation of this subsection or the provisions of KRS 42.355(4).

GEORGE E. FISCHER, Secretary
ADOPTED: March 15, 1982
RECEIVED BY LRC: March 15, 1982 at 11:50 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Richard D. Cole, Deputy Commissioner, Department of Local Government, Capital Plaza Tower, Frankfort, Kentucky 40601.

DEPARTMENT OF AGRICULTURE
Board of Veterinary Examiners
(Proposed Amendment)

201 KAR 16:050. Continuing education.

RELATES TO: KRS 321.330(1)
PURSUANT TO: KRS 321.240
NECESSITY AND FUNCTION: This regulation sets forth those requirements concerning annual courses of study of subjects relating to veterinary medicine, veterinary surgery, and veterinary dentistry.

Section 1. (1) Each veterinarian licensed by this board shall be required to annually complete eight (8) hours of study of courses in the subjects of veterinary medicine, veterinary surgery, and veterinary dentistry. Those courses approved shall:

(a) Be all scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine; and

(b) All programs approved by the board, not associated with the American Veterinary Medical Association and its sub-organizations.

(2) Those programs shall impart knowledge relating to the practice of veterinary medicine, veterinary surgery, and veterinary dentistry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research will assure expansive and comprehensive care to the public.

Section 2. Each veterinarian shall be responsible for securing necessary documentation to support proof of his attendance at a course and shall annually, on the form furnished by the board, list those courses attended by him. The board may require this form to be signed by the veterinarian before a notary public. [The annual renewal fee is increased to fifteen dollars ($15).]

ALBEN W. BARKLEY, II, Chairman
ADOPTED: January 28, 1982
RECEIVED BY LRC: March 12, 1982 at 10:10 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 2:045. Upland game birds, furbearers and small game; seasons, limits.

RELATES TO: KRS 150.300, 150.305, 150.330, 150.340, 150.360, 150.365, 150.370, 150.390, 150.400
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds and animals and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, animals and furbearers within reasonable limits based upon an adequate supply. This amendment is necessary to change the rabbit *and quail* season dates [and to clarify the setting of traps].

Section 1. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): opens third Saturday in August, continues through October 31. Opens again on the third Thursday in November, continues through December 31.

(2) Rabbits: opens third Thursday in November, continues through *the last day in February* [January 31].

(3) Quail (Bobwhite): opens third Thursday in November, continues through *the last day in February* [February 15].

(4) Grouse: opens third Thursday in November, continues through the last day in February.

(5) Furbearers: opens third Thursday in November, continues through January 31. Includes mink, muskrat, beaver, opossum, red fox, raccoon, weasel and skunk. The bobcat is protected year around and may not be trapped or killed.

(6) Traps and snares: all dry land sets are limited to No. 2 or smaller, smooth-jawed steel traps and No. 220 or smaller Conibear-type traps set no closer than ten (10) feet apart and snares without a self-locking device. Traps or snares shall not be set in trails or paths commonly used by humans and/or domestic animals.

(7) Taking raccoon and opossum: Raccoon and opossum may not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(8) Falconry hunting: the wildlife listed in this section may be pursued and taken by a licensed falconer with any legal hunting raptor from November 1 through the last hunting date listed for each species, except that squirrels may be taken starting the third Saturday in August.

Section 2. Bag and Possession Limits. Possession limit applies to transporting after two (2) or more days shooting but does not permit double bag limit to be taken or possessed in the field.

Game	Bag Limits	Possession Limits
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail (Bobwhite)	8	16
Grouse or native pheasant	4	8
Furbearers (except raccoon by means other than trapping)	No Limits	No Limits
Raccoon (by means other than trapping)	1*	No Limits**

* One (1) per hunter, with no more than three (3) per party of three (3) or more hunters while hunting.

** No possession limit on raccoons, except that no hunter or party of hunters shall possess more than the daily bag limit while hunting in the field.

Section 3. Trapping Licenses. The following trapping licenses are required: (1) Resident landowner or tenant trapping license: This license authorizes either the landowner or his dependent children to take wild animals by trapping upon their farmlands. Either the tenant or his dependent children residing upon the owner's lands have the same privilege.

(2) Resident statewide trapping license: This license authorizes the holder thereof to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.

(3) Nonresident statewide trapping license: This license authorizes the holder thereof to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.

Section 4. Shooting Hours. Shooting hours on the above species shall be from one-half (½) hour before sunrise to one-half (½) hour after sunset, except for raccoon and opossum which may be taken at any time during day or night.

Section 5. Squirrel Hunting Weapons. No person while in the act of hunting squirrels, may use or possess a breech-loading rifle of .240 caliber or larger, or a shotgun with slugs or buckshot. Squirrels may be taken with any type of muzzle-loading weapon and by means of longbows or compound bows.

Section 6. Prohibited Ammunition. No person while in the act of hunting any of the game species listed in this regulation may have in his or her possession any buckshot or shotgun slugs.

CARL E. KAYS, Commissioner
ADOPTED: March 1, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: March 12, 1982 at 9:40 a.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 2:050. Waste management definitions.

RELATES TO: KRS 224.033, 224.255, 224.855 to 224.884
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 for Natural Resources and Environmental Protection to adopt rules and regulations for the management of solid and hazardous wastes. This regulation defines essential terms used in connection with the 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 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 *site or* 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) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

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

(10) "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) "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) "Coal mining waste, refuse, overburden and coal mining by-products" as used in the waste management regulations:

(a) "Coal mining waste" means earth materials which are combustible, physicially unstable, or acid-forming or toxic-forming, that are generated during and incidental to the mining and extraction of coal. The term does not include used oil, garbage, paints or flammable liquids;

(b) "Refuse" means the woody vegetation, abandoned machinery and lumber resultant to the coal mining operation but does not include used oil, garbage, paint, flammable liquids or similar discarded material;

(c) "Overburden" means all of the earth and other geologic materials, excluding topsoil, which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of mining.

(d) "Coal mining by-products" means a material that is not one of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. The term does not include used oil, garbage, paints, flammable liquids or utility wastes (fly ash, bottom ash, scrubber sludge).

(13) [(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.

(14) [(13)] "Constituent" or "hazardous waste constituent" means a constituent which caused the administrator to list the hazardous waste in *Section 9 of 401 KAR 2:075* [40 CFR Part 261, Subpart D, filed herein by reference], or a constituent listed in Table I of 40 CFR 261.24 *which is incorporated by reference in Section 9(5) 401 KAR 2:075.*

(15) [(14)] "Construction materials" means non-hazardous non-soluble material, including but not limited to steel, concrete, brick, asphalt roofing material, or lumber from a construction or demolition project. Mixture of construction and demolition debris with any amount of other types of waste may cause it to be classified as other than construction materials.

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

(17) [(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.

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

(19) [(18)] "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(20) [(19)] "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.

(21) [(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.

(22) [(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.

(23) "Director" means the director of the department's division of waste management.

(24) [(22)] "Discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of solid or hazardous waste into or on any land or water.

(25) [(23)] "Disease vector" means all insects, *birds* or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(26) [(24)] "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.

(27) [(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.

(28) [(26)] "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in *Section 9 of 401 KAR 2:075* [40 CFR Part 261, Subpart D, filed herein by reference], and to each characteristic identified in *Section 8 of 401 KAR 2:075* [Part 261, Subpart C, filed herein by reference].

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

(30) [(28)] "Equivalent method" means any testing or analytical method, approved by the administrator *or the secretary* under *Section 9(1)(b) and (c) of 401 KAR 2:075* [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.

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

(32) [(30)] "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.

(33) [(31)] "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).

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

(35) [(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.

(36) [(34)] "Final closure of a 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 waste for treatment, recycling, storage, or disposal on the entire facility.

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

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

(39) [(37)] "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

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

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

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

(43) [(41)] "Groundwater" means water which is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water."

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

(45) [(43)] "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 *401 KAR 2:075, Section 3* [40 CFR 261, 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.

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

(47) [(44)] "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.

(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 wastes listed in 401 KAR 2:075.

(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 will remain after closure.

(g) "On site" means on the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a 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.

(h) "Recycling facility" means any facility at which hazardous waste is processed for the purpose of beneficial use or reuse; or is legitimately recycled and reclaimed by being converted to energy which is consumed.

(i) [(h)] "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. A generator who accumulates his own hazardous wastes in an approved manner for less than ninety (90) days for subsequent transport on-site or off-site is not operating or maintaining a storage facility.

(j) [(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.

(k) [(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.

(l) [(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.

(m) [(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.

(n) [(m)] "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.

(o) [(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.

(48) [(45)] "Inactive portion" means that portion of a hazardous waste site or facility which is not operated after *November 19, 1980* [the effective date of 40 CFR Part 261, filed herein by reference].

(49) [(46)] "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.

(50) [(47)] "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.

(51) [(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.

(52) "Interim status" means the designation of a hazardous waste site or facility which was in existence on November 19, 1980, and has submitted a Part A application under 401 KAR 2:060 and is treated as having a permit until such time as final administrative disposition of such application is made. For recycling facilities subject to 401 KAR 2:170, "interim status" means the facility had registered with the department by the effective date of 401 KAR 2:170.

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

(54) [(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.

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

(56) [(52)] "Liner" means a continuous layer of natural or man-made material which restricts the movement of the wastes, waste constituents, or leachate.

(57) [(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.

(58) [(54)] "Major modification" means a change in ownership, area occupied, disposal method, or other significant change in the operation of a waste management facility. *(Note: Minor modifications are described in Section 6(1)(e) of 401 KAR 2:060.)*

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

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

(61) [(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.

(62) [(59)] "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.

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

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

(65) [(62)] "New" means any hazardous waste site or facility that commenced construction after November 19, 1980.

(66) [(63)] "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.

(67) [(64)] "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.

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

(69) [(66)] "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, and/or disposal of wastes.

(70) [(67)] "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 *401 KAR 2:063 or 2:073* [40 CFR Parts 264 or 265, filed herein by reference].

(71) [(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.

(72) "Permit" means the authorization or other control document issued by the department to implement the requirements of the waste management regulations. "Permit" includes "permit by rule," and "emergency permit." Permit does not include "draft permit" or a "proposed permit."

(a) "Emergency permit" means a permit issued by the department to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of 401 KAR 2:060, Section 4.

(b) [(69)] "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.

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

(74) [(71)] "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.

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

(76) [(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.

(77) [(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.

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

(79) [(76)] "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.

(80) [(77)] "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as odors, gases, or other offensive conditions.

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

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

(83) [(80)] "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.

(84) [(81)] "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.

(85) [(82)] "Run-off" means any rainwater, or other liquid that drains overland from any part of a facility.

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

(87) [(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.

(88) [(85)] "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.

(89) [(86)] "Salvaging" means the controlled removal of waste materials for utilization in a manner approved by the department.

(90) [(87)] "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.

(91) [(88)] "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.

(92) [(89)] "Solid waste site or facility" means one (1) of the four (4) 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, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the department. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, woodchips, and tree trimming, 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 residential waste, commercial waste, institutional waste, and those 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 industrial wastes, 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) "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.

(93) [(90)] "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.

(94) [(91)] "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.

(95) [(92)] "Storage of hazardous waste" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

(96) [(93)] "Termination" means the final actions taken by the department as to a solid waste or hazardous waste *site or* facility when formal responsibilities for post-closure monitoring and maintenance cease.

(97) [(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.

(98) [(95)] "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.

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

(100) [(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.

(101) [(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.

(102) [(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.")

(103) [(100)] "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.

(104) [(101)] "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.

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

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

(107) [(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.

(108) [(105)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(109) [(106)] "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.

(110) [(107)] "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: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

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 224.033, *224.036, 224.071, 224.087,* 224.255, 224.855, 224.860, *224.862, 224.864,* 224.866, *224.868, 224.871, 224.873, 224.874, 224.876, 224.877,* 224.880

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 *site or facility* permit from the Department for Natural Resources and Environmental Protection. *Overview of the hazardous waste site or facility permit program. Not later than ninety (90) days after the original promulgation or revision of regulations in 401 KAR 2:075 (identifying and listing hazardous wastes) all generators and transporters of hazardous waste and all owners or operators of hazardous waste treatment, storage, recycling, or disposal facilities must file a notification of that activity under KRS Chapter 224. Six (6) months after the initial promulgation of the 401 KAR 2:075 regulations, treatment, storage, recycling, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited. A permit application consists of two (2) parts, Part A (see Section 15) and Part B (see Section 16). For "existing hazardous wastes sites or facilities," and requirement to submit an application is satisfied by submitting only Part A of the permit application until the department sets the date for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under KRS Chapter 224 and the Part A application forms qualifies owners and operators of existing hazardous waste sites or facilities for interim status. Facility owners and operators with interim status are treated as having been issued a permit until the department makes a final determination on the permit application. Facility owners and operators with interim status must comply with interim status standards set forth in 401 KAR 2:073. Facility owners and operators with interim status are not relieved from complying with other state requirements. For existing hazardous waste sites or facilities, the department shall set a date, giving at least six (6) months notice, for submission of Part B of the application. There is no form for Part B of the application; rather, Part B must be submitted in narrative form and contain the information set forth in Section 16. Owners or operators of new hazardous waste sites or facilities must submit Part A and B of the permit application at least 180 days before physical construction is expected to commence.*

Section 1. *Interim Status. (1) Qualifying for interim status. Any person who owns or operates an "existing hazardous waste site or facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:*

(a) Complied with the requirements of KRS 224.864 pertaining to notification of hazardous waste activity;

(b) Complied with the requirements of Section 14 governing submission of Part A applications;

(c) When the department determines on examination or re-examination of a Part A application as specified in Section 15 that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to enforcement procedures for operating without a permit.

(2) Coverage. During the interim status period the facility shall not:

(a) Treat, store, recycle or dispose of hazardous waste not specified in Part A of the permit application.

(b) Employ processes not specified in Part A of the permit application; or

(c) Exceed the design capacities specified in Part A of the permit application.

(3) Changes during interim status.

(a) New hazardous wastes not previously identified in Part A of the permit application may be treated, stored, recycled, or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change.

(b) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the department approves the change because of a lack of available treatment, storage, recycling, or disposal capacity at other hazardous waste sites or facilities.

(c) Changes in the processes for the treatment, storage, recycling, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the department approves the change because:

1. It is necessary to prevent a threat to human health or the environment to avert an emergency situation; or

2. It is necessary to comply with departmental regulations (including 401 KAR 2:073) and local laws.

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than ninety (90) days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements in Sections 9 through 16 of 401 KAR 2:063 (financial requirements), until the new owner or operator has demonstrated to the department that he is complying with that regulation. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with that regulation, the department shall notify the old owner or operator in writing that he no longer needs to comply with that regulation as of the date of demonstration.

(e) In no event shall changes be made to a hazardous waste site or facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent (50%) of the capital cost of a comparable entirely new hazardous waste site or facility.

(4) Interim status standards. During interim status, owners or operators shall comply with the interim status standards in 401 KAR 2:073.

(5) Grounds for termination of interim status. Interim status terminates when:

(a) Final adminstrative disposition of a permit application is made; or

(b) Interim status is terminated as provided in Section 14. [Generator's determination and registration of hazard]

(6) Deadlines for submission of Part B of the application. All hazardous waste sites or facilities which have submitted Part A of the application will be required to submit Part B of the application within six (6) months of the department's decision to require such submittal, according to Section 14(1)(d) of this regulation. The department may base its decision to require Part B of the application upon receiving Phase II or final authorization from the U.S. EPA. However, in accordance with KRS 224.866(1), the department may require submission of Part B of the application at any time.

[(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) *Permit by rule. Notwithstanding any other provision of this regulation the following shall be deemed to have a permit by rule if the conditions listed are met:*

(a) Ocean disposal barges or vessels. The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

1. Has a permit for ocean disposal issued by the U.S. EPA;

2. Complies with the conditions of that permit; and

3. Complies with the following hazardous waste regulations:

a. 401 KAR 2:063, Section 2(2), Identification number;

b. 401 KAR 2:063, Section 5, Use of manifest system;

c. 401 KAR 2:063, Section 5(3), Manifest discrepancies;

d. 401 KAR 2:063, Section 5(4), Operating record;

e. 401 KAR 2:063, Section 5(6), Annual report; and

f. 401 KAR 2:063, Section 5(7), Unmanifested waste report.

(b) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

1. Has a permit for underground injection issued by the U.S. EPA, and

2. Complies with the conditions of that permit and the requirements of 40 CFR 122.45 (wells managing hazardous waste).

(c) Publicly owned treatment works (POTW). The owner or operator of a POTW which accepts hazardous waste, for treatment, if the owner or operator:

1. Has an NPDES permit;

2. Complies with the conditions of that permit; and

3. Complies with the following regulations:

a. 401 KAR 2:063, Section 2(2), Identification number;

b. 401 KAR 2:063, Section 5, Use of manifest system;

c. 401 KAR 2:063, Section 5(3), Manifest discrepancies;

d. 401 KAR 2:063, Section 5(4), Operating record;

e. 401 KAR 2:063, Section 5(6), Annual report;

f. 401 KAR 2:063, Section 5(7), Unmanifested waste report; and

4. If the waste meets all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance. [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.

(a) Compliance with a permit during its term constitutes compliance with KRS Chapter 224 for purposes of enforcement. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Section 6(2) and (3).

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or regulations. [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. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Section 6(2)) or a minor modification made (to allow for a change in

ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department) to identify the new permittee and incorporate such other requirements as may be necessary under KRS Chapter 224 and the waste management regulations. [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 within six (6) months after the effective date of these regulations.]

[(5) No new hazardous waste site or facility shall commence construction or operation without having first obtained a permit.]

[(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. (1) Term of permit. Hazardous waste site or facility permits shall be effective for a fixed term not to exceed ten (10) years. (See also Section 10, Interim permits for UIC wells).*

(2) Modification of term of permit. Except as provided in Section 6(1), the term of a permit shall not be extended by modification beyond the maximum duration specified in subsection (1) of this section.

(3) Reduced term of permit. The department may issue any permit for a duration that is less than the full allowable term under subsection (1) of this section. [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. (1) Emergency permits. Notwithstanding any other provision of this regulation, in the event the department finds an imminent and substantial endangerment to human health or the environment, the*

department may issue an emergency permit to allow temporary treatment, storage, or disposal of hazardous waste for a non-permitted facility with an effective hazardous waste site or facility permit. An emergency permit shall be granted only when the secretary has issued an emergency order to discontinue, abate or alleviate pursuant to KRS 224.071. This emergency permit:

(a) May be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit:

(b) Shall not exceed ninety (90) days in duration;

(c) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(d) May be terminated by the department at any time without process if the department determines that termination is appropriate to protect human health and the environment;

(e) Shall be accompanied by a public notice published under Section 5(2) including:

1. Name and address of the office granting the emergency authorization;

2. Name and location of the permitted hazardous waste site or facility;

3. A brief description of the wastes involved;

4. A brief description of the action authorized and reasons for authorizing it; and

5. Duration of the emergency permit;

(f) Shall incorporate to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this regulation, and 401 KAR 2:063 and Section 6 of 401 KAR 2:055;

(g) Shall specify that all remaining hazardous waste and residues are removed at the end of the term of the emergency permit in a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of Section 7 of 401 KAR 2:063;

(h) Shall specify that failure to comply with the conditions of the emergency permit shall cause the department to sue for the recovery of the cost of proper closure (see Section 6(2) of 401 KAR 2:063 for closure performance standards and KRS Chapter 224 for the appropriate fines and penalties).

(2) Trial burn permits. For the purposes of determining feasibility of compliance with the incinerator performance standards in Section 21(5) of 401 KAR 2:063, and of determining adequate incinerator operating conditions under Section 21(6) of 401 KAR 2:063, the department may issue a trial burn permit to a facility to allow short term operation of a hazardous waste incinerator subject to subsection (2)(a) through (e) of this section.

(a) The trial burn must be conducted in accordance with a trial burn plan prepared by the applicant and approved by the department. The trial burn plan will then become a condition of the permit. The trial burn plan will include the following information:

1. An analysis of each waste or mixture of wastes to be burned which includes:

a. Heat value of the waste in the form and composition in which it will be burned;

b. Viscosity (if applicable) or description of physical form of the waste;

c. An identification of any hazardous organic constituents listed in 401 KAR 2:075, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in 401 KAR 2:075, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" referenced in 401 KAR 2:075, or their equivalent;

d. An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of the Solid Waste, Physical/Chemical Methods;"

e. A quantification of those hazardous constituents in the waste which may be designated as Principal Organic Hazardous Constituents (POHC's) based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in Section 21(5) of 401 KAR 2:063.

2. A detailed engineering description of the incinerator for which the trial burn permit is sought including:

a. Manufacturer's name and model number of incinerator (if available);

b. Type of incinerator;

c. Linear dimensions of the incinerator unit including the cross sectional area of the combustion chamber;

d. Description of the auxiliary fuel system (type/feed);

e. Capacity of prime mover;

f. Description of automatic waste feed cut-off system(s);

g. Stack gas monitoring and pollution control equipment;

h. Nozzle and burner design;

i. Construction materials; and

j. Location and description of temperature, pressure, and flow indicating and control devices.

3. A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

4. A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the department's decision under subsection (2)(d) of this section.

5. A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, air feed rate, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

6. A description of, and planned operating conditions for, any emission control equipment which will be used.

7. Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

8. Such other information as the department reasonably finds necessary to determine whether to approve the trial burn in light of the purposes of this subsection and the criteria in subsection (2)(d) of this section.

(b) The department, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection.

(c) Based on the waste analysis data in the trial burn plan, the department will specify as trial Principal Organic Hazardous Constituents (trial POHC's) those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be specified by the department based on the estimate of the difficulty of incineration of the constituents identified in

the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in 401 KAR 2:075, the hazardous waste constituent or constituents identified in 401 KAR 2:075 as the basis for listing.

(d) The department shall approve a trial burn plan if it finds that:

1. The trial burn is likely to determine whether the incinerator performance standards required by Section 21(5) of 401 KAR 2:063 can be met;

2. The trial burn itself will not present an imminent hazard to human health or the environment;

3. The trial burn will help the department to determine operating requirements to be specified under Section 21(6) of 401 KAR 2:063; and

4. The information sought in subsection (2)(d)1 and 3 of this section cannot reasonably be developed through other means.

(e) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

1. A quantitative analysis of the trial POHC's in the waste feed to the incinerator;

2. A quantitative analysis of the exhaust gas to determine the concentration and mass emissions of the trial POHC's, CO_2, O_2, and hazardous combustion by-products;

3. A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the trial POHC's;

4. A total mass balance of the trial POHC's in the waste;

5. A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 21(5) of 401 KAR 2:063;

6. If the waste feed contains more than 0.5 percent chlorine, a computation of chlorine removal efficiency, in accordance with Section 21(5) of 401 KAR 2:063;

7. A computation of particulate emissions, in accordance with 401 KAR 2:063, Section 21(5);

8. An identification of sources of fugitive emissions and their means of control;

9. A measurement of average, maximum, and minimum temperature, and air feed rates;

10. A continuous measurement of CO in the exhaust gas; and

11. Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in Section 21(5) of 401 KAR 2:063 and to establish the operating conditions required in Section 21(6) of 401 KAR 2:063 to meet that performance standard.

(f) The applicant shall submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and the results of all the determinations required in subsection (2)(e)1 of this section. To the extent possible, this submission shall be made within thirty (30) days of the completion of the trial burn, or sooner if the department so requests.

(g) All data collected during any trial burn must be submitted to the department following the completion of the trial burn. The results of the trial burn must be included with Part B of the permit application as specified in Section 16, if a permit application is submitted.

(h) All submissions required by this subsection shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 11. [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.*

(a) Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application. In making this determination the department shall consider the requirements specified in the waste management regulations and in KRS 224.866(1).

(b) If the department tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this subsection (see paragraph (d)). If the department's final decision is that the tentative decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (c) of this subsection.

(c) If the department decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under Section 7(2) and (3);

2. All compliance schedules under Section 8;

3. All monitoring requirements under Section 7(1); and

4. Standards for treatment, storage, recycling and/or disposal and other permit conditions under Section 7(5).

(d) All draft permits prepared by the department under this section shall be accompanied by a fact sheet and shall be made available for public comment. The department shall give notice of the opportunity for a public hearing as required by KRS 224.855 and respond to comments. [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. During the public comment period provided under Section 5(6), any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 5(4).* [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.

(a) 1. The department shall hold a public hearing on the basis of requests, when a significant degree of public interest in a draft permit(s) is found.

2. The department at its discretion may also hold a public hearing whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

3. The department shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under Section 5(6) is received. Whenever possible the department shall schedule a hearing under this section at a location convenient to the population center nearest to the proposed facility provided the hearing location is in the same county as required by KRS 224.855.

4. Public notice of the hearing shall be given as specified in Section 5(6).

(b) Whenever a public hearing will be held, the secretary shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5(6) shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

(4) Response to comments.

(a) At the time that any final permit decision is issued, the department shall issue a response to comments when a final permit is issued. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) For department issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision. If new points are raised or new material supplied during the public comment period, the department may document its response to those matters by adding new materials to the administrative record.

(c) The response to comments shall be available to the public.

(5) Fact sheet.

(a) A fact sheet shall be prepared for every draft permit for a major hazardous waste site or facility, and for every draft permit which the department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The department shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, recycled, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

4. Reasons for any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedure for reaching a final decision on the draft permit including:

a. The beginning and ending dates of the comment period under Section 5(6) and the address where comments will be received;

b. Procedures for requesting a hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision.

6. Name and telephone number of a person to contact for additional information.

(6) Public notice of permit application and public comment period.

(a) Scope.

1. The department shall give public notice under KRS 224.855(4) and (5) that the following actions have occurred:

a. A permit application has been tentatively denied under Section 5(1);

b. A draft permit has been prepared under Section 5(1);

c. A hearing has been scheduled under Section 5(3); and

d. An appeal has been granted under 401 KAR 2:055, Section 5.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section 6(1). Written notice of that denial shall be given to the requester and to the permittee.

3. Public notices may describe more than one (1) permit or permit action.

(b) Timing.

1. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least forty-five (45) days for public comment.

2. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.)

(c) Methods. Public notice of activities described in paragraph (a)1 of this subsection shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):

a. The applicant;

b. Any other agency which the department knows has

issued or is required to issue an environmental permit for the same facility or activity (including United States Environmental Protection Agency);

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any other affected states;

d. Persons on a mailing list developed by: including those who request in writing to be on the list; soliciting persons for "area lists" from participants in past permit proceedings in that area; and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.); and

e. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under state law with respect to the construction or operation of such facility.

2. Publication of a notice in a daily or weekly major local newspaper of general circulation as required by KRS 224.855(2) and broadcast over any commercial radio stations which have general coverage in the locality where the proposed site is located.

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents.

1. All public notices. All public notices issued under this regualtion shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

c. A brief description of the business conducted at the facility or activity described in the permit application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the comment procedures required by Section 5(2) and (3) and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;

g. The statement contained in KRS 224.855(3)(e); and

h. Any additional information considered necessary or proper.

2. Public notices for hearings. In addition to the general public notice described in paragraph (d)1 of this subsection, the public notice of a hearing under Section 5(3) shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the hearing; and

c. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(e) In addition to the general public notice described in paragraph (d)1 of this subsection, all persons identified in paragraph (c)1a, b, c, d and e of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any). The department shall charge for duplication cost and postage.

Section 6. Termination and Renewal of Hazardous Waste Permit. (1) Requests for modification, revocation and reissuance, or termination.

(a) A permit for a hazardous waste site or facility may be modified, revoked, and reissued, or terminated either at the request of any interested person (including the permittee) or upon the department's initiative. However, a permit may only be modified, revoked and reissued, or terminated for the reasons specified in Section 6(2) and (3) and following the procedures of 401 KAR 2:065. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of request for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c) If the department tentatively decides to modify or revoke and reissue a permit under Section 6(2), the department shall prepare a draft permit under Section 5(1) incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the department shall require the submission of a new application.

(d) In a permit modification under this subsection, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(e) "Minor modifications" are not subject to the requirements of this subsection. Minor modifications may only:

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility as referenced in Section 2(3);

5. Change the lists of facility emergency coordinators or equipment in the permit's contingency plan; or

6. Change estimates of maximum inventory under Section 6(3)(a)2 of 401 KAR 2:063; change estimates of expected year of closure or schedules for final closure under

Section 6(3)(a)4 of 401 KAR 2:063; or approve periods longer than ninety (90) days or 180 days under Section 6(4)(a) and (b) of 401 KAR 2:063.

(f) If the department tentatively decides to terminate a permit under Section 6(3), it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Section 5(1).

(g) All draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in Section 5(1)(f). [A hazardous waste permit shall automatically terminate at the end of one (1) year. A shorter period may be specified.]

(2) Justification for modification or revocation and reissuance of permits. When the department receives any information (for example, if the department inspects the facility, receives information submitted by the permittee as required in the permit Section 7(2), receives a request for modifiction or revocation and reissuance under Section 6(1), or conducts a review of permit file), the department may determine whether or not one (1) or more of the causes listed in paragraphs (a) and (b) of this subsection for modification or revocation and reissuance or both exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this subsection and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see Section 6(1)). If cause does not exist under this subsection or Section 6(1)(c), the department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section 6(1)(e) for "minor modifications," the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in this regulation followed.

(a) Causes for modification. The following are causes for modification but not revocation and reissuance of permits.

1. Alterations. There are material and substantial alterations or additions to the permitted hazardous waste site or facility or activity which occurred after permit issuance which justify the application of permit conditions that are differenct or absent in the existing permit.

2. Information. The department has received information. Permits for wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

3. New regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when: the permit condition requested to be modified was based on an effective hazardous waste management regulation; and the department has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and a permittee request modification in accordance with Section 6(1) within ninety (90) days after notice of the action on which the request is based.

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed department promulgated regulations, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Section 6(1) within ninety (90) days of judicial remand.

4. Compliance schedules. The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy (see also Section 6(1)(e) on minor modifications).

5. The department may modify a permit:

a. When modification of a closure plan is required under 401 KAR 2:063, Section 6(3)(b) or 6(4)(b);

b. After the department receives the notification of expected closure under 401 KAR 2:063, Section 6(4), when the department determines that extension of the ninety (90) or 180 day periods under 401 KAR 2:063, Section 6(4), modification of the twenty (20) year post-closure period under 401 KAR 2:063, Section 6(7)(a), continuation of security requirements under 401 KAR 2:063, Section 6(7)(a), or permission to disturb the integrity of the containment system under 401 KAR 2:063, Section 6(7)(c) are unwarranted; and

c. When the permittee has filed a request under 401 KAR 2:063, Section 14(4) for a variance to the level of financial responsibility or when the secretary demonstrates under 401 KAR 2:063, Section 14(5) that an upward adjustment of the level of financial responsibility is required.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under Section 6(3) and the department determines that modification or revocation and reissuance is appropriate.

2. The department has received notification (as required in the permit in Section 6(1)(c)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Section 2(3)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance. [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.

(a) The department may terminate a permit during its term or deny a permit renewal application for the following causes:

1. Noncompliance by the permittee with any condition of the permit;

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The department shall follow the applicable procedures in this regulation and in 401 KAR 2:065 in terminating any permit under this subsection. [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. All permits shall specify:*

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in KRS Chapter 224 and the Kentucky Hazardous Waste Management regulations. Reporting shall be no less frequent than specified in the above regulations. [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. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.*

(a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the appropriate Kentucky Revised Statute and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. In addition, the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See Section 4.).

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxillary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a modification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish the department within a reasonable time any information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the department or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facility's equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the appropriate Kentucky Revised Statutes, any substances or parameters at any location.

(j) Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the department at any time. In addition, the permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;
d. The individual(s) who performed the analyses;
e. The analytical techniques or methods used; and
f. The results of such analyses.

(k) Signatory requirement. All applications, reports, or information submitted to the department shall be signed and certified (see Section 11).

(l) Reporting requirements.

1. Planned changes. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. In addition, for a new hazardous waste site or facility, the permittee may not commence treatment, storage, recycling, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, recycle, or dispose of hazardous waste in the modified portion of the facility until:

a. The permittee has submitted to the department, by certified mail or hand delivery, a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

b. The department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or within fifteen (15) days of the date of submission of the letter in paragraph (e)1a of this subsection, the permittee has not received notice from the department of its intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, recycling or disposal of hazardous waste.

2. Anticipated noncompliance. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers. This permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the appropriate statute (see Section 2(3); in some cases, modification or revocation and reissuance is mandatory).

4. Monitoring reports. Monitoring results shall be reported at the intervals specified in this permit.

5. Compliance schedules. Reports of compliance or noncompliance with or any progress reports on interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each scheduled date.

6. Twenty-four (24) hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurence of the noncompliance. The following shall be included as information which must be reported orally within twenty-four (24) hours:

a. Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

b. Any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste site or facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(i) Name, address, and telephone number of the owner or operator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time and type of incident;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident. The department may waive the five (5) day written notice requirement in favor of a written report within fifteen (15) days.

7. Other noncompliance. The permittee shall report all instances of noncompliance not reported under subparagraphs 1, 4, 5, and 6 of this paragraph at the time monitoring reports are submitted. The reports shall contain the information listed in subparagraph (1)6 of this subsection.

8. The following reports required by 401 KAR 2:063 shall be submitted:

a. Manifest discrepancy report: if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen (15) days, the permittee must submit a letter or report including a copy of the manifest to the department (see Section 5(3) of 401 KAR 2:063).

b. Unmanifested waste report: must be submitted to the department within fifteen (15) days of receipt of unmanifested waste (see Section 5(7) of 401 KAR 2:063.)

c. Annual report: an annual report must be submitted covering facility activities during the previous calendar year (see 401 KAR 2:063, Section 5(6)).

9. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information. [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.

(a) In addition to conditions required in subsection (2) of this section, the department shall establish conditions as required on a case-by-case basis in permits under Section 3 (duration of permit), Section 8 (schedule of compliance), Section 8(2) (alternate schedules of compliance). In addition, each hazardous waste site or facility permit shall include permit conditions necessary to achieve compliance with each of the applicable requirements specified in the Kentucky Hazardous Waste Management regulations. In satisfying this provision, the department may incorporate applicable requirements of the Kentucky Hazardous Waste Management regulations directly into the permit or

establish other permit conditions that are based on these regulations.

(b) Individual programs.

1. In addition to conditions required in all permits for a particular program, the department shall establish conditions in permits for the individual programs as required on a case-by-case basis to provide for and assure compliance with all applicable requirements of the appropriate statute and regulations.

2. An "applicable requirement" is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An "applicable requirement" is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Section 6(2).

3. New or reissued permits, and to the extent allowed under Section 6(2) modified and revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Section 7(4). [The owner/operator shall handle a waste as a hazardous waste if the manifest indicates that the waste is hazardous.]

(4) Past performance considered in review. Past performance in related areas will be considered in the review and in the determination for any requirement for specialized conditions.

Section 8. Schedule of Compliance. (1) General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the appropriate statute and regulations.

(a) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(b) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

1. The time between interim dates shall not exceed one (1) year.

2. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements.

(2) Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste at a hazardous waste site or facility), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(c) If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules shall contain an idenitcal interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the permittee's decision is to continue conducting regulated activities.

2. One (1) schedule shall lead to timely compliance with applicable requirements.

3. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.

4. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under subsection (2)(a)1 of this section he shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation. [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. (1) Claims of confidentiality. In accordance with KRS 224.036, any information submitted to the department pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in KRS 224.036. (Public Information.)

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential will be denied.

(3) Substantiation of claims of confidentiality. (a) Claims of confidentiality for permit application information must be substantiated at the time the application is submitted and in the manner prescribed in the application instructions.

(b) If a submitter does not provide substantiation, the department will notify him by certified mail of the requirement to do so. If the department does not receive the substantiation within ten (10) days after the submitter receives the notice, the department shall place the unsubstantiated information in the public file.

Section 10. *Interim Permits for UIC Wells. The department may issue a permit under this section to any Class I UIC well (defined in 40 CFR 122.32) injecting hazardous wastes within the state, if no UIC program has been approved by the U.S. EPA for Kentucky. Any such permit shall apply and insure compliance with all applicable requirements of Section 17 of 401 KAR 2:073 and shall be for a term not to exceed two (2) years. No such permit shall be issued after approval or promulgaiton of a UIC program in Kentucky. Any permit under this section shall contain a condition providing that it will terminate upon final action by the department under a UIC program to issue or deny a UIC permit for the facility.* [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. (1) Applications. All permit applications shall be signed as follows:*

(a) For a corporation: by a principal executive officer of at least the level of vice-president;

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

(2) Reports. All reports required by permits, and other information requested by the department, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section.

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the department.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsections (1) or (2) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisionment." [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) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the department as described in this section and in Section 1. Persons currently authorized with interim status under Section 1 shall apply for permits when required by the department. Persons covered by permits in Section 2(1) need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in Section 4.*

(2) Applicant. Who applies? When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit, and the owner must also sign the permit application.

(3) Completeness. The department shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the department receives an application form and any supplemental information which is completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(4) Information requirements. All applicants for permits shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in Sections 15 and 16).

(a) The activities conducted by the applicant which require him to obtain permits.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(e) Whether the facility is located in Indian lands.

(f) A listing of all permits or construction approvals received or applied for under any of the following programs:

1. Hazardous waste management program under the Resource Conservation and Recovery Act (RCRA);

2. UIC program under the Safe Drinking Water Act (SDWA);

3. NPDES program under the Clean Water Act (CWA);

4. Prevention of significant deterioration (PSD) program under the Clean Air Act (CAA);

5. Nonattainment program under the Clean Air Act;

6. National emission standards for hazardous

pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

7. Ocean disposal permits under the Marine Protection Research and Sanctuaries Act;

8. Dredge or fill permits under section 404 of CWA; and

9. Other relevant environmental permits, including air pollution, water quality and solid waste permits issued by the department.

(g) A topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, recycling, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(5) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Sections 12, 15 and 16, for a peirod of at least three (3) years from the date the application is signed. [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.]

(6) Permit requirements. (a) Any person who requires a hazardous waste site or facility permit under KRS Chapter 224 shall complete, sign, and submit to the department an application for each permit required. Applications are not required for hazardous waste site or facility permits by rule (Section 2) or underground injections authorized by rule.

(b) The department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(c) Permit applications must comply with the signature and certification requirements of Section 11.

Section 13. Scope of the Permit Requirements. (1) Specific requirements. This section sets forth the specific requirements for the hazardous waste site or facility permit program.

(2) Scope of the hazardous waste site or facility permit requirement. KRS 224.866 requires a permit for the "treatment," "storage," "recycling," or "disposal" of any "hazardous waste" as identified or listed in 401 KAR 2:075. The terms "treatment facility," "storage facility," "recycling facility," "disposal facility," and "hazardous waste" are defined in 401 KAR 2:050.

(a) Specific inclusions. Owners and operators of certain facilities require hazardous waste site or facility permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste site or facility permits are required for:

1. Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, recyle, or dispose of hazardous waste (see Section 10). However, the owner or operator with a UIC permit issued by the department under an approved or promulgated UIC program, or by EPA, will be deemed to have a permit for the injection well itself if they comply with the requirements of Section 11 (permit by rule for injection wells).

2. Treatment, storage, recycling, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a permit for that waste if they comply with the applicable requirements of Section 2(1) (permit by rule for POTWs).

3. Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment, recycling, or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a permit for ocean disposal from the barge or vessel itself it they comply with the requirements of Section 2(1) (permit by rule for ocean disposal barges and vessels).

(b) Specific exclusions. A person is not required to obtain a permit for those activities he carries out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste. In addition, the following persons are among those who are not required to obtain a hazardous waste site or facility permit:

1. Generators who accumulate hazardous waste on-site for less than ninety (90) days, as provided in 401 KAR 2:070, Section 3.

2. Farmers who dispose of hazardous waste pesticides from their own use as provided in 401 KAR 2:070, Section 5(2).

3. Persons who own or operate facilities solely for the treatment, storage, recycling, or disposal of hazardous waste excluded from regulations under 401 KAR 2:075 (small generator exemption).

4. Owners or operators of totally enclosed treatment facilities as defined in 401 KAR 2:050.

5. Owners and operators of elementary neutralization units or wastewater treatment units as defined in 401 KAR 2:050.

6. Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 401 KAR 2:070, Section 3 at a transfer facility for a period of ten (10) days or less.

Section 14. Deadlines for Applying. (1) Existing hazardous waste sites or facilities.

(a) Owners and operators of existing hazardous waste sites or facilities must submit Part A of their permit application to the department no later than November 19, 1980. Where other existing facilities must begin complying with 401 KAR 2:073 at a later date because of revisions to the waste management regulations, the department by regulation will specify when those facilities must submit a permit application.

(b) The department may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if the department finds that:

1. There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

2. Such confusion is attributable to ambiguities in the waste management regulations.

(c) The department may by compliance order extend the date by which the owner and operator of an existing hazardous waste site or facility must submit Part A of their permit application.

(d) Any time after promulgation of this regulation the owner and operator of an existing hazardous waste site or facility may be required to submit Part B of their permit application. Any owner or operator shall be allowed at

least six (6) months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste site or facility may voluntarily submit Part B of the application at any time.

(e) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under this regulation.

(2) New hazardous waste sites or facilities.

(a) Except as provided in subsection (2)(c) of this section, no person shall begin physical construction of a new hazardous waste site or facility without having submitted Part A and B of the permit application and received a finally effective hazardous waste site or facility permit.

(b) An application for a permit for a new hazardous waste site or facility (including both Part A and Part B) may be filed any time after promulgation of the standards in 401 KAR 2:063, Section 17 et seq., applicable to such facility. Except as provided in subsection (2)(c) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

(c) After November 19, 1980, but prior to the effective date of those standards in 401 KAR 2:063, Section 17 et seq., which are applicable to his facility, a person may begin physical construction of a new hazardous waste site or facility, except for landfills, injection wells, land treatment facilities or surface impoundments (as defined in 401 KAR 2:050) without having received a finally effective hazardous waste site or facility permit, if prior to beginning physical construction, such person has:

1. Obtained the federal, state and local approvals or permits necessary to begin physical construction;

2. Submitted Part A of the permit application; and

3. Made a commitment to complete physical construction of the facility within a reasonable time. Such person may continue physical construction of the new hazardous waste site or facility after the effective date of the permitting standards in 401 KAR 2:063, Section 17 et seq., applicable to his facility if he submits Part B of the permit application on or before the effective date of such standards (or on some later date specified by the department). Such person must not operate the new hazardous waste site or facility without having received a finally effective hazardous waste site or facility permit.

(3) Updating permit applications.

(a) If any owner or operator of a hazardous waste site or facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator shall file an amended Part A application with the department, as necessary to comply with the provisions of Section 1 of this regulation.

(b) The owner or operator of a facility who fails to comply with the updating requirements of subsection (3)(a) of this section does not receive interim status as to the wastes not covered by duly filed Part A applications.

(4) Reapplications. Any hazardous waste site or facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the department. (The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit).

Section 15. Contents of Part A Application. In addition to the information in Sections 12, 13, 14, and 17, Part A of the hazardous waste site or facility permit application shall include the following information:

(1) Location. The latitude and longitude of the facility.

(2) Owner information. The name, address, and telephone number of the owner of the facility.

(3) Status of the facility and application. An indication of whether the facility is new or existing and whether it is a first or revised application.

(4) Scale drawing. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, recycling, and disposal areas.

(5) Photographs. For existing facilities, photographs of the facility clearly delineating all existing structures: existing treatment, storage, recycling, and disposal areas; and sites of future treatment, storage, recycling and disposal areas.

(6) Process description. A description of the processes to be used for treating, storing, recycling, and disposing of hazardous waste, and the design capacity of these items.

(7) Information on Wastes. A specification of the hazardous wastes listed or designated under 401 KAR 2:075 to be treated, stored, recycled, or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, recycled, or disposed annually, and a general description of the process to be used for such wastes.

Section 16. Contents of Part B Application. Part B information requirements presented below reflect the information requirements necessary for the department to determine compliance with 401 KAR 2:063 standards. If owners and operators of hazardous waste sites or facilities can demonstrate that the information prescribed in Part B cannot be provided to the extent required, the department may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the department and signed in accordance with requirements in Section 11. Certain technical data, such as design drawings and specifications, and engineering studies, shall be certified by a registered professional engineer. Part B of the hazardous waste site or facility application must include the following:

(1) General information requirements. The following information is required for all hazardous waste sites or facilities, except as 401 KAR 2:063, Section 1(1) provides otherwise:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, recycle, or dispose of the wastes properly in accordance with 401 KAR 2:063.

(c) A copy of the waste analysis plan required by 401 KAR 2:063, Section 2(4)(b) and if applicable.

(d) A description of the security procedures and equipment required by 401 KAR 2:063, Section 2(5), or a justification demonstrating the reasons for requesting a waiver of this requirement.

(e) A copy of the general inspection schedule required by 401 KAR 2:063, Section 2(15)(b) including, where applicable, as part of the inspection schedule, specific requirements in 401 KAR 2:063, Sections 17(5), 18(4), 19(5) and 22(5).

(f) A justification of any request for a waiver(s) of the preparedness and prevention requirements of 401 KAR 2:063, Section 3.

(g) A copy of the contingency plan required by 401 KAR 2:063, Section 4, including, where applicable, as part of the contingency plan, specific requirements in 401 KAR 2:063, Sections 19 and 20.

(h) A description of procedures, structures, or equipment used at the facility to:

1. Prevent hazards in unloading operations (for example, ramps, special forklifts);

2. Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

3. Prevent contamination of water supplies;

4. Mitigate effects of equipment failure and power outages; and

5. Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrating compliance with 401 KAR 2:063, Section 2(8), including documentation demonstrating compliance with 401 KAR 2:063, Section 2(8)(c).

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) Facility location information:

1. In order to determine the applicability of the seismic standard, 401 KAR 2:063, Section 2(9)(a), the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

2. If the facility is proposed to be located in an area listed in Section 22(1) of 401 KAR 2:063, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either: No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacment in Holocene time) within 3,000 feet of a facility are present, based on data from: published geologic studies, aerial reconnaissance of the area within a five (5) mile radius from the facility; an analysis of aerial photographs covering a 3,000 foot radius of the facility, and if needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or if faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, recycling, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, recycling, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, recycling, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses the location of any faults found.

3. Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

4. Owners and operators of facilities located in the 100-year floodplain must provide the following information: Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood; structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout; if applicable, and in lieu of the subparagraph above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including: timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility; a description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under 401 KAR 2:060, 401 KAR 2:063, and 401 KAR 2:073; the planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use; the potential for accidental discharges of the waste during movement.

5. Existing facilities NOT in compliance with 401 KAR 2:063, Section 2(9)(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(l) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste site or facility in a safe manner as required to demonstrate compliance with 401 KAR 2:063, Section 2(7). A brief description of how training will be designed to meet actual job tasks in accordance with requirements in 401 KAR 2:063, Section 2(7)(a)3.

(m) A copy of the closure plan and, where applicable, the post-closure plan required by 401 KAR 2:063, Section 6(3) and Section 6(8).

(n) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by 401 KAR 2:063, Section 6(10).

(o) The most recent closure cost estimate for the facility prepared in accordance with Section 10 of 401 KAR 2:063 plus a copy of the financial assurance mechanism adopted in compliance with 401 KAR 2:063, Section 11.

(p) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with Section 12 of 401 KAR 2:063 plus a copy of the financial assurance mechanism adopted in compliance with 401 KAR 2:063, Section 13.

(q) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of 401 KAR 2:063, Section 14. For a new facility, documentation showing the amount of insurance meeting the specification of 401 KAR 2:063, Section 14(2),

and if applicable, 401 KAR 2:063, Section 14, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, recycling, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in 401 KAR 2:063, Section 14.

(r) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (one (1) inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (five (5) feet), if relief is greater than 6.1 meters (twenty (20) feet), or an interval of 0.6 meters (two (2) feet), if relief is less than 6.1 meters (twenty (20) feet). Owners and operators of hazardous waste sites or facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

1. Map scale and date;
2. 100-year floodplain area;
3. Surface waters including intermittant streams;
4. Surrounding land uses (residential, commercial, agricultural, recreational);
5. A wind rose (i.e., prevailing windspeed and direction);
6. Orientation of the map (north arrow);
7. Legal boundaries of the hazardous waste site or facility;
8. Access control (fences, gates);
9. Injection and withdrawal wells both on-site and off-site;
10. Buildings; treatment, storage, recycling, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.);
11. Barriers for drainage or flood control; and
12. Location of operational units within the hazardous waste site or facility where hazardous waste is (or will be) treated, stored, recycled, or disposed (include equipment cleanup areas).

(s) Applicants may be required to submit such information as may be necessary to enable the department to carry out its duties under other state laws as required in this regulation.

(2) Specific information requirements. The following additional information is required from owners or operators of specific types of hazardous waste sites or facilities that are used or to be used for storage or treatment:

(a) For facilities that store containers of hazardous waste, except as otherwise provided in 401 KAR 2:063, Section 17:

1. A description of the containment system to demonstrate compliance with 401 KAR 2:063, Section 17. The description must show at least the following: basic design parameters, dimensions, and materials of construction; how the design promotes drainage or how containers are kept from contact with standing liquids in the containment system; capacity of the containment system relative to the number and volume of containers to be stored; provisions for preventing or managing run-on; how accumulated liquids can be analyzed and removed to prevent overflow.
2. Sketches, drawings, or data demonstrating compliance with 401 KAR 2:063, Section 17(7) (location of buffer zone and containers holding ignitable or reactive wastes and location of incompatible wastes), where applicable.
3. Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 401 KAR 2:063, Section 17(7)(a) and (b) and Section 2(8)(b) and (c).

(b) For facilities that use tanks to store, recycle, or treat hazardous waste, except as otherwise provided in 401 KAR 2:063, Section 18(1), description of design and operation procedures which demonstrate compliance with the requirements of 401 KAR 2:063, Section 18(2), (3), (6), and (7) including:

1. References to design standards or other available information used (or to be used) in design and construction of the tank;
2. A description of design specifications including identification of construction materials and lining materials (include pertinent characteristics such as corrosion or erosion resistance);
3. Tank dimensions, capacity, and shell thickness;
4. A diagram of piping, instrumentation, and process flow;
5. Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents); and
6. Description of procedures for handling incompatible, ignitable, or reactive wastes, including the use of buffer zones.

(c) For facilities that store, recycle, or treat hazardous waste in surface impoundments, except as otherwise provided in 401 KAR 2:063, Section 19(1), the owner or operator must submit detailed plans and specifications accompanied by an engineering report which must collectively include the information itemized in subparagraphs a through j. For new facilities, the plans and specifications must be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor. For existing facilities, comparable detail must be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

1. A statement of the minimum freeboard to be maintained at the facility and the basis of the design to demonstrate compliance with freeboard requirements of 401 KAR 2:063, Section 19(2)(a) and (b). For flow through facilities include a hydraulic profile;
2. Detailed drawings of the structure which is or will be provided to immediately stop flow into the impoundment to comply with 401 KAR 2:063, Section 19(2)(b) or, if no structure is needed to comply with 401 KAR 2:063, Section 19(2)(c)1, a description of the means by which waste additions will be stopped;
3. Detailed drawings of any dikes which exist or will be constructed;
4. A basis of design and design analysis of any dikes to comply with 401 KAR 2:063, Section 19(2)(d) and Section 19(4)(a). The design analysis must show that any dike will meet the requirements of 401 KAR 2:063, Section 19(5)(c)1;
5. Detailed design drawings and specifications of the liner(s) and the leachate detection, collection, and removal system and the basis of design and design analysis to comply with 401 KAR 2:063, Sections 19(2)(c), 19(2)(e), 19(4)(c), and 19(4)(d);
6. Liner installation instructions to comply with the re-

quirements of 401 KAR 2:063, Section 19(5)(a). For existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used;

7. Design details of the leachate removal system, the basis of design, and a description of the operating procedures to be used to ensure free flow from the collection system in accordance with 401 KAR 2:063, Section 19(3)(c);

8. Design plans and specifications and basis of design of any structures needed to comply with 401 KAR 2:063, Section 19(3)(e);

9. A description of the maintenance and repair procedures proposed to comply with 401 KAR 2:063, Section 19(3)(d) and Section 2(6)(c);

10. A description of the operating procedures that will ensure compliance with 401 KAR 2:063, Sections 19(8) and 19(9); and

11. A certification by a qualified engineer which complies with 401 KAR 2:063, Section 19(5)(c). The owner or operator of a new facility must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications.

(d) For facilities that store, recycle, or treat hazardous waste in waste piles, except as otherwise provided in 401 KAR 2:063, Section 20(1):

1. A description of practice to control wind disperal (e.g., cover or frequent wetting) of hazardous waste in piles so that the department where necessary can specify appropriate control measures.

2. A detailed engineering description of the facility design including: A description of measures to divert run-on away from the pile; a description of the leachate and run-off collection and control system; a description of the foundation supporting the base; design specifications of the pile base and liner (or liners) including the estimated containment life of the base and the permeability of the liner(s); estimated life of the hazardous waste pile; and, if applicable under 401 KAR 2:063, Section 20(4)(a)3, a description of the leachate detection, collection, and removal system including the system's relation to the water table and a description of any efforts to control the water table.

3. A detailed description of the facility operating procedures which demonstrate compliance with 401 KAR 2:063, Section 20(3), and 20(7) (ignitable or reactive waste) and 401 KAR 2:063, Section 20(8) (incompatible waste) including: a description of efforts to protect the containment system from plant growth which could puncture any component of the system; a description of design and operating procedures to properly manage and dispose of any leachate that is a hazardous waste; a description and listing of all equipment and procedures used to place the waste in or on the pile or to clean and expose the liner surface; and a description of efforts to separate hazardous waste that is incompatible with an waste or material stored nearby including the design specifications of any dike, berm, wall, or other device used to separate the materials.

(e) For facilities that incinerate hazardous waste, except as 401 KAR 2:063, Section 21(1) provides otherwise, the applicant must fulfill the requirements of subsection (2)(e)1, 2, or 3 of this section.

1. When seeking exemption under 401 KAR 2:063, Section 21(1)(b) (ignitable waste only): that the waste is either listed as a hazardous waste in 401 KAR 2:075, Section 9, only because it is ignitable (Hazard Code 1) or, that the waste has been tested against the characteristics of hazardous waste under 401 KAR 2:075, Section 8, and that it meets only the ignitability characteristic, and includes none of the hazardous constituents listed in Section 11(5) of 401 KAR 2:075; or

2. Submit results of a trial burn conducted in accordance with and including all the determinations required by Section 4 of this regulation; or

3. In lieu of a trial burn, the applicant may submit the following information: an analysis of each waste or mixture of wastes to be burned including: heat value of the waste in the form and composition in which it will be burned; viscosity (if applicable), or description of physical form of the waste; an identification of any hazardous organic constituents listed in Section 11(5) of 401 KAR 2:075, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Section 11(5) of 401 KAR 2:075 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" Section 11(3) of 401 KAR 2:075 or their equivalent. An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in 401 KAR 2:063, Section 21(4). A detailed engineering description of the incinerator, including: manufacturer's name and model number of incinerator; type of incinerator; linear dimension of incinerator unit including cross sectional area of combustion chamber; description of auxiliary fuel system (type/feed); capacity or prime mover; description of automatic waste feed cutoff system(s); stack gas monitoring and pollution control monitoring system; nozzle and burner design; construction materials; location and description of temperature, pressure, and flow indicating devices and control devices. A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in subsection (2)(e)3 of this section. This analysis should specify that POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided; the design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available; a description of the results submitted from any previously conducted trial burn(s) including: sampling and analysis techniques used to calculate performance standards in 401 KAR 2:063, Section 21(4); methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide; identification of any hazardous combustion by-products detected; the certification and results required by Section 4; the expected incinerator operation information to demonstrate compliance with 401 KAR 2:063, Section 21(4) and (6) including: expected carbon monoxide (CO) level in the stack exhaust gas; waste feed rate; combustion zone temperature; air feed rate; expected stack gas volume, flow rate, and temperature; computed residence time for waste

in the combustion zone; expected hydrochloric acid removal efficiency; expected fugitive emissions and their control procedures; proposed waste feed cut-off limits based on the identified significant operating parameters; such supplemental information as the department finds necessary to achieve the purposes of this paragraph; waste analysis data, including that submitted in subsection (2)(e)3 of this section, sufficient to allow the department to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required;

4. The department shall approve a permit application without a trial burn if it finds that: the waste are sufficiently similar; and the incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under 401 KAR 2:063, Section 21(6)) operating conditions that will ensure that the performance standards in 401 KAR 2:063, Section 21(6) will be met by the incinerator.

Section *17.* [9.] Prohibition of Use of Unpermitted Facility. [Ninety (90) days after the effective date of the hazardous waste regulations,] *(1) Restrictions.* No person shall deliver hazardous waste to a facility for treatment, storage, recycling, or disposal unless the owner/operator has:

(a) [(1)] Registered with the department as an existing hazardous waste facility in operation *on or before November 19, 1980;* [at the effective date of the hazardous waste regulations,] or

(b) [(2)] Been granted a hazardous waste *site or facility* permit by the department.

(2) Permit required. No person shall engage in the storage, treatment, recycling or disposal of hazardous waste without first obtaining construction or operation permits from the department as specified in KRS 224.866(1).

[(3) Registered as a recycling facility.]

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

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, *224.864* [224.866]

PURSUANT TO: KRS 13.082, 224.017, 224.033, *224.864* [224.866]

NECESSITY AND FUNCTION: KRS *224.864* [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, subsection (3) of this section for obtaining an identification number, Section 3(5) for accumulation of hazardous waste, Section 4(1)(c) and (d) for recordkeeping, Section 4(4) for additional reporting and if applicable, Section 5(2) for farmers.

(c) Any person who imports hazardous waste from outside the United States 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 or 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 (see Section 9(1)(c) of 401 KAR 2:075); or

2. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(3) Registration and identification number.

(a) A generator must not treat, store, recycle, dispose of, transport, or offer for transportation, hazardous waste without having registered with the Department and received a state identification number. Such registration shall be filed within ninety (90) days after promulgation or revision of regulations under 401 KAR 2:075 identifying by its characteristics or listing any substance as a hazardous waste. Not more than one (1) such registration shall be required to be filed with respect to the same substance. The registration shall include:

1. Know or anticipated types, potential sources, general

characteristics, and weights or volumes of hazardous wastes generated annually;

2. The place of generation and the name and address of a contact agent; and

3. If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after promulgation or revision of regulations under 401 KAR 2:075, 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. Not more than one (1) registration shall be required to be filed with respect to the same substance.

(b) A generator who has not received an identification number may obtain one (1) by registering with the Department as described above, using forms provided by the Department. Upon receiving the request and reviewing the information the Department will assign a state identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters or to treatment, storage, recycling or disposal facilities that have not received a state identification number.

Section *2.* [1.] Manifest. (1) *General requirements.*

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, *recycling,* or disposal must prepare a manifest before transporting the waste off-site.

(b) [(2)] A generator must designate on the manifest *the* [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.*

(a) The manifest must contain all of the following information:

1. [(a)] A manifest document number;

2. [(b)] The generator's name, mailing address, telephone number, and identification number;

3. [(c)] The name and identification number of each transporter;

4. [(d)] The name, address, and identification number of the designated facility and an alternate facility, if any;

5. [(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];

6. [(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.

(b) [(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 *by the operator of the designated facility* 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, *recycling,* or disposal within Kentucky. For shipments of hazardous waste originating within Kentucky but bound for treatment, storage, *recycling,* 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 *or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water.* Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste within the United States which originate at the site of generation in Kentucky, the generator must send at least three (3) copies of the manifest dated and signed in accordance with this subsection 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) A generator may accumulate hazardous waste on-site *for ninety (90) days or less* without a permit *or without having interim status* [for ninety (90) days or less], provided that:

[(a) All such waste is shipped off-site in ninety (90) days or less;]

1. [(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, except those provisions from 40 CFR 265.193 which were incorporated by reference in Section 9.

2. [(c)] The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

3. [(d)] *While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and* [Each container is properly labeled and marked according to this Section;]

4. [(e)] The generator complies with the requirements specified in *401 KAR 2:073, Section 3(1) and (2) and 40 CFR 265.16 which is incorporated by reference in 401 KAR 2:073, Section 2.* [40 CFR 265.16 and Subpart C and D of 40 CFR 265, filed herein by reference.]

(b) [(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, unless he has been granted an extension to the ninety (90) day period. Such extensions may be granted by the Department if hazardous wastes must remain on-site for longer than ninety (90) days due to unforseen, temporary, and uncontrolled circumstances. An extension of up to thirty (30) days may be granted at the discretion of the Department on a case-by-case basis* [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)(c)* [(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, *recycling,* or disposal.

(d) [(4)] The periods of retention referred to in this sec-

tion 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, *recycles,* 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, 401 KAR 2:110 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*; and* [.]

c. [(3)] A generator must file an exception report, if:

(i) [(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

(ii) [(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.

(c) [(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*; and* [.]

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: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

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. *General. 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(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(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 from the lists in Section 9(1)(b).

3. It is a mixture of any 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 any waste and one (1) or more hazardous wastes listed in Section 9 and has not been excluded from this paragraph under Sections 9(1)(b); however, the following mixtures of 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(3), 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 pre-treatment system does not exceed one (1) part per million; or

(b) One (1) or more of the following spent solvents listed in Section 9(3), methylene 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 pre-treatment system does not exceed twenty (25) parts per million; or

(c) One (1) of the following wastes listed in Section 9(4), 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(5), 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 seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(e) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in 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) under Section 9(1)(b).

Section 4. Exclusions. (1) The following materials are not wastes for the purpose of this regulation:

(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;

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended; however, this exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(c) Irrigation return flows;

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC 2011 et seq.;

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

(f) Mining overburden returned to the mine site; and

(g) Material from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(2) Any waste which meets the requirements of this subsection is not a hazardous waste.

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels).

(b) Agricultural wastes generated by any of the following and which are returned to the soils as fertilizers:

1. The growing and harvesting of agricultural crops.

2. The raising of animals, including animal manures.

(c) Mining overburden returned to the mine site.

(d) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(e) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(f) 1. Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in Subpart D due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

a. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

b. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

c. The waste is typically and frequently managed in non-oxidizing environments.

2. Specific wastes which meet the standard in subparagraph 1a, b and c (so long as they do not fail the test for any other characteristic) are:

a. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

b. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

c. Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

d. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

e. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

f. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

g. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

h. Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(g) Waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(h) Cement kiln dust waste. Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(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 2:060, 2:063, 2:070, 2:073, 2:080, 2:085 and 2:170 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 2:060, 2:063, 2:070, 2:073, 2:080, 2:085 and 2:170, 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 certain regulations by Section 6(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(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; or

(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, 2:063, 2:070, 2:073, 2:080, 2:085 and 2:170.

(a) A total of one (1) kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in Section 9(5)(e) 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(5)(e) 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(5)(e) 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, 2:080, 2:085 and 2:170. The time period set out in 401 KAR 2:070, Section 3(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 2:070, Section 1(2);

(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 treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, disposal or recycling facility, either of which is:

1. Permitted under 401 KAR 2:060 or 2:170;
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 waste; and
5. Located outside of Kentucky and is permitted, licensed, registered or approved 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 2:060, 2:063, 2:070, 2:073, 2:080 and 2:085 except as 401 KAR 2:170 prescribes:

(a) It is being beneficially used or re-used or legitimately recycled or reclaimed.

(b) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.

(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, 2:080 and 2:085 as well as any applicable requirements of 401 KAR 2:170 with respect to its generation, transportation, storage and recycling.

(3) All facilities which beneficially use, or re-use or legitimately recycle or reclaim hazardous wastes must comply with the permit requirements of 401 KAR 2:170.

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 401 KAR 2:060, 2:063, 2:070, 2:073, 2:080, 2:085 and 2:170.

(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 401 KAR 2:055, 2:060, 2:063, 2:070, 2:073, 2:080, 2:085 and 2:170.

(2) (a) A container or an inner liner removed from a con-

tainer that has held any hazardous waste, except a waste that is a compressed gas or that is identified in Section 9(5)(c), is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

2. No more than 2.5 centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner.

(b) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(c) A container or an inner liner removed from a container that has held a hazardous waste identified in Section 9(5)(c) is empty if:

1. The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

2. The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by test conducted by the generator, to achieve equivalent removal; or

3. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

Section 8. Characteristics of Hazardous Waste. (1) General.

(a) A waste, as defined in Section 2 of this regulation, 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 401 KAR 2:060 and 2:070 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 Section 11(1) 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. The secretary notifies the petitioner that the Department has excluded that waste by a variance granted under Section 2 of 401 KAR 2:055.

(c) Petitions for equivalent testing or analytical methods may be granted by the Department as specified in 40 CFR 260.21, herein filed by reference.

(2) General requirements.

(a) All wastes listed in this section are assigned hazard codes identical to the hazard codes contained in those lists adopted by this section from 40 CFR 261 Subpart D.

1. These codes are to be used wherever required to complete registration forms, annual reports, manifest documents or permit applications required by the hazardous waste regulations and represent the basis for listing that class or type of waste in this section.

2. The hazard codes referred to above shall mean:

a. (I)—Ignitable waste.
b. (C)—Corrosive waste.
c. (R)—Reactive waste.
d. (E)—EP Toxic waste.
e. (H)—Acute hazardous waste.
f. (T)—Toxic waste.

3. Appendix II to 40 CFR 261 identifies the constituent which caused each waste listed as an EP toxic waste (E) or toxic waste (T) to be listed in this section.

(b) Each hazardous waste listed in this section is assigned an EPA Hazardous Waste Number identical to that number which precedes the waste name in each list adopted by this section from 40 CFR 261 Subpart D. That number shall be used as required to complete registration forms, annual reports, manifest documents or permit applications required by the hazardous waste regulations.

(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 residues thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this subsection.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this subsection.

(c) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic names listed in paragraph (e) of this subsection, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) of this section unless:

1. The container or inner liner has been triple rinsed us-

ing a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; or

2. The container or inner liner has been cleansed by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

3. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in paragraph (e) or (f) of this section.

(e) Those materials listed in 40 CFR 261.33, paragraph (e) herein filed by reference.

(f) Those materials listed in 40 CFR 261.33, paragraph (f) 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 pertaining to hazardous wastes. However, special wastes which are classified as hazardous waste are exempt from the assessment of the Kentucky hazardous waste management fund as provided by KRS 224.876(6).

Section 11. Appendices. The following appendices to 40 CFR 261 are adopted and herein filed by reference for use in intrepreting any requirement in this regulation or any other hazardous waste regulation.

(1) Appendix I—Representative Sampling Methods.
(2) Appendix II—EP Toxicity Test Procedure.
(3) Appendix III—Chemical Analysis Test Methods.
(4) Appendix VII—Basis for Listing Hazardous Waste.
(5) Appendix VIII—Hazardous Waste Constituents.

APPENDIX A TO 401 KAR 2:075
READER'S AID

40 CFR 260 in this regulation is incorporated from the following Federal Registers:

45 FR 12724, February 26, 1980, Effective August 26, 1980; revised by 45 FR 33073, May 19, 1980, Effective November 19, 1980; 45 FR 72028, October 30, 1980; 45 FR 76075, November 17, 1980; 45 FR 76630, November 19, 1980; 45 FR 86968, December 31, 1980; 46 FR 2348, January 9, 1981; 46 FR 27476, May 20, 1981; 46 FR 35247, July 7, 1981; 46 FR 59537, December 7, 1981.

40 CFR 261 in this regulation is incorporated from the following Federal Registers:

45 FR 33119, May 19, 1980, Effective November 19, 1980; Amended by 45 FR 47833, July 16, 1980; 45 FR 72028, 72037, 72039, 72041, October 30, 1980; 45 FR 74890, November 12, 1980; 45 FR 76620, 76623, November 19, 1980; 45 FR 78529, 78531, 78541, November 25, 1980; 45 FR 80287, December 4, 1980; 46 FR 4617, January 16, 1981; 46 FR 27476, May 20, 1981; 46 FR 29708, June 3, 1981; 46 FR 34587, July 2, 1981; 46 FR 35247, July 7, 1981; 46 FR 44972, September 8, 1981; 46 FR 47429, September 25, 1981; 46 FR 56588, November 17, 1981; 46 FR 61272, December 16, 1981.

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1982
RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.
SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:015. Documents incorporated by reference.

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 incorporation by reference of documents referred to within these regulations.

Section 1. Code of Federal Regulations. (1) The following documents from the "Code of Federal Regulations" which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) 40 CFR 50:

1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).
2. Appendix B: Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method).
3. Appendix C: Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry).
4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of Photochemical Oxidants Corrected for Interferences due to Nitrogen Oxides and Sulfur Dioxide.
5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.
6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).
7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

8. Appendix H: Interpretation of the National Ambient Air Quality Standards for Ozone.

(b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(c) [(b)] 40 CFR 60:

1. Appendix A: Reference Methods:

a. Method 1—Sample and Velocity Traverses for Stationary Sources.

b. Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).

c. Method 3—Gas Analysis for Carbon Dioxide, Excess Air, and Dry Molecular Weight.

d. Method 4—Determination of Moisture in Stack Gases.

e. Method 5—Determination of Particulate Emissions from Stationary Sources.

f. Method 6—Determination of Sulfur Dioxide Emissions from Stationary Sources.

g. Method 7— Determination of Nitrogen Oxide Emissions from Stationary Sources.

h. Method 8—Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.

i. Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources.

j. Method 10—Determination of Carbon Monoxide Emissions from Stationary Sources.

k. Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.

l. Method 13A—Determination of Total Fluoride Emissions from Stationary sources—SPADNS Zirconium Lake Method.

m. Method 13B—Determination of Total Fluoride Emissions from Stationary Sources—Specific Ion Electrode Method.

n. Method 14—Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants.

o. Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.

p. Method 16—Semicontinuous Determination of Sulfur Emissions from Stationary Sources.

q. Method 17—Determination of Particulate Emissions from Stationary Sources (Instack Filtration Method).

r. Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.

s. Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.

2. Appendix B: Performance Specifications:

a. Performance Specification 1—Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emissions.

b. Performance Specification 2—Performance specifications and specification test procedures for monitors of sulfur dioxide and nitric oxides from stationary sources.

c. Performance Specification 3—Performance specifications and specification test procedures for monitors of carbon dioxide and oxygen from stationary sources.

(d) [(c)] 40 CFR 61: Appendix B: Test Methods:

1. Method 101—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (air streams).

2. Method 102—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (hydrogen streams).

3. Method 103—Beryllium screening method.

4. Method 104—Reference method for determination of beryllium emissions from stationary sources.

5. Method 105—Method for determination of mercury in wastewater treatment plant sewage sludges.

6. Method 106—Determination of vinyl chloride from stationary sources.

7. Method 107—Determination of vinyl chloride content of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of Official Analytical Chemists is incorporated herein by reference:

(1) Method 9—Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the Association of Official Analytical Chemists, 11th Edition.

(2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20014; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate annual "Book of ASTM Standards" from the American Society for Testing and Materials are incorporated herein by reference:

(1) ASTM Standards:

(a) A 99-66(71) Standard Specification for Ferromanganese.

(b) A 100-69(74) Standard Specification for Ferrosilicon.

(c) A 101-73 Standard Specification for Ferrochromium.

(d) A 482-66(71) Standard Specification for Ferrochrome-Silicon.

(e) A 483-64(74) Standard Specification for Silicomanganese.

(f) A 495-64(70) Standard Specification for Calcium-Silicon and Calcium-Manganese-Silicon.

(g) D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(h) D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.

(i) D 388-66(72) Standard Specification for Classification of Coals by Rank.

(j) D 1072-56(75) Standard Test Method for Total Sulfur in Fuel Gases.

(k) D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.

(l) D 1475-60(74) Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

(m) D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.

(n) D 1826-64(75) Standard Test Method for Calorific

Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

(o) D 1888-78 Standard Test Methods for Particulate and Dissolved Matter, Solids, or Residue in Water.

(p) [(o)] D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.

(q) [(p)] D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.

(r) [(q)] D 2015-66(72) Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.

(s) [(r)] D 2369-73 Standard Test Method for Volatile Content of Paints.

(t) [(s)] D 2880-78 Standard Specification for Gas Turbine Fuel Oils.

(u) [(t)] D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.

(v) [(u)] D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.

(w) [(v)] E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.

(2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

(1) T624 os-68—Analysis of Soda and Sulfate—White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute).

(2) Copies may be obtained from: TAPPI, 1 Dunwood Park, Atlanta, Georgia 30341.

Section 5. EPA. The following documents from the U. S. EPA are incorporated herein by reference:

(1) (a) Guideline on Air Quality Models, EPA-450/2-78-027, OAQPS No. 1.2-080, April, 1978.

(b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.

(c) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.

(d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Control Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.

(2) Copies may be obtained from: U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711.

Section 6. American Association of State Highway and Transportation Officials. The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

(1) AASHTO T 59-78 Standard Method of Test for Testing Emulsified Asphalt.

(2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capitol Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

(1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."

(2) Single copies may be obtained from:

(a) General Services Administration Regional Offices; or

(b) Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division of Air Pollution. The following documents from the Kentucky Division of Air Pollution are incorporated herein by reference:

(1) (a) Kentucky Method 50: Kentucky Division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."

(b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of Total Gaseous Organic Emissions from Stationary Sources."

(c) Kentucky Method 91: Kentucky Division of Air Pollution Control Reference Method 91, "Alternate Test Method for the Determination of Total Gaseous Organic Emissions from Stationary Sources."

(d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."

(e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."

(2) Copies may be obtained from: Division of Air Pollution Control, Technical Services, Department for Natural Resources and Environmental Protection, 5th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institute is incorporated herein by reference:

(1) Voluntary Product Standard PS 59-73—Prefinished Hardboard Paneling. This reference is also numbered ANSI A135.5-1973 (American National Standards Institute).

(2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:035. Permits and compliance schedules.

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 issuance of permits and compliance schedules.

Section 1. Prohibitions. (1) No person shall construct, recontruct, alter, or modify a source unless a construction permit to do so has been issued by the department.

(2) No person shall use, operate, or maintain a source in contravention of any regulations of the Division of Air Pollution unless an operating permit, conditioned by an approved compliance schedule, has been issued by the department and is currently in effect.

(3) No person shall use, operate, or maintain a source, which is in compliance with all regulations of the Division of Air Pollution unless:

(a) A permit to so operate has been issued by the department and is currently in effect; *or* [.]

(b) The source has demonstrated to the satisfaction of the department that it is in compliance with the provisions of all applicable regulations including all provisions relating to public participation, a complete application for a permit to operate has been accepted by the department and the department has notified the applicant that the application is complete.

(4) No person shall use, operate, or maintain a source which has changed ownership after a shutdown of six (6) months or more unless:

(a) The provisions of 401 KAR 50:055, Section 3(1) are met;

(b) The source was issued an operating permit and was in compliance with all applicable regulations under the previous ownership; and

(c) The provisions of Section 5(2) are met.

Section 2. Applications. (1) Applications for permits or compliance schedules required under Section 1 shall be made on forms prepared by the department for such purpose and shall contain such information as the department shall deem necessary to determine whether the permit or compliance schedule should be issued.

(2) Applications for permits or compliance schedules shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the source owner or operator; or, in the case of political subdivisions, by the highest executive official of such subdivision. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.

(3) The information submitted in the application shall, when specifically requested by the department, include an analysis of the characteristics, properties and volume of the air contaminants based upon source or stack samples of the air contaminants taken under normal operating conditions. Failure to supply information required or deemed necessary by the department to enable it to act upon the permit or compliance schedule application shall result in denial of the permit or shall result in disapproval of the compliance schedule.

(4) An application for a permit or compliance schedule may include one (1) or more affected facilities provided that all are contained within one (1) source. A person may apply for an amended permit to include new affected facilities provided that such new facilities are within the same source.

Section 3. [(2)] The department shall deny an application for a permit or compliance schedule if the department determines that emission standards, standards of performance, ambient air quality standards, approved control measures *or* [and] the provisions of Title 401, Chapter 51, are not met or will not be met upon completion of a compliance schedule.

(b) The department shall deny an application for a permit or compliance schedule if the applicant willfully makes material misstatements in the application or amendments thereto.

(c) When required by the regulations of Title 401, Chapters 50 to 65, the department shall base the determination of compliance with ambient air quality standards and prevention of significant air quality increments upon either:

1. Air quality models in accordance with 401 KAR 50:040; or

2. Ambient air quality monitoring in accordance with 401 KAR 53:010.

(d) In cases where no emission standards have been prescribed by regulation, the department shall require the use of all available, practical and reasonable methods to prevent and control air pollution.

(2) Compliance schedules herein shall be subject to approval of the department. If for any reason, the department and the source are unable to negotiate a mutually acceptable schedule, the department will propose a compliance schedule which will be subjected to a hearing pursuant to KRS 224.083. After considering the hearing report, the department shall issue an appropriate compliance schedule.

(3) Notification. This subsection shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to Section 4.

(a) Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the department shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) of this subsection shall be the date on which the department makes a determination that the application is complete.

(b) The department shall notify the applicant, in writing, of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial within thirty (30) days after receipt of a complete application, unless the department determines that an additional period of time is necessary to adequately review the application.

Section 4. [(3)] Procedures for Public Participation. This [sub]section shall apply to the proposed major source construction, major modifications as defined in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year or more of any one (1) pollutant.

(1) [(a)] Within thirty (30) days after receipt of an application to construct, reconstruct, or modify or any addition to such application, the department shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of *subsections (2), (6) and (7) of this section* [paragraphs (b), (e) and (f) of this subsection] shall be the date on which the department makes a determination that the application is complete.

(2) [(b)] Within thirty (30) days after the receipt of a complete application, the department shall:

(a) [1.] Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) [2.] Make available in at least one (1) location in each region in which the proposed source would be constructed, reconstructed, or modified, a copy of all materials submitted by the owner or operator, a copy of the department's preliminary determination and a copy or summary of other materials, if any, considered by the department in making the preliminary determination; and

(c) [3.] For sources subject to 401 KAR *51:017* [51:016E], notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification if applicable, and of the opportunity to comment in writing and of the opportunity to request a public hearing to receive written or oral comments. The cost of such advertisement shall be borne by the applicant.

(d) [4.] For all other sources subject to this [sub]section, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, and of the opportunity to comment in writing. The cost of such advertisement shall be borne by the applicant.

(3) [(c)] A copy of the notice required pursuant to this section shall be sent to the *following persons (any person otherwise entitled to receive notice under this subsection may waive his/her rights to receive notice):*

(a) The applicant; [and to]

(b) Officials and agencies having cognizance over the locations where the source will be situated as follows: the Administrator of the U. S. EPA through the appropriate regional office; local air pollution control agencies; the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source*; and* [.]

(c) Persons on a mailing list compiled by including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.

(4) All public notices issued under this regulation shall contain the following minimum information:

(a) Name and address of the department and division processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application; and

(e) A brief description of the comment procedures required by subsections (5) and (8) of this section.

(f) In addition to the general public notice described in paragraphs (a) to (e) of this subsection, the public notice for a hearing under subsection (8) of this section shall be given at least thirty (30) days before the hearing and shall contain the following information: reference to the date of previous public notices relating to the permit; date, time, and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) [(d)] Public comments submitted in writing within thirty (30) days after the date such information is made available shall be considered by the department in its final decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection at the same location in the region at which the department made available preconstruction information relating to the proposed source.

(6) [(e)] The department shall take final action on an application subject to this [sub]section by notifying the applicant in writing of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial. Such notification shall be made available for public inspection at the location in the region at which the department made available preconstruction information relating to the proposed source or modification. The public shall be notified of the department's final action on an application subject to this subsection by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be situated. The cost of such advertisement shall be borne by the applicant.

(a) [1.] For sources subject to 401 KAR *51:017* [51:016E] and for which a public hearing has been requested and held, the department shall take final action within 150 days after receipt of a complete application.

(b) [2.] For all other sources subject to this [sub]section, the department shall take final action within ninety (90) days after receipt of a complete application.

(7) [(f)] The department may extend each of the time periods specified in *subsections (2), (5) or (6) of this section* [paragraphs (b), (d) or (e) of this subsection] by no more than thirty (30) days or such other period as agreed to by the applicant and the department deems necessary. In accordance with Federal Regulation 40 CFR 52.21(r), the department shall in no case exceed one (1) year from the date of receipt of a complete application for taking final action on an application subject to 401 KAR *51.017* [51:016E].

(8) (a) For sources subject to 401 KAR 51:017, the department shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The department also may hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision. Public notice of the hearing shall be given as specified in paragraphs (b) and (c) of this subsection.

(b) Whenever a public hearing is to be held the department shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements

and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection (5) of this section shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost.

[(4) This subsection shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to subsection (3) of this section.]

[(a) Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the department shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) of this subsection shall be the date on which the department makes a determination that the application is complete.]

[(b) Within thirty (30) days after receipt of a complete application the department shall notify the applicant, in writing of its approval, conditional approval, or denial of the application, and shall set forth its reasons for conditional approval or denial.]

[(c) The department may extend the time period specified in paragraph (b) of this subsection by no more than thirty (30) days or such other period as the department deems necessary.]

Section *5.* [4.] Permits and Compliance Schedules. (1) Permits and compliance schedules issued hereunder shall be subject to such terms and conditions set forth and embodied in the permit or compliance schedule as the department shall deem necessary to insure compliance with its standards. Such terms and conditions may include maintenance and availability of records relating to operations which may cause or contribute to air pollution including periodic source or stack sampling of the affected facilities.

(2) In the case of *a* transfer of ownership *or name change* of a source, the new owner *or owner respectively* shall abide by any current compliance schedule or permit *to operate* issued *by the department* to the previous owner *or to the same owner under the previous source name* [by the department]. The new owner *or owner* shall notify the department of the change in ownership *and/or source name* within ten (10) days *following* [of] the change in ownership *or source name and shall apply for a new permit to operate in the event of a change in the name of the source.*

Section *6.* [5.] Exemptions. The provisions of this regulation shall not apply to the following [affected facilities]:

(1) Those affected facilities to which no *regulation* [standard] is applicable *and* [or] which emit an air pollutant to which no *ambient air quality* standard applies.

(2) Incinerator with a charging rate of less than 500 pounds per hour.

(3) Internal combustion engines whether fixed or mobile, and vehicles used for transport of passenger or freight.

(4) Direct fired sources used for heating and ventilating.

(5) Those sources as set forth in 401 KAR 63:005.

(6) Indirect heat exchangers at a source with a total capacity of less than fifty (50) million BTU per hour input which use natural gas, liquid petroleum gas, or distillate fuel oil as a main fuel or combinations of these as main and standby fuel *and which are not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.*

(7) Publicly owned roads.

(8) Feed grain mills *having a hammermill* with a rated capacity of [less than] ten (10) tons per hour *or less, provided that the source does not include a grain dryer.*

(9) Sawmills which produce only rough cut or dimensional lumber from logs and which have a rated capacity of 1,500 board feet per hour or less provided the source does not include an indirect heat exchanger or waste wood burner subject to regulation in Title 401, Chapter 59 or 61.

(10) All sources except those subject to regulation in Title 401, Chapter 57 or 401 KAR 63:020, whose potential to emit is less than or equal to two (2) tons per year of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides or carbon monoxide. This exemption shall not apply to sources of volatile organic compounds located in urban counties designated as non-attainment for ozone in 401 KAR 51:010.

Section *7.* [6.] Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after June 6, 1979 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action as provided under KRS 224.994.

(2) Approval to construct shall become invalid if construction is not commenced within twelve (12) months after receipt of such approval, if construction is discontinued for a period of six (6) months or more, or if construction is not completed within a reasonable time. The department may extend the twelve (12) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within twelve (12) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the requirements of the department and any other requirements under local, state, or federal law.

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:055. General compliance requirements.

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 establishes requirements for compliance during shutdown and malfunctions; establishes requirements for demonstrating compliance with standards; establishes requirements for compliance when a source is relocated within the Commonwealth of Kentucky; and other general compliance requirements.

Section 1. Emissions During Shutdown and Malfunction. (1) Emissions which, due to shutdown or malfunctions, temporarily exceed the standard set forth by the department shall be deemed in violation of such standards unless the requirements of this section are satisfied and the determinations specified in subsection (4) of this section are made.

(2) When emissions during any planned shutdown and ensuing startup will exceed the standards, the owner or operator of the source shall notify the director or his designee no later than three (3) days before the planned shutdown. However, if the shutdown is necessitated by events which the owner or operator could not reasonably have foreseen three (3) days before the shutdown, then such notification shall be given immediately following the decision to shutdown. The notice shall be in writing and shall specify the name of the air contaminant source, its location, the address and telephone number of the person responsible for the source, the reasons for and duration of the proposed shutdown, the date and time for the action, the physical and chemical composition, rate and concentration of the emissions during such shutdown and ensuing startup, the basis for determination that such shutdown is necessary, and the measures which will be taken to minimize the extent and duration of the emissions during such shutdown and ensuing startup.

(3) When emissions due to malfunctions, unplanned shutdowns or ensuing startups are or may be in excess of the standards, the owner or operator shall notify the director by telephone as promptly as possible, and shall cause written notice when requested by the director to be sent to the director. Such notice shall specify the name of the source, its location, the address and telephone number of the person responsible for the source, the nature and cause of the malfunctions, or unplanned shutdown, the date and time when the malfunction was first observed, the expected duration, the nature of the action to be taken to correct the malfunction, and an estimate of the physical and chemical composition, rate and concentration of the emission.

(4) A source shall be relieved from compliance with the standards set forth by the department if the director determines, upon a showing by the owner or operator of the source, that:

(a) The malfunction or shutdown and ensuing startup did not result from the failure by the owner or operator of the source to operate and maintain properly the equipment;

(b) All reasonable steps were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the standards, including the use of off-shift labor and overtime if necessary;

(c) All reasonable steps were taken to minimize the emissions and their effect on air quality resulting from the occurrence;

(d) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(e) The malfunction or shutdown and ensuing startup was not caused entirely or in part by poor maintenance, careless operation or any other preventable upset conditions or equipment breakdown.

(5) The director shall notify the owner or operator of the source of the determination made under this section no later than sixty (60) days after the date that all information required by this section has been submitted.

Section 2. Compliance with Standards and Maintenance Requirements. (1) An owner or operator of any affected facility subject to any standard within the regulations of the Division of Air Pollution shall:

(a) In the case of a new source, demonstrate compliance with the applicable standard(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility;

(b) In the case of an existing source, demonstrate compliance with the applicable standard before or on the date that final compliance is required by the applicable compliance schedule unless otherwise specified by regulation; and

(c) Maintain the affected facility in compliance with all applicable standards at all times subsequent to the date that compliance is demonstrated.

(2) Compliance with standards in the regulations of the Division of Air Pollution shall be demonstrated as follows:

(a) By performance tests as specified in the applicable regulation and according to the requirements and exceptions provided in 401 KAR 50:045.

(b) By methods other than performance tests as provided for by the applicable regulation.

(c) By methods acceptable to the department if the applicable regulation does not specify a performance test or other method of determining compliance.

(3) Compliance with opacity standards in the regulations of the Division of Air Pollution shall be determined by Method 9 of Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as may be provided for by regulation for a specific category of sources. Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation), performance specification as required by the department, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.

(4) The opacity standards set forth in this regulation shall apply at all times except during periods of startup, shutdown, and as otherwise provided in the applicable standard.

(5) At all times, including periods of startup, shutdown and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the department which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(6) Adjustment of opacity standards *for emissions from a stack or a control device*:

(a) An owner or operator of an affected facility may request the department to determine opacity of emissions from the affected facility during the initial performance tests. *Fugitive emissions are not subject to the provisions of this subsection.*

(b) Upon receipt from such owner or operator of the written report of the results of the performance tests, the department will make a finding concerning compliance with opacity and other applicable standards. If the department finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted, but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the department shall notify the owner or operator and advise him that he may petition the department within ten (10) days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.

(c) The department will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the department; and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

(d) The department will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.

Section 3. Shutdown and Relocation. (1) Any affected facility commencing operations after a shutdown for six (6) months shall demonstrate compliance with the applicable standard(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after commencing operations.

(2) Any source located within the Commonwealth of Kentucky and moved to another location involving a change of address shall be subject to applicable regulations at the new location or to regulations which were applicable at the original location, whichever is the more stringent.

Section 4. Circumvention. No owner or operator subject to the provisions of the regulations of the Division of Air Pollution shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

Section 5. Prohibition of Air Pollution. No person shall permit or cause air pollution as defined in 401 KAR 50:010 in violation of regulations promulgated by the department.

[Section 6. Alternative Emission Reduction Options. (1) Applicability:]

[(a) The provisions of this section shall apply to all affected facilities within a source emitting the same or comparable pollutants which commenced before the classification date defined below and:]

[1. Are in compliance with all applicable emission limitations or on schedule with an order containing a plan and timetable for compliance issued by the department and approved by the U.S. EPA;]

[2. Are subject to a court decree in an action in which the U.S. EPA was a party or which decree the U.S. EPA has found to be satisfactory and such decree contains a schedule for compliance and allows for timely modification of the decree without delay in the final compliance date; or]

[3. Are required to meet a compliance timetable contained in a regulation in Title 401, Chapter 61.]

[(b) The provisions of this section shall not apply to affected facilities which:]

[1. Are subject to standards under Title 401, Chapter 57 or 401 KAR 63:020;]

[2. Are subject to standards of performance under 401 KAR 63:010, unless such fugitive emissions have been accurately quantified and their air quality impact predicted by methods approved by the department;]

[3. Are subject to federal new source performance standards pursuant under 40 CFR 60;]

[4. Are subject to standards established pursuant to either Title 401, Chapter 51, or standards established pursuant to 40 CFR 52.21 or 40 CFR 51 Appendix S; or]

[5. Emit or may emit fugitive soil.]

[(2) Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.]

[(a) "Classification date" means the effective date of this regulation.]

[(b) "Fugitive soil" means particulate matter composed of soil which is uncontaminated by pollutants resulting from industrial activity. Fugitive soil may include emissions from haul roads, wind erosion of exposed soil surfaces and soil storage piles, and other activities in which soil is either removed, stored, transported, or redistributed.]

[(c) "Permanent," as applied to shutdown of affected facilities subject to Title 401, Chapters 59 and 61, means a period of five (5) years from shutdown for complying and eighteen (18) months from shutdown for non-complying affected facilities.]

[(3) Method for determining allowable emission rate:]

[(a) A source may petition the department to establish an allowable emission rate for each pollutant subject to standards of performance under Title 401, Chapters 59 and 61 except as provided in subsection (1)(b) of this section. This source allowable emission rate may be apportioned to the affected facilities at the source subject to regulation for that pollutant without regard to the individual pollutant emission rate allowed each affected facility under Title 401, Chapters 59 and 61, provided that the conditions specified in paragraph (b) 1, 2, and 3 of this subsection are

met. Such source allowable emission rate shall be determined according to the formula given in Appendix A to this regulation.]

[(b) The source emission rate determined in paragraph (a) of this subsection may be apportioned among the affected facilities included in the procedure subject to the following demonstrations by the source owner or operator:]

[1. The applicable ambient air quality standards contained in Title 401, Chapter 53, shall be attained and maintained after the apportioning of emissions among the affected facilities. Air quality models and procedures specified in 401 KAR 50:040 shall be used, as applicable.]

[2. The ambient air quality resulting from the use of the apportioned emissions shall be equal to or better than the ambient air quality which would have resulted through compliance of each affected facility with its individual emission limitation as contained in Title 401, Chapters 59 and 61. Air quality models and procedures specified in 401 KAR 50:040 shall be used as applicable.]

[3. The allowable emission rate apportioned to any new or modified affected facility commenced on or after the classification date of an applicable standard of performance contained in Title 401, Chapter 59, shall not exceed the emission rate allowed that new or modified affected facility in that standard of performance.]

[(c) Subsequent to a successful demonstration that the requirements of paragraph (b) of this subsection have been fully met, the source owner or operator may petition the department to designate the individual apportioned emission rate as the alternate emission limitation for each affected facility under the requirements of the department. Such designation shall be in accordance with the procedures contained in subsection (5) of this section.]

[(d) At no time subsequent to the designation of the alternate emission limitations by the department, shall the owner or operator of the source allow the total emissions (in pounds of effluent per hour) from all affected facilities included in the calculation of paragraph (a) of this subsection to exceed the source allowable emission rate established under paragraph (a) of this subsection.]

[(e) At no time subsequent to the apportioning of emissions shall any individual affected facility within the source exceed the alternate emission limitation established for it under paragraph (c) of this subsection.]

[(4) Monitoring and testing:]

[(a) The department shall require such recordkeeping, monitoring of operations, continuous emissions and/or ambient monitoring as may be necessary to demonstrate to the satisfaction of the department that the requirements of subsection (3)(d) and (e) of this section shall and will be met under actual conditions of operation of the source.]

[(b) The department may require that each individual affected facility assigned an alternate emissions limitation under subsection (3)(c) of this section demonstrate compliance with the applicable alternate emission limitation through performance tests. Such tests shall be conducted using reference methods and procedures prescribed for that particular affected facility under the standard of performance applicable to it in Title 401, Chapters 59 and 61.]

[(5) Enforcement:]

[(a) The source emission rate established under subsection (3)(a) of this section, the alternate affected facility emission limitation established under subsection (3)(c) of this section, and all applicable recordkeeping, monitoring and testing requirements under subsection (4) of this section shall be identified as conditions of an order or a permit issued by the department subject to prior written approval of the order or permit by the U.S. EPA.]

[(b) The order or permit issued by the department under paragraph (a) of this subsection shall be null and void on permanent shutdown of any affected facility for which an alternate emission limitation has been established by the department under subsection (3) of this section.]

[(c) Final compliance dates contained in any order or permit issued pursuant to paragraph (a) of this subsection shall provide for the most expeditious compliance with the alternate emissions limitations contained in the order or permit, as applicable. In no case shall the final compliance date for any affected facility identified in the order or permit exceed the final compliance date for that affected facility under the applicable standard of performance contained in Title 401, Chapters 59 and 61, or under an order previously issued to the source by the department.]

[(d) Failure of a source owner or operator to comply with the conditions of the order or permit issued pursuant to paragraph (a) of this subsection shall subject the owner or operator to any or all enforcement actions provided for under 401 KAR 50:060.]

[APPENDIX A TO 401 KAR 50:055

Determination of source allowable emission rate

$$F = \sum_{i=1}^{N} E_i$$

Where:

F = source allowable emission rate in pounds per hour of a particular pollutant.

E_i = allowable emission rate contained in applicable standard of performance for the ith process or affected facility in pounds of that pollutant per hour at rated capacity.

N = total number of processes, operations, or affected facilities for which individual emission limitations apply pursuant to Title 401, Chapters 59 and 61 for the same or comparable pollutant.]

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 51:010. Attainment status designations.

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 designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for particulates, sulfur dioxide, carbon monoxide, ozone and nitrogen oxides are as listed in Appendices A through E of this regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency of a national ambient air quality standard, the department shall review applicable data and submit to the U.S. EPA a revision to the attainment—non-attainment list pursuant to Section 107(d)(1) of the Clean Air Act.

(3) Whenever the air quality status in Appendices A through E of this regulation has been described by the generally inclusive term "Rest of State," that portion of the state so identified shall be deemed to be designated on a county-by-county basis.

Section 2. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable, however, primary ambient air quality standards shall be attained no later than December 31, 1982 in non-attainment areas with respect to the pollutants for which the area is non-attainment. The above date shall be extended to December 31, 1987 for ozone and carbon monoxide for those areas granted such an extension by the U. S. EPA.

APPENDIX A TO 401 KAR 51:010

ATTAINMENT STATUS DESIGNATIONS FOR TOTAL SUSPENDED PARTICULATES

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
Bell County	X	X	
Boyd County	X	X	
That portion of Bullitt Co. In Shepherdsville	X	X	
That portion of Campbell Co. in Newport	X	X	
That portion of Daviess Co. in Owensboro	X	X	
That portion of Henderson Co. in Henderson	X	X	
Jefferson County	X	X	
That portion of Lawrence Co. in Louisa	X	X	
McCracken County	X	X	
Marshall County		X	
That portion of Madison Co. in Richmond	X	X	
Muhlenberg County	X	X	
That portion of Perry Co. in Hazard	X	X	
That portion of Pike Co. in Pikeville	X	X	
That portion of Whitley Co. in Corbin	X	X	
Rest of State			X

APPENDIX B TO 401 KAR 51:010

ATTAINMENT STATUS DESIGNATIONS FOR SULFUR DIOXIDE

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
That portion of Daviess Co. in Owensboro			X
Greenup County			X
That portion of Henderson Co. in Henderson			X
Jefferson County	X	X	
McCracken County	[X]		X
Muhlenberg County	X	X	
Webster County	[X]	[X]	X
Rest of State			X

APPENDIX C TO 401 KAR 51:010

ATTAINMENT STATUS DESIGNATIONS
FOR CARBON MONOXIDE

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Jefferson County	X	
Rest of State		X

APPENDIX D TO 401 KAR 51:010

ATTAINMENT STATUS DESIGNATIONS
FOR OZONE

Designated Area	*Does Not Meet Primary Standards*	*Better Than Standards*	*Cannot Be Classified*
Boone County	X		
Boyd County	X		
Caldwell County			X
Calloway County			X
Campbell County	X		
Christian County			X
Fayette County		X	
Jefferson County	X		
Kenton County	X		
Trigg County			X
Rest of State		X	

[APPENDIX D TO 401 KAR 51:010

ATTAINMENT STATUS DESIGNATIONS
FOR OZONE

Designated Area	Does Not Meet Primary Standards	Better Than Standards	Cannot Be Classified
Anderson County		X	
Ballard County		X	
Boone County	X		
Boyd County	X		
Boyle County		X	
Campbell County	X		
Carlisle County		X	
Casey County		X	
Crittenden County		X	
Daviess County		X	
Fayette County	X		
Graves County		X	
Garrard County		X	
Hancock County		X	
Henderson County		X	
Hopkins County		X	
Jefferson County	X		
Jessamine County		X	
Kenton County	X		
Laurel County		X	
Lincoln County		X	
Livingston County		X	
Lyon County		X	
McCracken County		X	
McCreary County		X	
McLean County		X	
Madison County		X	
Marion County		X	
Marshall County		X	
Mercer County		X	
Muhlenberg County		X	
Ohio County		X	
Pulaski County		X	
Rockcastle County		X	
Russell County		X	
Union County		X	
Washington County		X	
Wayne County		X	
Webster County		X	
Whitley County		X	
Woodford County		X	
Rest of State			X]

APPENDIX E TO 401 KAR 51:010

ATTAINMENT STATUS DESIGNATIONS
FOR NITROGEN OXIDES

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:018. New stationary gas turbines.

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 stationary gas turbines.

Section 1. Applicability. The provisions of this regulation are applicable to the following affected facilities: all stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour, (ten (10) million BTU/hr) based on the lower heating value of the fuel fired, which commenced on or after the classification date defined below.

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) "Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine or any gas turbine portion of a combined cycle steam/electric generating system that is not self propelled. It may, however, be mounted on a vehicle for portability.

(2) "Simple cycle gas turbine" means any stationary gas turbine which does not recover heat from the gas turbine exhaust gases to preheat the inlet combustion air to the gas turbine, or which does not recover heat from the gas turbine exhaust gases to heat water or generate steam.

(3) "Regenerative cycle gas turbine" means any stationary gas turbine which recovers heat from the gas turbine exhaust gases to preheat the inlet combustion air to the gas turbine.

(4) "Combined cycle gas turbine" means any stationary gas turbine which recovers heat from the gas turbine exhaust gases to heat water or generate steam.

(5) "Emergency gas turbine" means any stationary gas turbine which operates as a mechanical or electrical power source only when the primary power source for a facility has been rendered inoperable by an emergency situation.

(6) "Ice fog" means an atmospheric suspension of highly reflective ice crystals.

(7) "ISO *(International Standard Organization)* standard day conditions" means 288 degrees Kelvin, sixty (60) percent relative humidity and 101.3 kilopascals pressure.

(8) "Efficiency" means the gas turbine manufacturer's rated heat rate at peak load in terms of heat input per unit of power output based on the lower heating value of the fuel.

(9) "Peak load" means 100 percent of the manufacturer's design capacity of the gas turbine at ISO standard day conditions.

(10) "Base load" means the load level at which a gas turbine is normally operated.

(11) "Fire-fighting turbine" means any stationary gas turbine that is used solely to pump water for extinguishing fires.

(12) "Turbines employed in oil/gas production or oil/gas transportation" means any stationary gas turbine used to provide power to extract crude oil/natural gas from the earth or to move crude oil/natural gas, or products refined from these substances through pipelines.

(13) "Metropolitan statistical area" (MSA) means any area defined as such by the U.S. Department of Commerce.

(14) "Offshore platform gas turbines" means any stationary gas turbine located on a platform in an ocean.

(15) "Garrison facility" means any permanent military installation.

(16) "Gas turbine model" means a group of gas turbines having the same nominal air flow, combustor inlet pressure, combustor inlet temperature, firing temperature, turbine inlet temperature and turbine inlet pressure.

(17) "Electric utility stationary gas turbine" means any stationary gas turbine constructed for the purpose of supplying more than one-third (⅓) of its potential electric output capacity to any utility power distribution system for sale.

(18) "Emergency fuel" is a fuel fired by a gas turbine only during circumstances, such as natural gas supply curtailment or breakdown of delivery system, that make it impossible to fire natural gas in the gas turbine.

(19) [(17)] "Classification date" means October 3, 1977.

Section 3. Standard for Nitrogen Oxides. (1) On and after the date on which the performance test required to be conducted by 401 KAR 50:045 is completed, every owner or operator subject to the provisions of this regulation shall comply with one (1) of the following as specified in subsections (2) to (4) of this section, except as provided in subsections (5) to *(12)* [(9)] of this section.

(a) No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any stationary gas turbine, any gases which contain nitrogen oxides in excess of the standard set forth in the formula in Appendix A of this regulation.

(b) No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any stationary gas turbine, any gases which contain nitrogen oxides in excess of the standard set forth in Appendix B of this regulation.

(c) F shall be defined according to the nitrogen content of the fuel as set forth in the table in Appendix C of this regulation, or manufacturers may develop custom fuel-bound nitrogen allowances for each gas turbine model they manufacture. These fuel-bound nitrogen allowances shall be substantiated with data and must be approved for use by the department before the initial performance test required by 401 KAR 50:045.

(2) *Electric utility* stationary gas turbines with a heat input at peak load greater than 107.2 gigajoules per hour (100 million BTU/hr) based on the lower heating value of the fuel fired [except as provided in subsection (4) of this section] shall comply with the provisions of subsection (1)(a) of this section.

(3) Stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (ten (10) million BTU/hr) but less than or equal to 107.2 gigajoules per hour (100 million BTU/hr) based on the lower heating value of the fuel fired, shall comply with the provisions of subsection (1)(b) of this section.

(4) *Stationary gas turbines with a manufacturer's rated base load at ISO conditions of thirty (30) megawatts or less except as provided in subsection (2) of this section shall comply with subsection (1)(b) of this section.* [Stationary

gas turbines employed in oil/gas production or oil/gas transportation and not located in MSAs, and offshore platform turbines shall comply with the provisions of subsection (1)(b) of this section.]

(5) Stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (ten (10) million BTU/hr) but less than or equal to 107.2 gigajoules per hour (100 million BTU/hr) based on the lower heating value of the fuel fired and that have commenced construction prior to October 3, 1982 are exempt from subsection (1) of this section.

(6) Stationary gas turbines using water or steam injection for control of NO_x emissions are exempt from subsection (1) of this section when ice fog is deemed a traffic hazard by the owner or operator of the gas turbine.

(7) Emergency gas turbines, military gas turbines for use in other than a garrison facility, military gas turbines installed for use as military training facilities, and fire fighting gas turbines are exempt from subsection (1) of this section.

(8) Stationary gas turbines engaged by manufacturers in research and development of equipment for both gas turbine emission control techniques and gas turbine efficiency improvements are exempt from subsection (1) of this section on a case-by-case basis as determined by the department.

(9) Exemptions from the requirements of subsection (1) of this section will be granted on a case-by-case basis as determined by the department in specific geographical areas where mandatory water restrictions are required by governmental agencies because of drought conditions. These exemptions will be allowed only while the mandatory water restrictions are in effect.

(10) Stationary gas turbines with a heat input at peak load greater than 107.2 gigajoules per hour (100 million BTU/hour) that commenced construction, modification, or reconstruction between the dates of October 3, 1977, and January 27, 1982, and were required to comply with subsection (1)(a), except electric utility stationary gas turbines, are exempt from subsection (1) of this section.

(11) Stationary gas turbines with a heat input greater than or equal to 10.7 gigajoules per hour (ten (10) million BTU/hour) when fired with natural gas are exempt from subsection (1)(b) of this section when being fired with an emergency fuel.

(12) Regenerative cycle gas turbines with a heat input less than or equal to 107.2 gigajoules per hour (100 million BTU/hour) are exempt from subsection (1) of this section.

Section 4. Standard for Sulfur Dioxide. On and after the date on which the performance test required to be conducted by 401 KAR 50:045 is completed, every owner or operator subject to the provisions of this regulation shall comply with one (1) of the following conditions:

(1) No owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any stationary gas turbine any gases which contain sulfur dioxide in excess of 0.015 percent by volume at fifteen (15) percent oxygen and on a dry basis; or

(2) No owner or operator subject to the provisions of this regulation shall burn in any stationary gas turbine any fuel which contains sulfur in excess of 0.8 percent by weight.

Section 5. Monitoring of Operations. (1) The owner or operator of any stationary gas turbine subject to the provisions of this regulation and using water injection to control NO_x emissions shall install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. This system shall be accurate to within plus or minus five (5) percent and shall be approved by the department.

(2) The owner or operator of any stationary gas turbine subject to the provisions of this regulation shall monitor sulfur content and nitrogen content of the fuel being fired in the turbine. The frequency of determination of these values shall be as follows:

(a) If the turbine is supplied its fuel from a bulk storage tank, the values shall be determined on each occasion that fuel is transferred to the storage tank from any other source.

(b) If the turbine is supplied its fuel without intermediate bulk storage the values shall be determined and recorded daily. Owners, operators or fuel vendors may develop custom schedules for determination of the values based on the design and operation of the affected facility and the characteristics of the fuel supply. These custom schedules shall be substantiated with data and must be approved by the department before they can be used to comply with this subsection.

(3) For the purpose of reports required under 401 KAR 59:005, Section 3, periods of excess emissions that shall be reported are defined as follows:

(a) Nitrogen oxides. Any one (1) hour period during which the average water-to-fuel ratio, as measured by the continuous monitoring system, falls below the water-to-fuel ratio determined to demonstrate compliance with Section 3 by the performance test required in 401 KAR 50:045 or any period during which the fuel-bound nitrogen of the fuel is greater than the maximum nitrogen content allowed by the fuel-bound nitrogen allowance used during the performance test required in 401 KAR 50:045. Each report shall include the average water-to-fuel ratio, average fuel consumption, ambient conditions, gas turbine load, and nitrogen content of the fuel during the period of excess emissions, and the graphs or figures developed under Section 6(1).

(b) Sulfur dioxide. Any daily period during which the sulfur content of the fuel being fired in the gas turbine exceeds 0.8 percent.

(c) Ice fog. Each period during which an exemption provided in Section 3(7) is in effect shall be reported in writing to the department quarterly. For each period the ambient conditions existing during the period, the date and time the air pollution control system was deactiviated, and the date and time the air pollution control system was reactiviated shall be reported. All quarterly reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter.

(d) Emergency fuel. Each period during which an exemption provided in Section 3(11) is in effect shall be included in the report required under 401 KAR 59:005, Section 3. For each period, the type, reasons, and duration of the firing of the emergency fuel shall be reported.

Section 6. Test Methods and Procedures. (1) The reference methods in Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as provided for in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed in Section 3 as follows:

(a) Reference Method 20 for the concentration of nitrogen oxides and oxygen. For affected facilities in this regulation, the span value shall be 300 parts per million of nitrogen oxides.

1. The nitrogen oxide emission level measured by Reference Method 20 shall be adjusted to ISO standard day conditions by the ambient condition correction factor in Appendix D of this regulation. The adjusted NO_x emission level shall be used to determine compliance with Section 3.

2. Manufacturers may develop custom ambient condition correction factors for each gas turbine model they manufacture in terms of combustor inlet pressure, ambient air pressure, ambient air humidity and ambient air temperature to adjust the nitrogen oxides emission level measured by the performance test as provided for in 401 KAR 50:045 to ISO standard day conditions. These ambient condition correction factors shall be substantiated with data and must be approved for use by the department before the initial performance test required by 401 KAR 50:045.

3. The water-to-fuel ratio necessary to comply with Section 3 will be determined during the initial performance test by measuring NO_x emissions using Reference Method 20 and the water-to-fuel ratio necessary to comply with Section 3 at thirty (30), fifty (50), seventy-five (75) and 100 percent of peak load or at four (4) points in the normal operating range of the gas turbine, including the minimum point in the range and peak load. All loads shall be corrected to ISO conditions using the appropriate equations supplied by the manufacturer.

(b) The analytical methods and procedures employed to determine the nitrogen content of the fuel being fired shall be approved by the department and shall be accurate to within plus or minus five (5) percent.

(2) The method for determining compliance with Section 4, except as provided in 401 KAR 50:045, shall be as follows:

(a) Reference Method 20 for the concentration of sulfur dioxide and oxygen; and

(b) ASTM D 2880-78 for the sulfur content of liquid fuels and ASTM D 1072-56 (75) for the sulfur content of gaseous fuels. These methods shall also be used to comply with Section 5(2). ASTM designations are filed by reference in 401 KAR 50:015.

(3) Analysis for the purpose of determining the sulfur content and the nitrogen content of the fuel as required by Section 5(2) may be performed by the owner/operator, a service contractor retained by the owner/operator, the fuel vendor, or any other qualified agency provided that the analytical methods employed by these agencies comply with the applicable subsections of this section.

APPENDIX A TO 401 KAR 59:018

Formula for NO_x Standard Using a 75 ppm Emission Limitation

$$STD = 0.0075\,(14.4/Y) + F$$

Where:

STD = allowable NO_x emissions (percent by volume at fifteen (15) percent oxygen and on a dry basis).

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour. Y shall be determined on a dry basis, at ISO conditions.

F = NO_x emission allowance for fuel-bound nitrogen as defined in Appendix C of this regulation.

APPENDIX B TO 401 KAR 59:018

Formula for NO_x Standard Using a 150 ppm Emission Limitation

$$STD = 0.0150\,(14.4/Y) + F$$

Where:

STD = allowable NO_x emission (percent by volume at fifteen (15) percent oxygen and on a dry basis).

Y = manufacturer's rated heat rate at manufacturer's rated peak load (kilojoules per watt hour), or actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour. Y shall be determined on a dry basis, at ISO conditions.

F = NO_x emission allowance for fuel-bound nitrogen as defined in Appendix C of this regulation.

APPENDIX C TO 401 KAR 59:018

Table of Fuel-Bound Nitrogen Levels versus the Value of F as Used in Appendices A and B

Fuel-Bound Nitrogen (percent by weight)	F (NO_x percent by volume)
$N \leq 0.015$	0
$0.015 < N \leq 0.1$	0.04 (N)
$0.1 < N \leq 0.25$	0.004 + 0.0067 (N-0.1)
$N > 0.25$	0.005

Where:

N = the nitrogen content of the fuel (percent by weight).

APPENDIX D TO 401 KAR 59:018

Ambient Condition Correction Factor

$$NO_X = (NO_{X_{obs}})(P_{ref}/P_{obs})^{0.5} e^{19(H_{obs}-0.00633)} (288°K/T_{AMB})^{1.53}$$

Where:

NO_X = emissions of NO_X at fifteen (15) percent oxygen and ISO standard ambient conditions.

$NO_{X_{obs}}$ = measured NO_X emissions at fifteen (15) percent oxygen ppmv.

P_{ref} = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure at 59°F.

P_{obs} = measured combustor inlet absolute pressure at test ambient pressure.

H_{obs} = specific humidity of ambient air at test.

e = transcendental constant (2.718).

T_{AMB} = temperature of ambient air at test.

JACKIE SWIGART, Secretary
ADOPTED: March 9, 1982
RECEIVED BY LRC: March 10, 1982 at 3:30 p.m.
SUBMIT COMMENTS TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOUCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:101. New bulk gasoline plants.

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 hydrocarbon emissions from new bulk gasoline plants.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which commenced on or after the classification date defined below which is located:
(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or
(2) In any other county and is a part of a major source of volatile organic compounds.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.
(1) "Affected facility" means a bulk gasoline plant.
(2) "Bulk gasoline plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, railroad cars, or other mobile non-marine vessels for both incoming and outgoing gasoline transfer operations.
(3) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 pounds per square inch or greater used as a fuel for internal combustion engines.
(4) "Bottom-fill system" means a system of filling transport vehicle tanks through an opening that is flush with the bottom of the transport vehicle tank.
(5) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.
(6) "Submerged fill tube system" means a fill tube the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the transport vehicle tank.
(7) "Classification date" means *June 29, 1979* [the effective date of this regulation].
(8) "Transport vehicle" means tank trucks, trailers, or railroad tank cars.

Section 3. Standard for Hydrocarbons. (1) The owner or operator of an affected facility shall install, maintain, and operate:
(a) Stationary storage tank control devices according to the provisions of 401 KAR 59:050 and/or 401 KAR 61:050.
(b) A vapor balance system for:
1. Filling of stationary storage tanks from transport vehicle tanks; and
2. Filling of transport vehicle tanks from stationary storage tanks.
(c) For loading into transport vehicle tanks either:
1. A submerged fill tube system; or
2. A bottom-fill system.
(2) The vapor balance system shall be equipped with fittings which are vapor tight and will automatically close upon disconnection so as to prevent the release of organic material.
(3) The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the cross-sectional area of the liquid fill line and free of flow restrictions.
(4) The vapor balance system must be equipped with interlocking devices which prevent transfer of gasoline until the vapor return hose is connected.
(5) Transport vehicle tank hatches shall be closed at all times during loading operations.
(6) There shall be no leaks from the pressure/vacuum relief valves and hatch covers of the stationary storage tanks or transport vehicle tanks during loading.
(7) The pressure relief valves on storage vessels and tank trucks or trailers shall be set to release at no less than 0.7 psig unless a lower setting is required by applicable fire codes.
(8) The owner or operator shall not load gasoline into any transport vehicle or receive gasoline from any transport vehicle which does not have proper fittings for connection of the vapor balance system, nor shall the owner or operator load or receive gasoline unless the vapor balance system is properly connected and in good working order. Except as provided in subsection (9) of this section

the fittings on the transport vehicle tanks must be vapor tight and automatically close upon disconnection so as to prevent the release of organic material.

(9) The following shall apply to the loading of a transport vehicle tank by means of a submerged fill tube system:

(a) When inserted into the tank, the submerged fill tube system must form a vapor tight seal with the tank.

(b) Tank hatches are to be opened only for the minimum time necessary to insert or remove the submerged fill tube system.

(10) No owner or operator shall permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

(11) On or after December 31, 1982, no owner or operator of a bulk gasoline plant in an urban county subject to this regulation shall allow loading or unloading of a tank truck unless the following provisions are met:

(a) The tank truck has a valid Kentucky pressure-vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed;

(b) The vapor balance system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(c) A pressure tap or any equivalent system as approved by the department is installed on the vapor balance system so that a liquid manometer, supplied by the department, can be connected by an inspector to the tap in order to determine compliance with paragraph (b) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one-quarter (¼) inch tubing connector which is compatible with the use of three-sixteenth (3/16) inch inside diameter plastic tubing;

(d) During loading or unloading operations there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 5; and

(e) During loading or unloading there are no avoidable visible liquid leaks.

Section 4. The owner or operator may elect to use an alternate control system if it can be demonstrated to the department's satisfaction that the alternate system will achieve equivalent control efficiency.

Section 5. Compliance. On or after December 31, 1982, the test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department, shall be used by the department to determine compliance with the standard prescribed in Section 3(11)(d) during inspections conducted pursuant to KRS 224.033(10). On and after December 31, 1982, owners or operators of bulk plants in urban counties shall keep records for two (2) years identifying the dates and locations on the equipment at which volatile organic compound leakage exceeded the provisions of Section 3(11)(e).

JACKIE SWIGART, Secretary

ADOPTED: February 25, 1982

RECEIVED BY LRC: March 2, 1982 at 2:45 p.m.

SUBMIT COMMENTS TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOUCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:175. New service stations.

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 volatile organic compound emissions from new service stations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility located in urban counties designated non-attainment for ozone according to 401 KAR 51:010 which commenced on or after the classification date defined below.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means the gasoline storage tanks at a service station.

(2) "Classification date" means June 6, 1979.

(3) "Service station" means any public or private establishment which dispenses gasoline into vehicle fuel tanks.

(4) "Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(5) "Vapor balance system" means a system which conducts vapors displaced from storage tanks during filling operations to the storage compartment of the transport vehicle delivering the fuel.

(6) "Vent line restriction" means:

(a) An orifice of one-half (½) to three-quarters (¾) inch inside diameter;

(b) A pressure-vacuum relief valve set to open at not less than eight (8) oz. per square inch pressure and not less than one-half (½) oz. per square inch vacuum unless a different

vacuum relief setting is required by safety or fire authorities; or

(c) A vent shut-off valve which is activated by connection of the vapor return hose.

(7) "Interlocking system" means devices which keep the storage tank sealed unless the vapor hose is connected or which prevent delivery of fuel until the vapor hose is connected.

Section 3. Standard for Volatile Organic Compounds. (1) The owner or operator of an affected facility shall install, maintain, and operate the following devices:

(a) Submerged fill pipe;

(b) Vent line restriction on the affected facility vent line; and

(c) Vapor balance system with an interlocking system and vapor tight connections on the liquid fill line and the vapor return line. The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the liquid fill hose, and free of flow restrictions to achieve acceptable recovery. The size and design of the vapor return line and connections, including coaxial systems, are subject to the approval of the department.

(d) If the gasoline storage tank is equipped with a separate gauge well, a gauge well drop tube shall be installed which extends to within six (6) inches of the bottom of the tank.

(2) The owner or operator may elect to use an alternate control system if that system can be demonstrated to the department's satisfaction to achieve an equivalent control efficiency.

(3) *On or after December 31, 1982,* the owner or operator shall not allow any *tank truck* [transport vehicle] to deliver fuel to an affected facility *unless:*

(a) The tank truck has a valid Kentucky pressure vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed;

(b) The tank truck [until the transport vehicle] is properly connected to the vapor balance system or alternate control system; [.]

(c) The vapor balance system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(d) A pressure tap or any equivalent system as approved by the department is installed on the vapor balance system so that a liquid manometer, supplied by the department, can be connected by an inspector to the tap in order to determine compliance with paragraph (c) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one-quarter (¼) inch tubing connector which is compatible with the use of three-sixteenth (3/16) inch inside diameter plastic tubing;

(e) During such delivery there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 4; and

(f) During such delivery there are no avoidable visible liquid leaks.

Section 4. Compliance. On or after December 31, 1982, the test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department, shall be used by the department to determine compliance with the standard prescribed in Section 3(3)(e) during inspections conducted pursuant to KRS 224.033(10). On and after December 31, 1982, owners or operators of service stations shall keep records for two (2) years identifying the dates and locations on the equipment at which volatile organic compound leakage exceeded the provisions of Section 3(3)(f).

Section *5.* [4.] Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the annual throughput is less than or equal to 120,000 gal.

JACKIE SWIGART, Secretary

ADOPTED: February 25, 1982

RECEIVED BY LRC: March 2, 1982 at 2:45 p.m.

SUBMIT COMMENTS TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOUCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:055. Existing loading facilities at bulk gasoline terminals.

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 loading facilities at bulk gasoline terminals.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:

(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(2) In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KR 50:010.

(1) "Affected facility" means the facilities at a bulk gasoline terminal for loading gasoline into tank trucks, trailers, railroad cars, or other non-marine mobile vessels.

(2) "Bulk gasoline terminal" means a facility for the storage and dispensing of gasoline where incoming gasoline loads are received by pipeline, marine tanks or barge, and where outgoing gasoline loads are transferred by tank trucks, trailers, railroad cars or other non-marine mobile vessels.

(3) "Gasoline" means any petroleum distillate used as a fuel for internal combustion engines and having a Reid vapor pressure of 4.0 pounds per square inch or greater.

(4) "Classification date" means *June 29, 1979* [the effective date of this regulation].

(5) "Kentucky pressure-vacuum test sticker" means a sticker which is issued each year by the department, in accordance with the provisions of 401 KAR 63:031, to the owner or operator of a gasoline tank truck or which may be issued by a local air pollution control district within the Commonwealth of Kentucky with an equivalent regulation approved by the department and the U.S. EPA.

Section 3. Standard for Hydrocarbons. (1) No owner or operator of any loading facility shall load gasoline unless such facility is equipped with a vapor control system which is in good working order and in operation.

(2) Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor collection system. Measures shall be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected.

(3) No owner or operator shall permit the hydrocarbon emissions from the vapor control device to exceed eighty (80) milligrams per liter of gasoline loaded.

(4) No owner or operator shall open tank hatches or allow hatches to be opened at any time during loading operations if bottom-fill is practiced. If top-submerged fill is practiced, the hatch is to be opened the minimum time necessary to install and remove the submerged fill pipe and associated vapor collection equipment.

(5) No owner or operator shall *transfer gasoline to a tank truck that does not have a valid Kentucky pressure-vacuum test sticker attached and visibly displayed* [permit there to be any leak in the railroad cars, trailers, tank trucks, pressure relief valves, or associated vapor collection. A leak is defined as a reading of ten (10) percent of the lower explosive limit as propane on the portable hydrocarbon detector (explosimeter) with the probe one (1) centimeter from the source].

(6) No owner or operator shall permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

(7) No owner or operator of an affected facility shall allow loading unless the following provisions are met:

(a) The vapor control system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(b) A pressure tap or any equivalent system as approved by the department is installed on the vapor balance system so that a liquid manometer, supplied by the department, can be connected by an inspector to the tap in order to determine compliance with paragraph (a) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one-quarter (¼) inch tubing connector which is compatible with the use of three-sixteenth (3/16) inch inside diameter plastic tubing;

(c) During loading operations there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 5; and

(d) During loading there are no avoidable visible liquid leaks.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct such monitoring of operations and submit records as specified by the department. *The owner or operator shall keep records for two (2) years identifying the dates and locations on the equipment at which volatile organic compound leakage exceeded the provisions of Section 3(7)(d).*

Section 5. Compliance. (1) The design of the vapor control system is subject to the approval of the department.

(2) Kentucky Method 95, filed by reference in 401 KAR 50:015, shall be used to determine compliance with the standard in Section 3.

(3) The test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department, shall be used by the department to determine compliance with the standard prescribed in Section 3(7)(c) during inspections conducted pursuant to KRS 224.033(10).

Section 6. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.

(2) Award the control system contract no later than January 1, 1980.

(3) Initiate on-site construction or installation of emission control equipment no later than July 1, 1980.

(4) On-site construction or installation of emission control equipment shall be completed no later than March 1, 1981.

(5) Final compliance shall be achieved no later than *December 31, 1982* [May 1, 1981].

JACKIE SWIGART, Secretary

ADOPTED: February 25, 1982

RECEIVED BY LRC: March 2, 1982 at 2:45 p.m.

SUBMIT COMMENTS TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOUCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:056. Existing bulk gasoline plants.

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 hydrocarbon emissions from existing bulk gasoline plants.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which commenced before the classification date defined below, which is located:

(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(2) In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a bulk gasoline plant.

(2) "Bulk gasoline plant" means a facility for the storage and dispensing of gasoline that employs tank trucks, trailers, or other mobile non-marine vessels for both incoming and outgoing gasoline transfer operations.

(3) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 pounds per square inch or greater used as a fuel for internal combustion engines.

(4) "Bottom-fill system" means a system of filling transport vehicle tanks through an opening that is flush with the bottom of the transport vehicle tank.

(5) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(6) "Submerged fill tube system" means a fill tube the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the transport vehicle tank.

(7) "Classification date" means *June 29, 1979* [the effective date of this regulation].

(8) "Transport vehicle" means tank trucks, trailers, railroad or tank cars.

Section 3. Standard for Hydrocarbons. (1) The owner or operator of an affected facility shall install, maintain, and operate:

(a) Stationary storage tank control devices according to the provisions of 401 KAR 59:050 and/or 401 KAR 61:050.

(b) A vapor balance system for:

1. Filling of stationary storage tanks from transport vehicle tanks; and

2. Filling of transport vehicle tanks from stationary storage tanks.

(c) For loading into transport vehicle tanks either:

1. A submerged fill tube system; or

2. A bottom-fill system.

(2) The vapor balance system shall be equipped with fittings which are vapor tight and will automatically close upon disconnection so as to prevent the release of organic material.

(3) The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the cross-sectional area of the liquid fill line and free of flow restrictions.

(4) The vapor balance system must be equipped with interlocking devices which prevent transfer of gasoline until the vapor return hose is connected.

(5) Transport vehicle tank hatches shall be closed at all times during loading operations.

(6) There shall be no leaks from the pressure/vacuum relief valves and hatch covers of the stationary storage tanks or transport vehicle tanks during loading.

(7) The pressure relief valves on storage vessels and tank trucks or trailers shall be set to release at no less than 0.7 psig unless a lower setting is required by applicable fire codes.

(8) The owner or operator shall not load gasoline into any transport vehicle or receive gasoline from any transport vehicle which does not have proper fittings for connection of the vapor balance system, nor shall the owner or operator load or receive gasoline unless the vapor balance system is properly connected and in good working order. Except as provided in subsection (9) of this section the fittings on the transport vehicle tanks must be vapor tight and automatically close upon disconnection so as to prevent the release of organic material.

(9) The following shall apply to the loading of a transport vehicle tank by means of a submerged fill tube system:

(a) When inserted into the tank, the submerged fill tube system must form a vapor tight seal with the tank.

(b) Tank hatches are to be opened only for the minimum time necessary to insert or remove the submerged fill tube system.

(10) No owner or operator shall permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

(11) No owner or operator of a bulk gasoline plant in an urban county subject to this regulation shall allow loading or unloading of a tank truck unless the following provisions are met:

(a) The tank truck has a valid Kentucky pressure-vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed;

(b) The vapor balance system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(c) A pressure tap or any equivalent system as approved by the department is installed on the vapor balance system so that a liquid manometer, supplied by the department, can be connected by an inspector to the tap in order to determine compliance with paragraph (b) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one-quarter (¼) inch tubing connector which is compatible with the use of three-sixteenth (3/16) inch inside diameter plastic tubing;

(d) During loading or unloading operations there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 5; and

(e) During loading or unloading there are no avoidable visible liquid leaks.

Section 4. The owner or operator may elect to use an alternate control system if it can be demonstrated to the department's satisfaction that the alternate system will achieve equivalent control efficiency.

Section 5. Compliance. The test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection

Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department, shall be used by the department to determine compliance with the standard prescribed in Section 3(11)(d) during inspections conducted pursuant to KRS 224.033(10). Owners or operators of bulk plants in urban counties shall keep records for two (2) years identifying the dates and locations on the equipment at which volatile organic compound leakage exceeded the provisions of Section 3(11)(e).

Section *6.* [5.] Compliance Timetable. (1) The owner or operator of an affected facility located in any county designated non-attainment for ozone under 401 KAR 51:010 shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.

(b) Award the control system contract no later than January 1, 1980.

(c) Initiate on-site construction or installation of emission control equipment no later than July 1, 1980.

(d) On-site construction or installation of emission control equipment shall be completed no later than March 1, 1981.

(e) Final compliance shall be achieved no later than May 1, 1981.

(2) The owner or operator of an affected facility located in a county not specified under subsection (1) of this section shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1981.

(b) Award the control system contract no later than January 1, 1982.

(c) Initiate on-site construction or installation of emission control equipment no later than July 1, 1982.

(d) On site construction or installation of emission control equipment shall be completed no later than March 1, 1983.

(e) Final compliance shall be achieved no later than May 1, 1983.

(3) The owner or operator of a bulk plant in an urban county subject to this regulation shall achieve final compliance with Section 3(11) by December 31, 1982.

JACKIE SWIGART, Secretary

ADOPTED: February 25, 1982

RECEIVED BY LRC: March 2, 1982 at 2:45 p.m.

SUBMIT COMMENTS TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOUCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 61:085. Existing service stations.

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 volatile organic compound emissions from existing service stations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility located in urban counties designated non-attainment for ozone according to 401 KAR 51:010 which commenced before the classification date defined below.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means the gasoline storage tanks at a service station.

(2) "Classification date" means June 6, 1979.

(3) "Service station" means any public or private establishment except farms which dispenses gasoline into vehicle fuel tanks.

(4) "Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean any fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(5) "Vapor balance system" means a system which conducts vapors displaced from storage tanks during filling operations to the storage compartment of the transport vehicle delivering the fuel.

(6) "Vent line restriction" means:

(a) An orifice of one-half (½) to three-quarters (¾) inch inside diameter;

(b) A pressure-vacuum relief valve set to open at not less than eight (8) oz. per square inch pressure and not less than one-half (½) oz. per square inch vacuum unless a different vacuum relief setting is required by safety or fire authorities; or

(c) A vent shut-off valve which is activated by connection of the vapor return hose.

(7) "Interlocking system" means devices which keep the storage tank sealed unless the vapor hose is connected or which prevent delivery of fuel until the vapor hose is connected.

Section 3. Standard for Volatile Organic Compounds. (1) The owner or operator of an affected facility shall install, maintain, and operate the following devices:

(a) Submerged fill pipe;

(b) Vent line restriction on the affected facility vent line; and

(c) Vapor balance system with an interlocking system and vapor tight connections on the liquid fill line and the vapor return line. The cross-sectional area of the vapor

return hose must be at least fifty (50) percent of the liquid fill hose, and free of flow restrictions to achieve acceptable recovery. The size and design of the vapor return line and connections, including coaxial systems, are subject to the approval of the department.

(d) If the gasoline storage tank is equipped with a separate gauge well, a gauge well drop tube shall be installed which extends within six (6) inches of the bottom of the tank.

(2) The owner or operator may elect to use an alternate control system if that system can be demonstrated to the department's satisfaction to achieve an equivalent control efficiency.

(3) The owner or operator shall not allow any *tank truck* [transport vehicle] to deliver fuel to an affected facility *unless:*

(a) The tank truck has a valid Kentucky pressure-vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed;

(b) The tank truck [until the transport vehicle] is properly connected to the vapor balance system or alternate control system; [.]

(c) The vapor balance system and associated equipment are designed and operated to prevent gauge pressure in the tank truck from exceeding 450 mm water (eighteen (18) in. water) and prevent vacuum from exceeding 150 mm water (six (6) in. water);

(d) A pressure tap or any equivalent system as approved by the department is installed on the vapor balance system so that a liquid manometer, supplied by the department, can be connected by an inspector to the tap in order to determine compliance with paragraph (c) of this subsection. The pressure tap shall be installed by the owner or operator as close as possible to the connection with the delivery tank, and shall consist of a one-quarter (¼) inch tubing connector which is compatible with the use of three-sixteenth (3/16) inch inside diameter plastic tubing;

(e) During such delivery there is no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 4; and

(f) During such delivery there are no avoidable visible liquid leaks.

Section 4. Compliance. The test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department, shall be used by the department to determine compliance with the standard prescribed in Section 3(3)(e) during inspections conducted pursuant to KRS 224.033(10). Owners or operators of service stations shall keep records for two (2) years identifying the dates and locations on the equipment at which volatile organic compound leakage exceeded the provisions of Section 3(3)(f).

Section *5.* [4.] Compliance Timetable. (1) The owner or operator of an affected facility with an annual throughput greater than or equal to 250,000 gal. shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.

(b) Award the control device contract no later than November 1, 1979.

(c) Initiate on-site construction or installation of emission control equipment no later than April 1, 1980.

(d) On-site construction or installation of emission control equipment shall be completed no later than November 1, 1980.

(e) Final compliance shall be achieved no later than February 1, 1981.

(2) The owner or operator of an affected facility with an annual throughput of less than 250,000 gal. shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than September 1, 1979.

(b) Award the control device contract no later than November 1, 1980.

(c) Initiate on-site construction or installation of emission control equipment no later than April 1, 1981.

(d) On-site construction or installation of emission control equipment shall be completed no later than November 1, 1981.

(e) Final compliance shall be achieved no later than February 1, 1982.

(3) The owner or operator of a service station subject to this regulation shall achieve final compliance with Section 3(3) by December 31, 1982.

Section *6.* [5.] Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the annual throughput is less than or equal to 120,000 gal.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 17:060. Minimum standards for medicare supplement policies.

RELATES TO: KRS *304.14-510, 304.32-270, 304.38-200* [304.17-400]

PURSUANT TO: KRS 304.2-110, *304.14-510, 304.32-270, 304.38-200* [304.17-400]

NECESSITY AND FUNCTION: This regulation applies to all individual *and group* Medicare supplement and accident and sickness insurance policies and Medicare supplement subscriber contracts delivered or issued for delivery in this state on and after the effective date hereof. KRS *304.14-510* [304.17-400] provides that the Commissioner of Insurance may make reasonable rules or regulations to establish minimum standards for Medicare supplement insurance policies delivered or issued for delivery to any person in this state *and all certificates issued under group Medicare supplement policies or subscriber policies in this state.* This regulation establishes the minimum standards for Medicare supplement insurance.

Section 1. Definitions. For purposes of this regulation, the following terms shall have the meanings herein provided. No policy subject to this regulation shall contain definitions or terms which do not conform to the requirements of this section.

(1) "Policy" means *a policy as defined in KRS 304.14-500* [an individual Medicare supplement accident and sickness policy or an individual Medicare supplement hospital and medical service plan or contract].

(2) *"Certificate" means a certificate as defined in KRS 304.14-500* ["Medicare supplement coverage" is a policy which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the requirements of this regulation applicable to any such policy sold to a person eligible for Medicare by reason of age].

(3) "Benefit period" shall not be defined as more restrictive than defined in the Medicare program.

(4) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

1. Be an institution operated pursuant to law; and

2. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a pre-arranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an in-patient basis for which a charge is made; and

3. Provide twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

(b) The definition of the term "hospital" may exclude:

1. Convalescent homes, convalescent, rest, or nursing facilities; or

2. Facilities primarily affording custodial, educational or rehabilitory care; or

3. Facilities for the aged, drug addicts, or alcoholics; or

4. Any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

(5) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities, and available services.

(a) A definition of such home or facility shall not be more restrictive than one requiring that it:

1. Be operated pursuant to law;

2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

4. Provide continuous twenty-four (24) hour nursing service by or under the supervision of a registered graduate professional nurse; and

5. Maintain a daily medical record on each patient.

(b) The definition of such home or facility may exclude:

1. Any home, facility or part thereof used primarily for rest;

2. A home or facility for the aged or for the care of drug addicts or alcoholics; or

3. A home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care.

(6) "Accident," "accidental injury," "accidental means," shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: Injury or injuries, for which benefits are provided, means accidental bodily injury sustained by the insured person which is the direct result of the accident, independent of disease or bodily infirmity or any other cause, and occurs while the insurance is in force.

(b) Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law, or injuries for which benefits are provided and such benefits are received if the injury occurs while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

(7) "Sickness" shall not be defined to be more restrictive than the following: Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force. The definition may be further modified to exclude sickness or disease for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar laws.

(8) "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(9) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as a registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

(10) "Medicare" shall be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act," "as then constituted and any later amendments or substitutes thereof," or words of similar import.

(11) "Mental or emotional disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

Section 2. Prohibited Policy Provisions. (1) No policy or *subscriber* contract shall contain a probationary period.

(2) No policy *or subscriber contract may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if such policy or subscriber contract*

[shall] limits or excludes coverage by type of illness, accident, treatment or medical condition, except as follows:

(a) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(b) Mental or emotional disorders, alcoholism and drug addiction (except when purchased as an option);

(c) Illness, treatment or medical condition arising out of:

1. War or act of war (whether declared or undeclared); participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;

2. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;

(d) Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;

(e) Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column (insured must be offered this benefit as an option);

(f) Treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicade), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories or other institutions, services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(g) Dental care or treatment;

(h) Eye glasses, hearing aids and examination for the prescription or fitting thereof;

(i) Rest cures, custodial care, transportation and routine physical examinations;

(j) Territorial limitations;

provided, however, *Medicare supplement* policies *and subscriber contracts* may not contain, when issued, limitations or exclusions of the type enumerated in paragraphs (a), (e), (i), or (j) above that are more restrictive than those of Medicare. Policies *and contracts* may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(3) No Medicare supplement policy or subscriber contract may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

Section 3. Minimum Standards. No policy *or subscriber contract* shall be delivered or issued for delivery in this state which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) Policy minimum standards:

(a) Premiums charged for Medicare supplement policies shall be presumed unreasonable in relation to the benefits provided if the anticipated credible loss ratio for the *individual policies* [policy] is less than *sixty percent (60%)* [sixty-five percent (65%)] *and less than seventy-five percent (75%) for group policies.* In determining the credibility of the anticipated loss ratio, due consideration shall be given to all relevant factors, including:

1. Statistical credibility of premiums and benefits;
2. Experience and projected trends;
3. Concentration of experience at early policy duration;
4. Expected claim fluctuations;
5. Refunds, adjustments, or dividends;
6. Renewability features;
7. All appropriate expense factors.

(b) The term "Medicare benefit period" shall mean the unit of time used in the Medicare program to measure use of services and availability of benefits under Part A, Medicare hospital insurance;

(c) The term "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims;

(d) Coverage, when issued, shall not be subject to any exclusions, limitations, or reductions (other than as permitted in this regulation and other applicable laws and regulations) which are inconsistent with the exclusions, limitations, or reductions permissible under Medicare, other than a provision that coverage is not provided for any expenses to the extent of any benefit available to the insured person under Medicare;

(e) Coverage shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents; and

(f) Coverage shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and co-payment percentage factors. Premiums may be changed to correspond with such changes.

(g) All policy language and solicitation materials shall be printed on a flesch scale of not less than fifty (50).

(2) Minimum benefit standards. Medicare supplement coverages shall provide at least the following benefits:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital in-patient reserve days;

(c) Upon exhaustion of all Medicare hospital in-patient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage of twenty percent (20%) of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses and to a maximum benefit of at least $5,000 per calendar year.

(e) A Medicare supplement policy may not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(f) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse sole-

ly because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health; and

(g) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or the payment of the maximum benefits.

Section 4. Required Disclosure Provisions. (1) General rules:

(a) Each policy *or subscriber certificate* shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of contract to be issued. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, or renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) A policy *or subscriber certificate* which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(c) If a policy *or subscriber certificate* contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(d) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a Medicare supplement policy, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy or contract shall require signed acceptance by the insured. After the date of policy or contract issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefit(s) or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(e) Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within ten (10) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(f) [(d)] Insurers issuing *accident and sickness policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis other than incidentally, to a person(s) eligible for Medicare by reason of age* [Medicare supplement coverage] shall provide to *all applicants* [the policyholder] a Medicare supplement buyers's guide entitled "Guide to Health Insurance for People with Medicare" developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the U.S. Department of Health and Human Services, Code No. HCFA-02110, December 1979, or as thereafter amended, available from the Health Care Financing Administration of the U.S. Department of Health and Human Services, Washington, D. C., 20202. Delivery of the buyer's guide shall be made *whether or not such policies, certificates or subscriber contracts are advertised, solicited or issued as Medicare supplement policy(ies) as defined in this regulation. Except in the case of direct response insurers, delivery of the "buyers guide" shall be made to the applicant at the time of application and acknowledgement of receipt of the "buyers guide" shall be obtained by the insurer. Direct response insurers shall deliver the "buyers guide" to the applicant upon request but not* [no] later than at the time the policy is delivered.

(2) Coverage requirements:

(a) No policy subject to this regulation shall be delivered or issued for delivery in this state unless the outline of coverage is delivered to the applicant at the time application is made and, except for the direct response policy, acknowledgment of receipt or certification of delivery of such outline of coverage is provided to the insurer; and

(b) If an outline of coverage was delivered at the time of application and the policy or contract is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(c) Any accident and sickness insurance policy or subscriber certificate, other than a Medicare supplement policy or policies, identified in Section 1 of this regulation, issued for delivery in this state to persons eligible for Medicare by reason of age, shall notify insureds under the policy or subscriber contract is not a Medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to the insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to the insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language: This (policy, certificate or subscriber contract) is not a Medicare supplement (policy or certificate). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide.

(3) Outline of coverage. An outline of coverage, in the form prescribed below, shall be issued in connection with policies that meet the standards of Section 3. The items included in the outline of coverage must appear in the sequence prescribed:

(Company Name)
Medicare Supplement Coverage
Outline of Coverage

(a) Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you read your policy carefully!

(b) Medicare supplement coverage. Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital in-patient charges and some physician charges, subject to any deductibles and co-payment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine (delete if such coverage is provided).

(c) Neither (insert company's name) nor its agents are connected with Medicare.

(d) A brief summary of the major benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare supplement coverage is as follows:

Service	Benefit	Medicare Pays	This Policy Pays	You Pay
Hospitalization: Semi-private room and board, general nursing and miscellaneous hospital services and supplies. Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.	First 60 days	All but $(160)		
	61st to 90th day	All but $(40) a day		
	91st to 150th day	All but $(80) a day		
	Beyond 150 days	Nothing		
Posthospital Skilled Nursing Care: In a facility approved by Medicare, you must have been in a hospital for at least three (3) days and enter the facility within fourteen (14) days after hospital discharge.	First 20 days	100% of costs		
	Additional 80 days	All but $(20) a day		
	Beyond 100 days	Nothing		
Medical Expense	Physician's services, in-patient and out-patient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge (after $(60) deductible)		

(e) Statement that the policy does or does not cover the following:

1. Private duty nursing.
2. Skilled nursing home care costs (beyond what is covered by Medicare).
3. Custodial nursing home care costs.
4. Intermediate nursing home care costs.
5. Home health care (above number of visits covered by Medicare).
6. Physician charges (above Medicare's reasonable charge).
7. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).
8. Care received outside of U. S. A.
9. Dental care of dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for and the cost of eyeglasses or hearing aids.

(f) A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payment of the benefits described in paragraph (d) of this subsection, including conspicuous statements:

1. That the chart summarizing Medicare benefits only briefly describes such benefits.
2. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

(g) A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premium.

(h) The amount of premium for this policy.

Section 5. Replacement Involving Medicare Supplement Policy. The policy issued by the replacing insurer will not be contestable by it in the event of the insured presenting a claim to any greater extent than the existing health insurance policy would have been contestable by the existing insurer had such replacement not taken place.

Section 6. Requirements for Replacement Involving Medicare Supplement Policy. (1) Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance policy(s) presently in force. A supplemental application or other form to be signed by the applicant containing such a question may be used.

(2) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in subsection (3) of this section. One (1) copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant upon issuance of the policy, the notice described in subsection (4) of this section. In no event, however, will such a notice be required in the solicitation of the following types of policies: accident only and single premium nonrenewable policies.

(3) The notice required by subsection (2) of this section for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

Notice to Applicant Regarding Replacement of
Accident and Sickness Insurance

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. You may return your new policy within ten (10) days and have your entire premium refunded. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have may not be immediately or fully covered under the new policy.

This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) The new policy will be issued at a higher age than your present policy; therefore, the cost of the new policy, depending upon the benefits, may be higher than your present policy.

(c) The renewal provisions of the new policy should be examined to determine whether you have the right to periodically renew.

(d) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(e) If you still wish to terminate your present policy and replace it with new coverage, be certain to accurately and completely answer all questions on the application concerning your medical/health history. Failure to include all important medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

_____
(Agent's Signature)

A copy is to be given to the applicant and a copy retained by the agent and/or company.

(4) The notice required by subsection (2) of this section for a direct response insurer shall be as follows:

Notice to Applicant Regarding Replacement of Accident and Sickness Insurance

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (Company Name) Insurance Company. You may return your new policy within ten (10) days and have your entire premium refunded. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) The new policy will be issued at a higher age than your present policy; therefore, the cost of the new policy, depending upon the benefits, may be higher than your present policy.

(c) The renewal provisions of the new policy should be examined to determine whether you have the right to periodically renew.

(d) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(e) (To be included only if the application is attached to the policy.) If you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (company name and address) within ten (10) days if any information is not correct and complete, or if any past medical history has been left out of the application.

_____
(Company Name)

Section 7. Duplicate Benefits. (1) No insurer or agent thereof may sell a policy to an individual entitled to benefits under federal medicare, or under any other policy with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled other than as a recipient of medical assistance benefits under Title XIX of the Social Security Act. For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered duplicative.

(2) Application forms shall include a question designed to elicit information as to whether the insurance to be issued duplicates other accident and health insurance presently in force.

Section 8. Effective Date. This regulation shall be effective thirty (30) days from the date it is approved pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: March 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: March 12, 1982 at 4:15 p.m.
SUBMIT COMMENT TO: Daniel D. Briscoe, Commissioner of Insurance, 151 Elkhorn Court, Frankfort, Kentucky 40601.
See public hearings scheduled on page 973.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:130. *Security;* persons permitted on licensed premises.

RELATES TO: KRS 230.630(1),(3), 230.640, 230.690(5)
PURSUANT TO: KRS 13.082, 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in

Kentucky. The function of this regulation is to regulate persons permitted on licensed premises.

Section 1. Each licensee as defined herein shall cause to be excluded from the association grounds all persons designated by order of the commission or statute to be excluded. Each licensee shall take such measures as to maintain security of horses on the association's grounds so as to protect from injury due to frightening of or tampering with said horses. Each licensee shall exclude from the paddock area, race strip and appurtenant portions where necessary all persons who have no immediate connection with the horses entered except members of the commission, racing officials, officials and directors of the United States Trotting Association, and duly accredited members of the news media.

Section *2.* [1.] Admission to Premises. Each and every badge or button regardless of when issued by the commission and the badge or button issued by the National Association of State Racing Commissioners shall be honored for admission to any place on the track operating under the jurisdiction of the commission.

Section *3.* [2.] Badges and buttons issued to deputy commissioners (supervisors of racing), their assistants and security personnel shall be surrendered to the commission upon termination of employment.

Section *4.* [3.] Limited Admission. (1) No person other than members, officers, and employees of the commission, racing officials, and police officers shall be permitted to enter any part of the licensed premises, except the club house, grandstand, or other areas open to patrons, or the general public, unless he possesses and displays a badge or an identification card, countersigned by the chairman of the commission, the designated representative of the commission or track manager, bearing his name, address, and photograph authorizing his admittance thereto, or possesses or displays a temporary identification permit countersigned by the chairman of the commission, the designated representative of the commission or track manager to enter the particular area.

(2) Only the following listed persons shall be entitled to enter the stable area of a licensee: members, officers and employees of the commission; management and employees of management performing duties therein; and racing officials, police officers, owners, trainers, grooms and others performing official duties in the stable area.

(3) Any person violating this rule may be evicted from the licensed premises by the licensee and thereafter denied admission as a patron or otherwise to any portion of the licensed premises.

CARL B. LARSEN, Supervisor
ADOPTED: January 8, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: February 16, 1982 at 8:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051 H Newtown Road, Lexington, Kentucky 40511.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:135. Identification cards and badges.

RELATES TO: KRS 230.630(1),(3), 230.640
PURSUANT TO: KRS 13.082, 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to regulate identification cards and badges.

Section 1. Cards and Badges. (1) The licensee shall issue identification cards or badges only to its officers, employees, guards, and watchmen, to drivers, and to owners, or trainers, their employees, assistants, grooms and attendants. Such identification cards or badges may at any time be taken up by the licensee upon reasonable cause and shall be taken up from owners, trainers, their employees, assistants, grooms, and attendants when the horses of such owners or trainers are removed from the licensed premises.

(2) The licensee shall issue temporary identification permits only to persons of good moral character who have a legitimate purpose for entering any such enclosure not open to the general public. Such temporary permits may be taken up by the licensee at any time and shall be surrendered to the licensee when the particular purpose for which the permit was issued has been completed.

(3) An identification card *or badge* shall be issued to those entitled to the stable area *by the licensee or as authorized by* [under the auspices of] the chairman of the commission, *to* [the] designated representatives of the commission and *the* track management. The identification card *or badge when properly worn or displayed shall permit those guarding the area to grant entry to those so properly identified* [shall be displayed upon request by those guarding the area]. *Any person who uses the identification or attempts to use a card or badge for admittance not issued to said person shall forfeit the right to the issuance of said badge or card by surrendering same upon demand.*

(4) The commission reserves the right to specifically identify, by color designation, each track under its control. The licensee shall only authorize admittance to the track upon the showing of a properly color-coded identification card or badge. In the event said identification card or badge does not permit entry to the specific track, or if worn on a track other than that specified, it shall be subject to immediate forfeiture.

(5) [(4)] Any identification card or button may be taken up by direction of the chairman of the commission or the designated representative of the commission upon reasonable cause and shall be taken up from owners, trainers, their employees, assistants, grooms and attendants when the horses of such owners or trainers are removed from the licensed premises.

(6) If a person not as herein authorized is found to be in violation of these provisions, said person may be evicted immediately from the licensed premises by the direction of the chairman of the commission or the designated representative of the commission and thereafter denied admission as a patron or otherwise to any portion of any premises licensed by said commission.

(7) [(5)] Any person violating this rule may be evicted from the licensed premises by direction of the chairman of the commission or the designated representative of the

commission and thereafter denied admission as a patron or otherwise to any portion of the licensed premises.

(8) The Director of Security as designated by the commission shall have the primary obligation of enforcing all security regualtions and, where the same have been violated, he shall certify such violation to the commission, and the same shall be reviewed by the commission at its regular meeting and, if shown upon a full hearing, the commission should find that the security of the licensee was responsible for such violation, the licensee shall be fined a sum not to exceed the sum of $500.

CARL B. LARSEN, Supervisor
ADOPTED: January 8, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: February 16, 1982 at 8:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051 H Newtown Road, Lexington, Kentucky 40511.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:180. Personnel to be licensed; fees.

RELATES TO: KRS 230.630(1),(3), 230.640, 230.700, 230.710
PURSUANT TO: KRS 13.082, 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide for the licensing of personnel and the fees to be charged for licensing.

Section 1. Every person holding a permit to conduct pari-mutuel wagering in this state and every person who is a member of an association holding such a permit and every person who is an officer of a corporation which holds such a permit, and every employee of the holder of such permit in any capacity connected to any extent with the pari-mutuel wagering business in this state, and all owners, trainers, drivers, grooms, managers, agents, blacksmiths, veterinarians, and like persons who actively participate in the racing activities of any such permit holders, shall furnish the commission, on demand, for its files, his fingerprints and photograph, which fingerprints and photograph shall be furnished at the time application is made for license from this commission.

Section 2. No one shall be permitted to enter in or about the grounds, stables or stable enclosures who does not have in his possession a license issued by the commission as owner, trainer, driver, apprentice, agent, stable foreman, groom, veterinarian, or proper credentials issued by the association, and a full record of these credentials shall be compiled and open to inspection at all times.

Section 3. At all pari-mutuel racing meetings all persons in the appended list shall procure a license from the commission. The annual fee for such licenses shall be paid at the time of the filing of the application and shall be as follows:

Stable License	$25	Announcer	$10
Owner-Driver	15	Assistant Race Secretary	10
Owner-Driver-Trainer	15	Assistant Starting	
Driver	10	Judge/Gate Driver	10
Driver-Trainer	10	Charter	10
Owner	10	Clerk of Course	10
Owner-Trainer	10	Farrier	10
Trainer	10	Mutuel Employees	10
Judges-Associate	15	Program Director	10
Judges-Paddock	15	Timer	10
Judges-Patrol	15	Veterinarian	14
Judges-Presiding	15	Miscellaneous	10
Judges-Starting	15	Groom	4
Race Secretary	15	*Security Guard*	*10*

Section 4. Should a licensee lose a permit or should a permit in some manner be destroyed, such licensee may apply for a duplicate permit for a fee of five dollars ($5), except a grooms license shall be duplicated for one dollar ($1).

Section 5. If the commission, in its discretion, shall find that the experience, character and general fitness of the applicant are such that the participation of such person in harness horse race meets will not be consistent with the public interest, convenience and necessity and with the best interests of racing generally in conformity with the purposes of the harness racing act, it may thereupon deny a license.

Section 6. If a license has previously been issued by the United States Trotting Association then upon payment of the license fee set out in Section 3, said license may be approved by an official stamp of the commission without the requirement on the part of said applicant to submit data required by Section 1.

CARL B. LARSEN, Supervisor
ADOPTED: January 8, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: February 16, 1982 at 8:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051 H Newtown Road, Lexington, Kentucky 40511.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission
(Proposed Amendment)

811 KAR 1:190. Matters not covered by rules; violations.

RELATES TO: KRS 230.630(1),(3), 230.640, 230.720
PURSUANT TO: KRS 13.082, 230.630(3),(4),(7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide penalities for violation of rules and to provide for matters not covered by the rules and regulations.

Section 1. Matters Not Covered By Rules and Regulations. Any situation not covered by the rules and regulations of this commission shall be referred to the commission for disposition.

Section 2. Violations. (1) *Any person who is licensed under Section 3 of 811 KAR 1:180* [Any licensee, judge, owner, trainer, driver, groom, veterinarian, official and mutuel employee] violating any of the rules or regulations shall be liable upon conviction of a fine not exceeding $1,000, or revocation of license, suspension or both, unless otherwise limited in the rules.

(2) The conviction of any corporate licensee of a violation of any of the rules or regulations may also subject the officers of the said corporation to a penalty not exceeding that which is hereinabove provided.

(3) Any attempt to violate any of the rules and regulations falling short of actual accomplishment shall constitute an offense, and upon conviction shall be punishable as hereinabove provided.

CARL B. LARSEN, Supervisor
ADOPTED: January 8, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: February 16, 1982 at 8:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051 H Newtown Road, Lexington, Kentucky 40511.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

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

Section 1. Hospital Inpatient Services. *The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in comformity with applicable state and federal laws, regulations, and quality and safety standards.* [The department shall reimburse participating hospitals for hospital inpatient services on the basis of reasonable cost.]

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the department in setting payment rates are specified in the department's "Inpatient Hospital Reimbursement Manual" which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the department will apply the Medicare standards and principles described in 42 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

[~~Section 2.~~ Determination of Reasonable Cost. The department shall determine reasonable cost in the following manner: (1) To determine the reasonable cost for each hospital participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department shall apply the same standards, cost reporting period, cost reimbursement principles, and the method of cost apportionment currently applicable to such hospitals under Title XVIII; however, the inpatient routine service costs for medical assistance recipients shall be determined subsequent to the application of the Title XVIII method of apportionment and the calculation shall exclude the applicable Title XVIII inpatient routine service charges under the departmental method or patient days under the combination methods as well as Title XVIII inpatient routine service costs (including any nursing salary cost differential).]

[(2)To determine the reasonable cost for each hospital not participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department will apply the standards and principles described in 20 CFR sections 405.402 through 405.455 (excluding the inpatient routine nursing salary cost differential) and either of the following, depending on the bookkeeping methods and preference of the hospital involved:]

[(a) One of the available alternative cost apportionment methods in 20 CFR section 405.404.]

[(b) The "Gross Reasonable Cost Compared to Actual Charges Method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient costs are divided by the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient.]

Section 3. Compliance with Federal Medicaid Requirements. The department will comply with the requirements shown in 42 CFR 447.250 through 447.272.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. The prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the department of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the department from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the department, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending capital costs and return on equity capital are excluded, the trending factor to be used will be derived from the percentage of change in the aggregate per diem cost of all participating hospitals between the last two (2) state fiscal years preceding the rate year. In determining this trending factor, only cost reports relative to the two (2) fiscal years being compared will be utilized.

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

(5) Peer grouping. Hospitals will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, and 201 beds and up.

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

(7) Use of upper limits. An upper limit will be established on all costs (except equity return and Medicaid capital cost) at 110 percent of the weighted median per diem cost for hospitals in each peer group, using the latest available cost data; upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. Exceptions have been made for the University of Kentucky and University of Louisville hospitals in recognition of special costs relating to the educational functions. For these two (2) hospitals, the upper limit is established at 150 percent of the weighted median cost. In addition, the upper limit is established at 120 percent for those hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served).

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

Section 5. Implementation Date. This payment system shall be implemented March 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: February 24, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: February 25, 1982 at 3 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 1:036. Amounts payable for skilled nursing and intermediate care facility 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 skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR *447.250* [447.272] through 42 CFR *447.272* [447.316]. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 2. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application or the reimbursement principles developed by the department and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The department's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The department's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the department. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the

inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. *The state will set a uniform rate year for SNFs and ICFs (July 1-June 30) by taking the latest audited cost data available as of April 30 of each year and trending the facility costs to July 1 of the rate year. (Unaudited and/or budgeted cost data may be used if a full year's audited data is unavailable.) Allowable costs will then be indexed for inflation for the rate year, and the maximum set at 110 percent of the median for the class (SNF or ICF). In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 165 percent of 110 percent of the median of allowable trended and indexed costs of all other SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1982, so that the maximum payment amount for the prospective uniform rate year will be at 110 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, a prospective rate will be set in the same manner as for SNFs and basic ICFs, except that no maximum (upper limit) shall be imposed.* [Such maximum payment rate may be reviewed annually by the department and may be adjusted as deemed appropriate with consideration given to the factors of facility costs, program objectives and budgetary resources.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges, or where an evaluation by the department of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing; however, short-term interest expense on a principal amount in excess of program payments made under the prospective rate equivalent to two (2) months experience based on ninety (90) percent occupancy or actual program receivables will be disallowed in determining cost;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels).

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship will be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the department will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (newly participating facilities), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for property costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities when *either* [any] of the following occurs on or

after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant[;] or, second, when a multi-level facility (one providing more than one (1) type of care, converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of *additional or* converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981. [; or, third, when the facility changes ownership. (However, stock transfers which are not considered changes of facility ownership, or changes of ownership based on sales or purchase agreements entered into prior to April 1, 1981, and which are finalized by transfer of legal ownership prior to October 1, 1981, shall not cause the facility to be classified as a newly participating facility for purposes of this subsection.)] *Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.*

[(c) Effective May 1, 1981, the following additional upper limit (within the class) shall be applicable with regard to otherwise allowable costs, by cost center, for all facilities (except ICF-MRs): for administrative and general and owner's compensation (combined), the upper limit shall be 105 percent of the median per diem cost.]

(c) [(d)] For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the clsss) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted *by trending, indexing* [for the inflation] and *the* occupancy factor[s]. The median for each cost center for each class shall be determined annually using the *same* [latest] cost data [available] for the class *which was used in setting the maximum payment amount.* The Division for Medical Assistance shall notify all participating facilities of the median *per diem cost center* upper limits currently in effect.

(d) [(e)] Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include [membership dues,] political contributions, the cost of travel outside the state (and all costs related thereto), and legal fees for unsuccessful lawsuits *against the department.*

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (⅔) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Stock transfers, except stock transfers followed by liquidation of all company assets and which may be revalued in accordance with Internal Revenue Service rules, are not considered changes of facility ownership. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(11) Each facility shall maintain and make available such records (in a form acceptable to the department) as the department may require to justify and document all costs to and services performed by the facility. The department shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Departmental approval or rejection of projections and/or expansions will be made on a prospective basis in the context that if such expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections and/or expansions is made, absence of a response by the department shall not be construed as approval of the item or expansion.

(13) The department shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the department will determine the necessity for and scope of a field audit in relation to routine service cost. A field audit may be conducted for purposes of verifying prior year cost to be used in setting the new prospective rate; field audits may be conducted annually or at less frequent intervals. A field audit of ancillary cost will be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(15) Reimbursement paid may not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the department).

(16) The department may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the department to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(17) Each facility shall submit the required data for determination of the prospective rate no later than sixty

(60) days following the close of the facility's fiscal year. [The department shall, under normal circumstances, be expected to determine the prospective rate and make notification to the facility within an additional sixty (60) days after actual receipt of the required documents. These] *This* time limit[s] may be extended [as necessary for the procuring of additional documentation, resolution of disputed facts,] at the specific request of the facility (with the department's concurrence)[, and at such times as the rate review and appeal process is utilized by a facility and the determination and/or notification is held awaiting completion of that process]. *The department may also require, as necessary, that facilities whose cost report does not cover a full facility fiscal year shall submit an interim and/or budgeted cost report by April 30 to be used in setting the prospective rate for the facility for the next unform rate year.*

Section 4. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be *trended to the beginning of the uniform rate year and* increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The department may impose a lower occupancy rate for newly constructed or newly participatingfacilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The department may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective *7-1-81* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$24.99 & below [$21.99 & below]*	—	—
25.00 - 25.99 [22.00 - 22.99]	$1.38	$ .87
26.00 - 26.99 [23.00 - 23.99]	1.29	.75
27.00 - 27.99 [24.00 - 24.99]	1.18	.62
28.00 - 28.99 [25.00 - 25.99]	1.06	.47
29.00 - 29.99 [26.00 - 26.99]	.92	.31
30.00 - 30.99 [27.00 - 27.99]	.76	.13
31.00 - 32.55 [28.00 - 28.99]	.53	—

Maximum Payment *$32.55* [$29.80]

* For a basic per diem of *$24.99* [$21.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective *1-1-82* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$29.99 & below*	—	—
30.00 - 31.99	$1.38	$ .87
32.00 - 33.99	1.29	.75
34.00 - 35.99	1.18	.62
36.00 - 37.99	1.06	.47
38.00 - 39.99	.92	.31
40.00 - 41.99	.76	.13
42.00 - 43.99	.53	—

[Maximum Payment $90.00]

* For a basic per diem of $29.99 and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38 and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective *10-1-81* [4-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$31.99 & below [$28.99 & below]*	—	—
32.00 - 33.99 [29.00 - 30.99]	$1.38	$ .87
34.00 - 35.99 [31.00 - 32.99]	1.29	.75
36.00 - 37.99 [33.00 - 34.99]	1.18	.62
38.00 - 39.99 [35.00 - 36.99]	1.06	.47
40.00 - 41.99 [37.00 - 38.99]	.92	.31
42.00 - 43.99 [39.00 - 40.99]	.76	.13
44.00 - 45.99 [41.00 - 42.99]	.53	—

Maximum Payment *$48.75*** [$45.00**]

* For a basic per diem of *$31.99* [$28.99] and below, the investment amount will be equal to 7.5 percent, but not to exceed $1.38, and the incentive amount will be equal to 5.0 percent, but not to exceed $.87.

** The maximum payment for hospital based skilled nursing facilities *is set at $75.65* [was initially set at $80.00, such amount to be adjusted as shown in Section 4(6)].

(6) The prospective rate is then compared, *as appropriate,* with the maximum payment. [This shall be twenty-nine dollars and eighty cents ($29.80) per patient per day for routine services for the period beginning 4/1/81 for general intermediate care facilities; ninety dollars ($90) per patient per day for routine services for the period beginning 4/1/81 for intermediate care facilities for the mentally retarded, and forty-five dollars ($45) per patient per day for routine services for the period beginning 12/1/79 for non-hospital based skilled nursing facilities. The maximum payment shall be eighty dollars ($80) per patient per day for routine services for the period beginning 12/1/79 for hospital based skilled nursing facilities, the rate to be adjusted proportionately in relation to the non-hospital based skilled nursing facility maximum payment so that the rates will be identical after a period of five (5) years (beginning 12/1/79).] If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 110 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities [and intermediate care facilities for the mentally retarded] have special requirements that must be considered. [Current maximum payment rates are somewhat in excess of 110 percent since the department is allowing for a period of adjustment from the prior method of determining the maximum payment rates.] The department has determined that the maximum payment rates shall be reviewed annually against the criteria of 110 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1982 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 110 percent of the median is a lower dollar amount than has been currently set.

Section 5. Rate Review and Appeal. Participating facilities may appeal departmental decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division for Medical Assistance, a re-evaluation of the point at issue. This request must be received within twenty (20) days following notification of the prospective rate by the program. The director shall review the matter and notify the facility of any action to be taken by the department (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Bureau for Social Insurance, a review by a standing review panel to be established by the commissioner. This request must be postmarked within fifteen (15) days following notification of the decision of the Director, Division for Medical Assistance. Such panel shall consist of three (3) members: one (1) member from the Division for Medical Assistance, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Center for Program Development, Bureau for Social Insurance. *A date for the rate review panel to convene will be established* [The panel shall meet to consider the issue] within fifteen (15) days after receipt of the written request. *[, and] The panel* shall issue a binding decision on the issue within *ten (10)* [five (5)] days of the hearing of the issue. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the department's expense.

Section 6. Definitions. For purposes of Sections 1 through 6, the following definitions shall prevail unless the specific context dictates otherwise.

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the department in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and non-legend drugs, including urethral catheters, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the department's regulation on payment for drugs.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Psychological and psychiatric therapy (for ICF/MR only).

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable [prior year] costs are *trended and* adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable [prior year] routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable [prior year] costs, including fixed or capital costs, yields projected current year allowable costs.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the department will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on *allowable* [prior year] costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the department.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins, and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, bandaids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services, including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

Section 7. Implementation of Uniform Rate Year. The first uniform rate year shall be July 1, 1981-June 30, 1982. For general ICFs, payments based on the uniform rate year shall begin effective July 1, 1981. For SNFs, payments based on the uniform rate year shall begin effective October 1, 1981. For ICF-MRs, payments based on the uniform rate year shall begin effective January 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: March 12, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: March 15, 1982 at 11:30 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 RESOUCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 2:100. Home energy assistance program; eligibility, criteria.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 194.050 to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to offset the rising costs of home energy that are excessive in relation to household income. This regulation sets forth the eligibility and payments criteria for each of two (2) components of energy assistance, regular and crisis, under the Home Energy Assistance Program (HEAP).

Section 1. Application. Each household requesting assistance shall be required to complete an application and provide such information as may be deemed necessary to determine eligibility and payment amount in accordance with the procedural requirements prescribed by the department.

Section 2. Definitions. Terms used in HEAP are defined as follows: (1) "Principal residence" is that place where a person is living voluntarily and not on a temporary basis; the place he/she considers home; the place to which, when absent, he/she intends to return; and such place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" is defined to include electricity, gas, and any other fuel such as coal, wood, oil, bottled gas, etc., that is used to sustain reasonable living conditions.

(3) "Household" is defined as one (1) or more persons who share common living arrangements in a principal residence within the Commonwealth of Kentucky.

(4) A "fully vulnerable household" is any household which pays all energy costs directly to the energy provider or any household which rents nonsubsidized housing whose energy costs are included in the rent payment.

(5) "Regular component" is that portion of benefits reserved as energy assistance for heating for households containing at least one (1) member who is elderly (age sixty (60) or older) or disabled (as defined by Titles II, XVI, and XIX of the Social Security Act).

(6) "Crisis component" is that portion of benefits reserved for use as emergency energy assistance after the

regular component is terminated for eligible households in emergency or crisis situations.

Section 3. Eligibility Criteria. A household must meet the following conditions of eligibility for receipt of a HEAP payment:

(1) The household must be fully vulnerable for energy cost.

(2) For purposes of determining eligibility, the amount of continuing and non-continuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application will be considered. Income received on an irregular basis will be prorated.

(3) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from consideration as income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and CETA) normally disregarded in AFDC, federal payments or benefits which must be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$359	$4,310
2	474	5,690
3	589	7,070
4 or more	704	8,450

(4) Applicants for the crisis component must attest financial inability to obtain or retain energy for heating and that the applicant is or will be without energy for heat within the next fifteen (15) days or has received a final termination notice.

(5) The household must have total liquid assets at the time of application of not more than $3,000. Excluded assets are cars, household or personal belongings, primary residence, cash surrender value of insurance policies, and prepaid burial policies.

Section 4. Payment Levels. Payment amounts are set at a level to serve a maximum number of households while providing a reasonably adequate payment relative to energy costs. The highest level of assistance will be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) For the regular component, payments to eligible households will be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales

Scale A.
Energy Sources: LP Gas (Propane), Fuel Oil, Electricity

Monthly Household Income	Payment Amount: Household Size 1 and 2	Payment Amount: Household Size 3 or more
$ 0-$250	$225	$250
$251-$500	$189	$213
over $500	—	$175

Scale B.
Energy Sources: Wood, Natural Gas, Coal

Monthly Household Income	Payment Amount: Household Size 1 and 2	Payment Amount: Household Size 3 or more
$ 0-$250	$175	$200
$251-$500	$138	$163
over $500	—	$125

(2) Benefit amounts for crisis component applicants shall not exceed the amount required to alleviate the crisis, subject to the maximums in the above benefit scales. Payment shall be made for only one (1) crisis per household. Payment amounts shall be determined by whether the energy provider uses a continuous (e.g., monthly, bimonthly) or noncontinuous (e.g., gets payment at time of each delivery) billing cycle and by whether the applicant has arrearages as follows:

(a) If the energy provider uses a continuous billing cycle, arrearages plus current month charges billed will be paid not to exceed the maximum per household.

(b) If the energy provider uses a nontinuous billing cycle, payment will be made for the delivery of fuel not to exceed the maximum. Arrearages will not be paid unless there is no other available vendor, and the available vendor will deliver fuel only on receipt of payment for arrearages. In such instances payment for arrearages plus current delivery may not exceed the maximum per household.

(3) If the applicant incurs an indirect fuel cost through a rent payment, the amount of the payment shall be the amount of rent owed for arrearages and the current month, not to exceed the maximum in the benefit chart.

(4) If the Department for Human Resources receives only a percentage of the federal funds authorized by Congress, benefits to eligible households in the regular component may be reduced proportionately.

Section 5. Payment Methods. Payments to eligible households will be made as follows:

(1) Payment authorization under the regular component is of two (2) types:

(a) If the recipient utilizes an energy provider who has a continuous billing cycle, payment is authorized by a two-party check paid payable to the provider and the recipient, except that a direct provider payment may be authorized if necessary to obtain energy.

(b) When there is no continuous billing cycle or heating is included as an undesignated portion of rent, payment shall be made by a check payable to the recipient.

(2) Payment authorization under the crisis component is made by two-party check to the provider/landlord and recipient unless the provider/landlord refuses to accept a

two-party check. In this instance, the check shall be made payable to the recipient only.

(3) At the recipient's discretion, the total benefit may be made in separate authorizations to facilitate payment to more than one (1) provider (e.g., when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments may not exceed maximums. The household will decide how to divide payment if more than one (1) provider is used.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. The department shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP:

(1) Applications for the regular component shall be accepted beginning January 4, 1982, and ending no later than January 15, 1982, at the close of business.

(2) Applications for the crisis component shall be accepted beginning January 18, 1982.

(3) Applications shall be processed in the order taken until funds are expended. HEAP shall be terminated by the Secretary when actual and projected program expenditures have resulted in utilization of available funds.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation should additional federal funds be made available for that purpose.

Section 9. Allocation of Funds. (1) Fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Sixty (60) percent of benefit funds shall be reserved for use in the regular component. Funds shall be allocated for use in each Area Development District (ADD) based on the number of Supplemental Security Income recipients in the ADD. Funds unobligated by the close of business January 15, 1982, shall be available for use in the crisis component.

(3) Forty (40) percent of benefit funds shall be reserved for use in the crisis component. Funds shall be allocated for use in each Area Development District based on the number of households with income at or below 100 percent of poverty level. *Funds unspent by the close of business February 28, 1982, shall be available for use statewide.*

(4) As prescribed by the Secretary, up to $150,000 of *administrative* [benefit] funds may be set aside for use in select geographic areas, for the purpose of purchasing alternative means of energy. To the extent this benefit is provided a recipient, it will replace the benefit that household would otherwise receive.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy provided to eligible recipients is required to comply with the following:

(1) Reconnection of utilities and/or delivery of fuel must be accomplished upon certification for payment;

(2) The household must be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer must be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated differently than households not receiving benefits; and

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of recipient households on the basis of receipt of this payment.

JOHN CUBINE, Commissioner
ADOPTED: February 25, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: February 25, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:055. Compensation plan, pay for performance.

RELATES TO: KRS 18.170, 18.190, 18.210, 18.240
PURSUANT TO: KRS 13.082, 18.170, 18.210
NECESSITY AND FUNCTION: KRS 18.210 requires the Commissioner of Personnel to prepare and submit to the board rules which provide for a pay plan for all employees in the classified service, taking into account such factors as the relative level of duties and responsibilities of various classes, rates paid for comparable positions elsewhere, and the state's financial resources. This rule is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting an annual wage and salary survey of relevant labor markets, the Commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity, external market competitiveness, and individual employee merit. The plan shall provide salary grades or specific salary rates as appropriate for the various classes. Each job class shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for classes shall be consistent with the functions outlined in the classification plan. The compensation plan shall reward individual employee work performance in accordance with a performance increase chart to be developed by the Commissioner.

(2) When the Commissioner determines through relevant salary surveys that the state's overall compensation position is inadequate in relation to that of other employers, he may authorize a general adjustment of all salary grades in the pay structure to a position which is comparable to the external market. Additional surveys may be conducted as necessary to determine market conditions for specific classes.

(3) The Commissioner shall submit the plan to the board for its approval. The board shall present the plan, through the Secretary of the Finance and Administration Cabinet, to the Governor for his final approval. The Commissioner shall review the plan annually.

Section 2. Appointments. Initial appointments to state service shall be made at the minimum rate of the pay range established for the class unless the Commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the middle rate of the range. Such exception shall be based on the outstanding and unusual nature of the applicant's education, experience or ability over and above the minimum requirements set for the class. Such additional qualifications must be in the same or related area to that of the job duties of the class to which the appointment is to be made. Employees possessing similar qualifications employed in the same class, by the same agency, in the same locality shall have their salaries adjusted to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Re-entrance to State Service. Appointing authorities, with the approval of the Commissioner, may place re-employed, reinstated, and probationarily appointed former employees at a salary determined by one (1) of the following methods:

(1) Reinstatement to the same pay grade or lower:

(a) Request the same salary that was paid at the time of separation if such salary is within the current salary grade;

(b) Request a salary higher than that paid at the time of separation due to salary structure or grade adjustments occurring pursuant to Section 8 or Section 9.

(c) Request a lower salary than that earned at the time of separation if such a salary is within the current pay grade.

(d) Request a salary in accordance with the standards used for making new appointments.

(2) Re-employment or probationary appointment of former employees to the same, lower, or higher pay grade:

(a) Request the same salary that was paid at the time of separation if such salary is within the current salary grade;

(b) Request a salary higher than that paid at the time of separation due to salary structure or grade adjustments occurring pursuant to Section 8 or Section 9.

(c) Request a lower salary than that earned at the time of separation if such salary is within the current pay grade.

(d) Request a salary in accordance with the standards used for making new appointments.

(3) Employees re-employed in the same class series, or employees reinstated to the same class or a lower class in the same series, at the same or higher salary earned prior to separation shall be considered for a performance increase when they have completed twelve (12) months service since the date they last received a performance increase. A maximum of six (6) months of that twelve (12) months of service may have been earned during the last period of service in which they held status. Employees re-employed in the same class series at a lower rate of pay than that earned at the time of separation shall be considered for a probationary increase in accordance with Section 5(1) below. Employees re-employed or reinstated to a class in a different series shall be considered for a probationary performance increase in accordance with Section 5(1) below. Former employees probationarily appointed shall be considered for probationary performance increases in accordance with Section 5(1) below.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum or above the maximum of the higher grade. If the promotion is to a classification which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the Commissioner, may grant a ten percent (10%) or fifteen percent (15%) salary increase over the employee's previous salary, provided the proposed salary is within the salary grade for the position.

(2) Demotion. An employee who is demoted shall have his salary reduced to a rate which is in the grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Transfer. An employee who is transferred to a job class having the same pay grade shall be paid the same salary that he received prior to transfer.

(4) Reclassification. An employee who is advanced to a higher pay grade through a reclassification of his position shall receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum or above the maximum of the higher grade. An employee who is reduced to a lower pay grade through a reclassification of his position shall receive the same salary he was receiving prior to reclassification, even if that salary is above the maximum of the lower pay grade. An employee whose salary is at or above the maximum of the lower grade shall not receive additional performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9. The employee shall return to his original increase date upon return of his salary to the grade. An employee in a position which has been reclassified to a lower pay grade after July 1, 1983, shall have his salary reduced to a rate within the grade applicable to the new class of position.

(5) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five percent (5%) except that in no case shall the employee's salary after such increase be below the minimum or above the maximum of the higher grade. An employee whose current salary exceeds the grade maximum assigned to his class due to the July 1, 1982 salary schedule adjustment shall retain that current salary following reallocation of his class to a higher grade. An employee who is reduced to a lower pay grade through a reallocation of his position shall receive the same salary received prior to reallocation, even if that salary is above the maximum of the lower grade. An employee whose salary is at or above the maximum of the new grade shall not receive additional performance increases until such time the salary falls within the grade due to an adjustment prusuant to Section 8 or Section 9. The employee shall return to his original increase date upon return of his salary to the grade. An employee in a position which has been reallocated to a lower or higher pay grade after July 1, 1983, shall have his salary reduced to a rate within the grade applicable to the new class of position..

(6) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 1:110, Section 4, may receive a five percent (5%) increase upon detail to a higher class except that in no case shall the employee's salary after such increase be below minimum or above the maximum of the higher grade. Annual performance increases shall not be permitted while an employee is on detail to special duty to a class in a higher pay grade.

(7) Reversion.

(a) An employee who is returned to his former class after failure to complete the probationary period following promotion, or following detail assignment to a higher class, shall have his salary reduced to a salary rate received prior to such promotion or detail assignment and is entitled to all salary advancements and adjustments, pursuant to Section 8 or Section 9, he would have received had he not left the class.

(b) Employees who are returned to their former class in the classified service following transfer or promotion to the unclassified service shall have their salary reduced to the rate received prior to the promotion or transfer and are entitled to all salary advancements and adjustments they would have received had they not left the class.

Section 5. Salary Advancements. (1) Probationary performance increases. The amount of an employee's probationary performance increase shall be based upon individual employee work performance as evidenced through systematic performance appraisal conducted in accordance with 101 KAR 1:140, Section 10, and other guidelines which the Commissioner shall develop. Full-time employees, and those part-time employees who work at least 100 hours a month who complete their probationary period with at least a satisfactory performance level shall be granted a performance increase at the beginning of the month following such completion of the probationary period. The service may be provisional or probationary. Employees completing the probationary period with below standard or unsatisfactory performance levels shall be considered for an annual performance increase in accordance with Section 5(2)(d) below.

(2) Annual performance increases.

(a) The amount of an employees annual performance increase shall be based upon individual employee work performance as evidenced through systematic performance appraisal conducted in accordance with 101 KAR 1:140, Section 10, and other guidelines which the Commissioner shall develop. Performance increases shall be limited to full-time status employees and those part-time status employees who work at least 100 hours a month. Employees who are on educational leave with pay shall receive performance-based increases in accordance with Section 7(1) below. Employees in classes assigned specific salary rates shall not be eligible to receive performance increases. Employees whose salaries are above grade maximums pursuant to Sections 4(4), (5), and 9(3) shall not be eligible to receive performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9.

(b) An employee having at least a satisfactory performance level shall receive a performance increase at the beginning of the month following completion of twelve (12) months service since last receiving a performance or probationary increase. An employee receiving a performance increase which would place his salary above the maximum of the range shall have his salary adjusted to the maximum of the range with the excess of the performance increase amount awarded as a lump sum payment. Such employee shall not receive additional performance increases until such time the salary falls within the grade due to an adjustment pursuant to Section 8 or Section 9. The employee shall return to his original increase date upon return of his salary to the grade. Employees having below standard or unsatisfactory performance levels shall be considered for annual performance increases in accordance with paragraphs (c) or (d) of this subsection.

(c) An employee whose below standard performance level does not warrant a performance increase on his regularly scheduled increase date may be eligible to receive a performance increase three (3) months following his regularly scheduled date. A three (3) month re-evaluation period, beginning immediately following the determination of the employee's performance level, shall be used for the purpose of improving the employee's performance at least to a satisfactory level. An employee whose performance remains below standard following this re-evaluation period shall be considered for an increase twelve (12) months

following his regularly scheduled date.

(d) An employee whose unsatisfactory performance level does not warrant an increase on his regularly scheduled increase date shall be considered for an increase twelve (12) months following his regularly scheduled date.

(3) Service computation. In computing service for the purpose of determining annual performance increase eligibility for full-time employees, only those months for which an employee earned annual leave or was on educational or military leave with pay shall be used except as provided under Section 7(1). In those cases where an employee is changed from part-time to full-time, part-time service which would be counted in determining increase eligibility for a part-time employee shall be counted in determining increase eligibility for a full-time employee. In those cases where an employee is changed from full-time to part-time, full-time service which would be counted in determining increase eligibility for a full-time employee shall be counted in determining increase eligibility for a part-time employee.

(4) Performance increase dates will be established or changed:

(a) Following completion of probation with at least a satisfactory performance level, due to appointment, reinstatement, re-employment, or promotion.

(b) Following completion of a three (3) month re-evaluation period with at least a satisfactory performance level, described in Section 5(2) above.

(c) When an employee is on leave without pay for more than one-half (½) the scheduled work days in any month.

(d) When the employee returns from leave with pay where an absence of six (6) months or more in the performance cycle is involved as described in Section 7(1) below.

(5) Performance increase dates will not change when an employee:

(a) Is in a position in a job class which is assigned a new or different salary grade.

(b) Receives a salary adjustment as a result of his position being reallocated or reclassified.

(c) Is transferred.

(d) Receives a demotion.

(e) Is approved for detail to special duty as provided by 101 KAR 1:110, Section 4.

(f) Receives an educational achievement salary advancement under Section 6.

(g) Returns from military leave.

(h) Returns from leave with pay involving less than six (6) months absence in the performance cycle.

(6) No employee shall have his salary advanced to a rate above the maximum of the salary grade applicable to the class of his position. An employee may retain a rate of pay above the maximum of the range as provided in Section 4(4) and (5) and Section 9(3) of these rules.

(7) Transition provisions.

(a) All provisions in Section 5(7) shall be superseded by provisions described in Section 5(1) through (6), January 1, 1983.

(b) Probationary increments. Full-time employees and those part-time employees who work at least 100 hours a month who were probationarily appointed, or former employees probationarily appointed or re-employed or reinstated at a lower salary, prior to July 1, 1982 shall be eligible and may be given consideration by the appointing authority for a five percent (5%) salary advancement at the beginning of any month following successful completion of the probationary period; however, in no case shall a five percent (5%) salary advancement be awarded under this section after December 31, 1982. The service may be provisional or probationary. A former employee who was reinstated or re-employed at the same or higher salary prior to July 1, 1982 may be considered for a five percent (5%) salawry advancement when he has completed twelve (12) months service since the date he received a probationary or annual increment; however in no case shall a five percent (5%) increase be awarded under this section after December 31, 1982. A maximum of six (6) months of that twelve (12) months service may have been earned during the last period of service in which he held status.

(c) Annual increments. Annual increments shall be based upon length of service until December 31, 1982. Full-time employees having status, and those part-time employees who work at least 100 hours a month whose annual increment date occurs prior to December 31, 1982 shall be given a five percent (5%) salary advancement at the beginning of the month following completion of twelve (12) months service since last receiving an annual or probationary increment. Employees who are on educational leave with pay shall receive such annual increments until December 31, 1982. For the purpose of determining annual increment eligiblity, service computation shall be done in accordance with Section 5(3) above. Employees whose salaries are at or above range maximums due to salary schedule adjustment July 1, 1982 shall receive their five percent (5%) annual increments if they would have received such increment has not this salary schedule adjustment occurred. Employees whose salaries are within five percent (5%) of the range maximum following such schedule adjustment shall receive the full benefit of their annual increment even if such increase places their salary above the range maximum.

(d) Outstanding merit increment. Any permanent full-time employee who has served for one (1) year immediately preceding the recommendation and who has not received an outstanding merit advancement within twelve (12) months is eligible for a five percent (5%) outstanding merit advancement in his present grade in addition to any other salary advancements to which he might be entitled if:

1. His acts or ideas have resulted in significant financial savings to the Commonwealth, or to a significant improvement in service to its citizens; or

2. His job performance is outstanding. The appointing agency must submit written justification to the Commissioner and the personnel action form must be approved by the agency head and the Commissioner to be effective. In a fiscal year, an agency with sufficient budgeted funds may grant as many outstanding merit salary advancements as thirty percent (30%) of the number of its employees at the close of the prior fiscal year. This provision expires December 31, 1982.

(e) Continuous service award. An employee who has served (12) months at or above the maximum of the salary grade applicable to his class prior to December 31, 1982 shall be given a continuous service award of five percent (5%) of his current annual salary rate. Service at the maximum rate of the grade applicable to the class of position held by the employee prior to July 1, 1982 adjustment shall be counted toward his twelve (12) month period. Employees whose salaries were at the maximum of the salary range prior to July 1, 1982 but whose salaries are returned to the range following the July 1, 1982 schedule adjustment, shall receive their regular annual increments in accordance with Section 5(7)(c). This continuous service award shall be given as a lump sum payment. The service shall be computed in accordance with Section 5(3).

Section 6. Educational Achievement Increase. Subject to the approval of the Commissioner, any permanent, full-time employee who, after completion of his initial probationary period, satisfactorily completes 260 classroom hours (or the equivalent as determined by the Commissioner) of job related instruction is eligible for a lump-sum educational achievement increase of five percent (5%) of his annual base salary the first of the month following the approval of the increase.

Section 7. Return from Leave. Following January 1, 1983, an employee returning to duty from leave with pay where an absence of six (6) months or more in the performance cycle is involved shall have his performance increase date established four (4) months following his regularly scheduled increase date. Where an employee's increase date occurs while the employee is on leave with pay, and an absence of six (6) months or more in the perfromance cycle is involved, the employee shall have his increase date established four (4) months following the date of his return. Where an absence of less than six (6) months in the performance cycle is involved, the employee shall be considered for his performance increase on his regularly scheduled increase date.

(2) Leave without pay. Employees returning to duty from leave without pay lasting less than one (1) year shall have their increase dates established in accordance with Section 5(3) above. Employees returning to duty from leave without pay in excess of one (1) year shall have their increase dates established in accordance with Section 3(3).

(3) Military Leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received. Satisfactory performance shall be assumed when computing the amount of performance increase(s) due.

Section 8. General Schedule Adjustment. When the Commissioner authorizes a general adjustment of all grades in the pay structure, employees shall have their salaries adjusted at least to the minimum rates of grades in all cases. All salary adjustments shall be made in accordance with standards established by the Commissioner.

Section 9. Class Re-evaluation and Grade Adjustment. (1) Class re-evaluation is the assignment of a different salary grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in salary grade. Whenever it becomes necessary to assign a class in different salary grade due to changes defined in Section 9(1) above, the Commissioner may make a new or different salary grade applicable to a class of position. Persons employed in positions of that class at the effective date of the change in salary grade shall have their salary placed at least at the minimum salary of the higher grade. In no event shall an employee's salary be placed at a rate which provides a salary rate less than the employee received prior to the change in the salary grade. Employees whose salaries are already within the higher grade shall retain their current salaries following the adjustment. Employees in a class or classes assigned to a lower pay grade through class re-evaluation shall retain their current salary even if that salary is above the maximum rate of the lower grade. Such employees shall not be eligible to earn annual performance increases until such time as the employee's salary falls within the grade. The employee shall return to his original increase date upon return of his salary to the grade. The Commissioner shall review the use of this provision for retaining employees' salaries above grade maximums and report to the Board July 1, 1984, to determine the need for continuing such provision.

(3) Recruitment difficulties. Whenever the Commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same locality are adjusted in salary to the same rate. When the Commissioner determines that it is not possible to relieve salary inadequacies using this provision, Section 9(2) shall apply.

(4) Increases resulting from this section shall not affect an employee's annual performance increase date.

Section 10. Paid Overtime. Overtime for which pay is authorized shall have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such compensation in kind shall be treated as part payment and its value shall be deducted from the appropriate salary rate in accordance with the schedule promulgated by the Commissioner after consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the Commissioner may authorize the payment of a supplemental shift premium for those employees directed to work an evening or night shift. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment. The employee's loss of shift differential pay shall not be a basis for an appeal to the Personnel Board.

Section 13. 101 KAR 1:050, Compensation plan, is hereby repealed.

PHILIP TALIAFERRO, Chairman
ADOPTED: March 12, 1982
APPROVED: DEE MAYNARD, Commissioner
RECEIVED BY LRC: March 15, 1982 at 11:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner Dee Maynard, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department for Administration

200 KAR 5:320. Repeal of 200 KAR 5:302.

RELATES TO: KRS 13.080(3)(a), 45.360(3)
PURSUANT TO: KRS 45.360(3)
NECESSITY AND FUNCTION: In 1979, this section incoporated into regulation by reference a portion of the finance department management manual. The section is hereby repealed because: the KAR does not identify the affected parts of the manual sufficiently clearly to alert employees who might be affected; there is little, if anything, in the manual that needs or merits the force of law or regulation; if anything in the manual needs to be in the regulations, it should be clearly identified, published in the Administrative Register, considered by the Subcommittee, published as a regulation and brought to the attention of affected state workers; and unlike regulations, the management manual, by its own statement was intended to serve only "one (1) purpose—to pass information to another individual," thereby avoiding "perpetual rehash of routine task and work procedures."

Section 1. 200 KAR 5:302, Management and procedures manual, is hereby repealed.

GEORGE E. FISCHER, Secretary
ADOPTED: March 11, 1982
RECEIVED BY LRC: March 12, 1982 at 9:20 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Cattie Lou Miller, Department for Administration, Finance and Administration Cabinet, Room 238, Capitol Annex, Frankfort, Kentucky 40601.

COMMERCE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:115. Gun and archery seasons for deer.

RELATES TO: KRS 150.025, 150.170, 150.176, 150.305, 150.330, 150.340, 150.360, 150.370, 150.390, 150.400
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the deer gun and archery seasons in specified counties and on wildlife management areas. This regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting, to prescribe the methods by which deer may be legally taken, and to prescribe procedures by which handicapped persons may apply for exemptions from conventional hunting methods requirements. The function of this regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer to furnish sport and recreation for present and future residents of the state.

Section 1. Deer Gun Season, Zones, Dates, and Legal Deer. Deer gun hunting is permitted in the following zones on the dates listed, except as specified in subsection (6) of this section and Section 3.

(1) Zone No. 1: Open to either sex deer hunting for ten (10) consecutive days beginning the first Saturday in November. That portion of Edmonson County south of 728, east of 259 between 728 and 31W and north of 31W.

(2) Zone No. 2: Open to antlered deer gun hunting for ten (10) consecutive days beginning the first Saturday in November. On the last day of the hunt, antlerless deer may also be taken. Counties in this zone are: Breckinridge, Bullitt, Butler, Caldwell, Carroll, Christian, Crittenden, Franklin, Gallatin, Hancock, Henry, Hopkins, Logan, McCracken, Muhlenberg, Ohio, Oldham, Owen, Shelby, Todd, and Trimble.

(3) Zone No. 3: Open to antlered deer gun hunting for ten (10) consecutive days beginning the first Saturday in November. Counties in this zone are: Adair, Allen, Anderson, Ballard, Barren, Boone, Boyd, Boyle, Bracken, Calloway, Campbell, Carlisle, Carter, Casey, Cumberland, Edmonson, except that portion included in Zone 1, Fulton, Grant, Graves, Grayson, Green, Greenup, Hardin, Harrison, Hart, Henderson, Hickman, Kenton, Larue, Lawrence, Lewis, Livingston, McLean, Marion, Mason, Meade, Mercer, Metcalfe, Monroe, Nelson, Pendleton, Russell, Scott, Spencer, Taylor, Trigg, Union, Warren, Washington, and Webster.

(4) Zone No. 4: Open to antlered deer gun hunting for five (5) consecutive days beginning the first Saturday in November. Counties in this zone are: Bath, Daviess, Elliott, Fleming, Jefferson, Lyon, McCreary, Marshall, Menifee, Morgan, Nicholas, Pulaski, Robertson, Rowan, and Wayne.

(5) Zone No. 5: Open to antlered deer gun hunting for three (3) consecutive days beginning the first Saturday in November. Counties in this zone are: Bell, Bourbon, Breathitt, Clark, Clay, Clinton, Estill, Fayette, Floyd, Garrard, Harlan, Jackson, Jessamine, Johnson, Knott, Laurel, Lee, Leslie, Letcher, Madison, Magoffin, Martin, Montgomery, Owsley, Perry, Pike, Powell, Rockcastle, Simpson, Whitley, Wolfe, and Woodford.

(6) Zone No. 6: Counties, wildlife management areas, and parks closed to all deer hunting:

(a) Counties in this zone are Lincoln and Knox.

(b) Wildlife management areas: Cane Creek WMA including all private inholdings, in Laurel County; Ballard WMA in Ballard County; Central Kentucky WMA in Madison County; Grayson Lake WMA in Carter and Elliott Counties; Mill Creek WMA including all private inholdings, in Jackson County; and Robinson Forest WMA in Breathitt, Perry, and Knott Counties.

(c) Deer hunting is prohibited within the boundaries of all national parks.

Section 2. Deer Archery Season, Zones, Dates, and Legal Deer. Zones 1, 2, and 3 are open to either sex archery deer hunting during specified periods as follows, except as specified in Section 3. Zones 4 and 5 are open to antlered deer only archery hunting except as specified in Section 3.

(1) The deer hunting season for longbows and compound bows opens October 1 and continues through December 31 with no archery hunting during the period of November 5 through 16.

(2) The deer hunting season for crossbows is November 20 through 29 only.

Section 3. Exceptions to Deer Hunting Regulations on Wildlife Management Areas. All deer gun and archery regulations apply unless otherwise specified herein.

(1) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties:

(a) Archery season: antlered deer, October 2 through October 10.

(b) Gun season: antlered deer, December 4 and 5. Hunters will be selected by a drawing as stated in subsection (10) of this section. Hunters will be allowed to hunt both days.

(c) Checking in and out: gun hunters must check in and out at the management area check station. Archery hunters are not required to check in but must check out if a deer is taken.

(d) No other deer hunting is permitted.

(2) Higginson-Henry Wildlife Management Area located in Union County: archery season: October 1 through November 4. Archery hunters are not required to check in but must check out if a deer is taken. No other deer hunting is permitted.

(3) Kleber Wildlife Management Area located in Owen County:

(a) Archery season: October 1 through November 4 and December 6 through December 31.

(b) Gun season: either sex deer, December 4 and 5. Gun hunters will be selected by a drawing as stated in subsection (10) of this section. Hunters will be allowed to hunt both days.

(c) Checking in and out: gun hunters must check in and out at the management area check station. Archery hunters are not required to check in but must check out if a deer is taken.

(d) No other deer hunting is permitted.

(4) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties:

(a) Breech-loading firearms are prohibited.

(b) Muzzle-loading handguns of .44 caliber or larger are permitted.

(c) Crossbows may be used during the entire archery season.

(5) Redbird Wildlife Management Area located in Leslie and Clay Counties:

(a) Archery season: antlered deer, October 2 through October 10.

(b) Gun season: antlered deer, December 11 and 12. Hunters will be selected by a drawing as stated in subsection (10) of this section.

(c) Muzzle-loading firearm season: Antlered deer, December 4 and 5. Hunters will be selected by a drawing as stated in subsection (10) of this section. Muzzle-loading handguns of .44 caliber or larger may be used.

(d) Checking in and out: gun hunters must check in and out at the management area check station. Archery hunters are not required to check in but must check out if a deer is taken.

(e) No other deer hunting is permitted.

(6) West Kentucky Wildlife Management Area located in McCracken County:

(a) Archery season: either sex deer, October 1 through November 4 on Tracts 1, 2, 3, 4, 5 and 6.

(b) Gun season: either sex deer, December 11 and 18. Hunters will be selected by a drawing as stated in subsection (10) of this section. Hunters may hunt on assigned date only.

(c) Permitted firearms: muzzle-loading and breech-loading shotguns only.

(d) Checking in and out: all hunters must check in and out daily at the wildlife management area check station.

(e) No firearms permitted on any "A" tracts or tract 7, at any time.

(f) No other deer hunting is permitted.

(7) Yellowbank Wildlife Management Area located in Breckinridge County:

(a) Archery season: either sex deer, October 1 through November 4 and December 13 through December 31.

(b) Gun season: either sex deer, December 4, 8, and 11. Hunters will be selected by a drawing as stated in subsection (10) of this section. Hunters will be allowed to hunt on assigned date only.

(c) Checking in and out: gun hunters must check in and out daily at the management area check station. Archery hunters are not required to check in but must check out if a deer is taken.

(d) No other deer hunting is permitted.

(8) Duck Island Unit of Barkley Lake Wildlife Management Area:

(a) Archery season: either sex deer, October 1 through October 15.

(b) Gun season: either sex deer on October 23 and 24. Hunters will be selected by a drawing as stated in subsection (10) of this section. Hunters will be allowed to hunt on assigned date only.

(c) Checking in and out: gun hunters must check in and out at the Calhoun Hill Boat Ramp at Donaldson Creek on the east side of Barkley Lake after 4:30 a.m. on the day of the hunt.

(d) No other deer hunting is permitted.

(9) Clay Wildlife Management Area located in Nicholas County:

(a) Archery season: antlered deer, October 15 through November 4 and December 4 through December 31.

(b) Checking in and out: archery hunters are required to check in and out at the management area check station.

(c) No other deer hunting is permitted.

(10) Deer hunt application procedures:

(a) Applications must be made only on forms provided by the Department of Fish and Wildlife Resources.

(b) No more than four (4) hunters may apply per form. More than one (1) application per individual per hunt will disqualify that applicant. Completed applications must be accompanied by a stamped, self-addressed envelope and be postmarked no later than August 31, 1982.

Section 4. Legal Deer, Hunting Hours and Bag Limits. (1) An antlered deer is defined as having one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(2) Hunting hours: one-half (½) hour before sunrise to one-half (½) hour after sunset, prevailing local time.

(3) Bag and possession limit: the limit is two (2) deer per hunter per year. Only one (1) deer may be taken by firearms outside the following designated special deer areas: Fort Knox, Fort Campbell, Land Between the Lakes, and Blue Grass Ordnance Depot. Under no circumstances shall any individual be permitted to take more than two (2) deer anywhere in the state.

Section 5. Hunting License, Deer Permits, Deer Tags and Check Station Requirements. (1) Hunting license and deer permit: All persons taking or attempting to take deer must have in possession a valid annual Kentucky hunting license and a valid deer hunting permit unless exempted by KRS 150.170(3), (5) or (6).

(2) Leaving head attached: any person harvesting or possessing a deer must leave the head attached to the body until the carcass is removed from the field and processed.

(3) Mandatory deer check stations: any person, including those eligible to hunt without a license, harvesting a deer during any deer hunting season must have it checked

at the deer check station nearest to where the deer was harvested, or by the nearest available conservation officer, no later than 9 a.m. prevailing local time on the day following the day of harvest. The hunter must fill out the stub attached to the deer permit and submit it to the check station operator or conservation officer.

(4) Tagging deer carcass and head:

(a) Before moving the carcass, the hunter must attach the metal tag portion of the deer permit to the deer. This tag must be permanently locked and attached to any portion of the deer carcass so that it cannot be removed without destroying the tag or mutilating the carcass and must remain attached until the carcass is processed and packaged. The hunter must detach the stub marked "A Tag" and, before moving the carcass punch a clearly visible hole through the space provided to indicate the weapon used to take the deer.

(b) Deer heads or other parts separated from the carcass for mounting by a taxidermist must have the taxidermist tag properly filled out and attached to the separated part.

(5) Second deer permit: a hunter who has taken one (1) deer may purchase a second deer permit, which shall be valid only when accompanied by a properly punched, stamped or signed "A Tag" portion of the first deer permit. If this portion of the first deer permit is punched to indicate that the first deer was taken by gun, the second deer permit is valid only for archery hunting, except that two (2) deer may be taken by gun if one (1) is taken on a designated special deer area listed in Section 4(3).

Section 6. Prohibited Methods and Conditions For Gun and Archery Deer Hunting. (1) Residents of any state which does not grant Kentucky residents the right to hunt deer may not hunt deer in Kentucky.

(2) Persons under eighteen (18) years of age may not hunt deer with a gun unless accompanied by an adult.

(3) Deer may not be taken with the aid of dogs or any domestic animal, or by the use of a boat or any type of vehicle.

(4) A deer may not be taken while the deer is swimming.

(5) All gun deer hunters must wear a visible vest, coat, coveralls, cap or hat of hunter orange color. The entire garment must be hunter orange.

(6) On department-owned and operated wildlife management areas and on the Daniel Boone National Forest, the use of any nails, spikes, screw-in devices, wire or tree climbers are prohibited for attaching tree stands or for climbing trees. Only portable tree stands and climbing devices that do not injure trees may be used. Portable stands may be placed in trees no more than two (2) weeks before opening day of each hunting period and must be removed within one (1) week following the last day of each hunting period. All portable tree stands must be marked with the owner's name and address. Existing permanent tree stands may not be used.

(7) Rattling of antlers or sticks and the use of hand or mouth operated calls is permitted.

(8) No person or persons shall cast the rays of a spotlight, jacklight or other artificial lighting device on any highway or in any field, woodland or forest, while having in his or her possession, or under his or her control, a firearm or other implement by which a deer could be killed, even though such deer is not shot at, injured or killed. This shall not apply when the headlights of a motor vehicle in normal operation on a highway are cast upon a field, woodland or forest in the normal course of travel, nor shall it apply to landowners or tenants engaged in normal or necessary activity upon their lands.

(9) No person shall possess a deer taken contrary to this or any other regulation or statute.

Section 7. Firearms Restrictions for Gun Deer Hunting. (1) Permitted firearms: Center-fire rifles of .240 caliber or larger (with the exceptions of the .30 caliber carbine and .256 caliber rifle); muzzle-loading rifles of .38 caliber or larger; and muzzle-loading and breech-loading shotguns of ten (10) gauge maximum and twenty (20) gauge minimum firing a single projectile. Handguns with barrel lengths of 3.90 inches or greater are permitted. Only the following cartridges may be used: .30 caliber Herret; .357 magnum; .357 Herret; .357 automag; .41 magnum; .41 automag; .44 magnum; .44 automag; .45 automag; and any other cartridge using a bullet of at least 110 grains weight and developing at least 500 foot-pounds of muzzle energy.

(2) Prohibited firearms: any caliber of cartridge that does not meet the requirements given in subsection (1) of this section; any fully automatic weapon or weapon capable of firing more than one (1) round with one (1) trigger pull; any military issue M-1 .30 caliber carbine or its equivalent caliber sold commercially; and .256 caliber rifle.

(3) Fully jacketed military type ammunition and tracer bullet ammunition are prohibited. Buckshot or any type of shot shells are prohibited.

Section 8. Equipment Restrictions for Archery Deer Hunting. (1) Longbows and compound bows may not be fitted with any device capable of holding an arrow at full draw without aid from the hunter.

(2) Arrows must be barbless without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide.

(3) Crossbows must have a minimum pull weight of 100 pounds and a working safety device. Minimum bolt weight is 380 grains with a barbless broadhead point at least seven-eighths (7/8) inch wide, with no chemical treatments or chemical attachments.

(4) Archery hunters are prohibited from carrying firearms while hunting deer.

Section 9. Hunting Methods Exemptions for Handicapped Hunters. Persons with physical handicaps that would make it impossible for them to hunt by conventional methods may apply by letter to the Commissioner of the department for a hunting methods exemption. The Commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he or she could not otherwise do so because of his or her handicap. Specific exemptions to be allowed will be described in the letter of authorization, which will be signed by the Commissioner and a conservation officer who will certify that the applicant for the exemption is, in his opinion, handicapped to such a degree that the requested exemption is necessary to permit the applicant to hunt. Hunting method exemptions will expire at the end of the calendar year.

Section 10. 301 KAR 2:112, Deer gun and archery seasons for specific counties and areas, is hereby repealed.

CARL E. KAYS, Commissioner
ADOPTED: March 1, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: March 12, 1982 at 9:40 a.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

401 KAR 2:063. General standards for hazardous waste sites or facilities.

RELATES TO: KRS 224.033, 224.071, 224.255, 224.855, 224.860, 224.866, 224.880
PURSUANT TO: KRS 13.082, 224.017, 224.862, 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 new hazardous waste sites or facilities.

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 hazardous waste sites or 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 Section 10 of 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 Section 5 of 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 Section 3(5) of 401 KAR 2:070;

4. A farmer disposing of waste pesticides from his own use in compliance with Section 5(2) of 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 this section;

8. A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section 3(1) 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 401 KAR 2:050 and regulations under Section 1 of 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 provided in Section 1(1), and paragraph (b) of this subsection.

(b) Section 2(9)(b) is applicable only to facilities subject to regulation under Sections 17, 18, 19, 20, and 21 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 for 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.

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 21(2) 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 department 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).

(c) Unless the owner or operator has made a successful demonstration under paragraphs (a)1 and (a)2 of this subsection, a sign with the legend, "Danger—Unauthorized Personnel Keep Out," must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient number to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility and must be legible from a distance of at least twenty-five (25) feet. Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

(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 17(5), 18(4), 19(5), 20(5), and 21(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 section, 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 department 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 sites or facilities, except as Section 1(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 department 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 department has ruled that such a device is not required under subsection (3) of this section.

(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 department has ruled that such a device is not required under subsection (3) of this section.

(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) 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 sites or facilities, except as Section 1(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 subsections (2) and (7) of this section 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(7).

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subsection (6) of this section) 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 department prior to the issuance of the operating permit 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 (e.g., 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 released 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 department and appropriate state and local authorities that the facility is in compliance with paragraph (h) of this subsection 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 department. 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 hazardous waste sites or facilities, except as Section 1(1) provides otherwise. Subsections (2), (3) and (7) of this section 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 subsection (3)(a) of this section) 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 EPA 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 subsection (3)(a) of this section) 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 department 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 as described in Section 22(3);
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 21(2);
4. Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 4(7)(j);
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 21(7);
7. For off-site facilities, notices to generators as specified in Section 2(3)(b); and
8. All closure cost estimates under Section 10, for disposal facilities, and post-closure cost estimates under Section 12.

(5) Availability, retention, and disposition of records.

(a) All records, including plans, required under this regulation 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 department.

(c) A copy of records of waste disposal locations and quantities under subsection (4)(b)2 of this section must be submitted to the department 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 department 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 10 disposal facilities, the most recent post-closure cost estimate under Section 12; 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 Section 5 of 401 KAR 2:075 then the owner or operator must prepare and submit a single copy of a report to the department 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 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 subsections (6) and (7) of this section the owner or operator must also report to the department:
(a) Releases, fires, and explosions as specified in Section 4(7)(j); 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) Subsections (2) through (6) of this section (which concern closure) apply to the owners and operators of all hazardous waste management sites or facilities; and
(b) Subsections (7) through (10) of this section (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 escape 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 site or facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with Section 16(1) of 401 KAR 2:060 and approved by the department as part of the permit issuance proceeding under 401 KAR 2:060. In accordance with Section 7(4) of 401 KAR 2:060, the approved closure plan will become a condition of any hazardous waste site or facility permit. The department's decision must assure that the approved closure plan is consistent with subsections (2), (4), (5) and (6) of this section and the applicable requirements of Sections 17(9), 18(5), 19(7), 20(9) and 21(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 subsection (6) of this section. 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 subsections (2), (4), (5), and (6) of this section and the applicable closure requirements of Sections 17(9), 18(5), 19(7), 20(9) and 21(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. (See Section 6(1)(a) of 401 KAR 2:060.) 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 department at least 180 days prior to the date he expects to begin closure.
(4) 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 department 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

(1) Standby 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 subsection and by sending an originally signed duplicate of the trust agreement to the director by certified mail. The standby trust fund shall be utilized in conjunction with one (1) of the mechanisms specified in subsections (2), (3) and (4). An owner or operator of a new facility must send the originally signed duplicate of the trust agreement with the mechanism of subsections (2), (3) or (4) 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 16(1)(a) and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 16(1)(b)).

(c) Payments to the trust fund must be made annually by the owner or operator over the term of the intitial permit. (Note: subsections (2), (3) and (4) specify an alternate payment into this fund.) 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 10), except as provided in subsection (6) 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 2:073, 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 Article 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 director 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 director 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 director will instruct the trustee to release to the owner or operator such funds as the director 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 director. Within sixty (60) days after receiving bills for closure activities, the director will instruct the trustee to make reimbursements in those amounts as the director specifies in writing if the director determines that the closure expenditures are in accordance with the closure plan or otherwise justified.

(k) The director 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 director notifies the owner or operator, in accordance with subsection (8) of this section, 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 subsection and by having the bond delivered to the director by certified mail. An owner or operator of a new facility must have the surety bond delivered to the director 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 16(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 director 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 subsection.

(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 6 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 director 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 10) 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 director. Notice of an increase or decrease in the penal sum must be sent to the director 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 director. Cancellation cannot occur, however:

1. During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or

2. While a compliance procedure is pending, as defined in Section 9.

(i) The surety bond no longer satisfies the requirements of this subsection subsequent to the receipt by the director of a notice of cancellation of the surety bond. Upon receipt of such notice the director will issue a compliance order pursuant to KRS Chapter 224 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 director 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 director has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(k) The director 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 subsection and by having the bond delivered to the director by certified mail. An owner or operator of a new facility must have the surety bond delivered to the director 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 16(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 subsection (1) of this section, except that:

1. An originally signed duplicate of the trust agreement must be delivered to the director 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 Section 6 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 director 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 10).

(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 director. Notice of an increase or decrease in the penal sum must be sent to the

director 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 director. Cancellation cannot occur, however:

1. During the ninety (90) days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or

2. While a compliance procedure is pending, as defined in Section 9.

(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 subsection subsequent to the receipt by the director of a notice of cancellation of the surety bond. Upon receipt of such notice the director will issue a compliance order pursuant to KRS Chapter 224 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 director 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 director has given prior written consent based on receipt of evidence of alternate financial assurance as specified in this section.

(l) The director 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 director in accordance with subsection (8) of this section 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 subsection and by having it delivered to the director by certified mail. An owner or operator of a new facility must have the letter of credit delivered to the director 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 16(4).

(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 director 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 director by certified mail of that decision. The ninety (90) day period will begin on the date of receipt by the director 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 10 except as provided in subsection (6)).

(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 director. Notice of an increase or decrease in the amount of the credit must be sent to the director 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 director may draw on the letter of credit.

(h) The letter of credit no longer satisfies the requirements of this subsection subsequent to the receipt by the director 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 director will issue a compliance order pursuant to KRS Chapter 224, 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 director may draw on the letter of credit.

(i) The director 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 director notifies the owner or operator, in accordance with subsection (8) 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 director 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 director 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 director; and

2. The state indicated either that the owner or operator has performed closure/post-closure to the director'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 surety bonds guaranteeing payment into a closure trust fund, letters of credit and cash. The mechanisms must be as specified in subsections (2), (4) and (5) 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 the multiple mechanisms include only surety bonds and letters of credit, a single standby trust may be established for all these mechanisms. The director may invoke use of any or all of the mechanisms in accordance with the requirements of subsections (2), (4) and (5) 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 director 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 director 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. If other financial mechanisms specified in this section cover facilities that are located in more than Kentucky, the director and the appropriate state agency heads or regional administrators in which the facilities are located must be involved in all transactions that involve the director, except when the transactions involve only those facilities 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 6(6) of this regulation), the director 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 director has reason to believe that closure has not been in accordance with the closure plan.

Section 12. 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 6(7) through (10). The owner or operator must keep this estimate, and all subsequent estimates required in this section, at the facility.

(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 6(8)(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 director.

(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 10(3). 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 13. 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 and prior to issuance of the permit. Financial assurance must be established by a:

(1) Post-closure escrow fund.

(a) An owner or operator must satisfy the requirements of this section by establishing a post-closure escrow fund which conforms to the requirements of this section. The escrow agent must be a bank or other financial institution which has the authority to act as an escrow agent and whose operations are regulated and examined by a federal or state agency. The escrow agreement shall contain terms sufficient to assure the integrity of the fund and provide for annual valuation of said fund.

(b) Payments to the escrow fund must be made annually by the owner or operator over the term of the initial permit and be in the form of cash. The payments to the post-closure escrow 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 escrow fund is established. The first payment must be at least equal to the post-closure cost estimate (see Section 12) except as provid-

ed in paragraph (h) of this subsection, 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 post-closure cost estimate, CV is the current value of the escrow fund, and Y is the number of years remaining in the term of the permit.

2. If an owner or operator established an escrow fund as specified in 401 KAR 2:073, Section 7, 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 2:073. 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 post-closure cost estimate, CV is the current value of the escrow fund and Y is the number of years remaining in the term of the permit.

(c) The owner or operator may accelerate payments into the escrow 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 paragraphs (a) and (b) of this subsection.

(d) After the term of the initial permit 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 escrow agent's most recent annual valuation of the escrow fund. 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.

(e) If the value of the escrow 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 director for release of the amount in excess of the adjusted post-closure cost estimate.

(f) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in paragraph (e) of this subsection, the secretary will instruct the escrow agent to release to the owner or operator such funds as the secretary specifies in writing.

(g) 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 director. Within sixty (60) days after receiving bills for post-closure activities, the director may instruct the escrow agent to make reimbursements in those amounts as the director specifies in writing if the director determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified.

(h) Release of the owner or operator from the requirements of this section. At the end of the period of post-closure care specified in the permit for the facility or the period specified by the director after closure, whichever period is shorter, the owner or operator may request a hearing to terminate the escrow fund. Upon a finding that all post-closure care requirements have been met said fund shall be terminated and any remaining funds returned to the owner or operator.

(2) Use of a financial mechanism for multiple facilities. An owner or operator may use the 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 director 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 director 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.

Section 14. Liability Requirements. The liability requirements of this section apply to both new facilities and existing facilities. (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 (see subsection (3)) or liability self-insurance (see subsection (4)) 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.

(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 or self-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. However, such insurance (see subsection (3)) or self-insurance (see subsection (4)) 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; six (6) months 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 director 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 16(5).

(3) As evidence of this liability requirement, any owner or operator using the liability insurance mechanism must deliver an originally signed duplicate of the insurance policy to the director by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the insurance policy to the director 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 subsection 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 16(5).

(4) Liability self-insurance.

(a) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either subparagraph 1 or 2 of this paragraph:

1. The owner or operator must have:

a. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum or net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

b. Net working capital and tangible net worth each at least six (6) times the sum of the current appropriate liability requirement (see subsection (1) or (2) of this section);

c. Tangible net worth of at least $10 million; and

d. Assets in the Commonwealth of Kentucky amounting to either, at least, ninety percent (90%) of his total assets or at least six (6) times the sum of the appropriate liability requirement.

2. The owner or operator must have:

a. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

b. Tangible net worth at least six (6) times the sum of the appropriate liability requirement;

c. Tangible net worth of at least $10 million; and

d. Assets located in the Commonwealth of Kentucky amounting to either, at least, ninety percent (90%) of his total assets or at least six (6) times the sum of the appropriate liability requirement (see subsection (1) or (2) of this section).

(b) To demonstrate that he meets this test, the owner or operator must submit the following items to the director:

1. A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 16(6);

2. A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

3. A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

a. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

b. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(c) An owner or operator of a new facility must submit the items specified in paragraph (b) of this subsection to the director at least sixty (60) days before the date on which hazardous waste is first received for treatment storage or disposal.

(d) After the initial submission of items specified in paragraph (b) of this subsection, the owner or operator must send updated information to the director within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in paragraph (b) of this subsection.

(e) If the owner or operator no longer meets the requirements of paragraph (a) of this subsection, he must send notice to the director of intent to establish liability insurance as specified in subsection (3) of this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide liability insurance within 120 days after the end of such fiscal year.

(f) The director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (a) of this subsection, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (b) of this subsection. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (a) of this subsection, the owner or operator must provide liability insurance as specified in subsection (3) of this section within thirty (30) days after notification of such a finding.

(g) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (b)2 of this subsection). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator must provide liability insurance as specified in subsection (3) of this section within thirty (30) days after notification of the disallowance.

(h) The owner or operator is no longer required to submit the items specified in paragraph (b) of this subsection when:

1. An owner or operator substitutes liability insurance as specified in this subsection;

2. The director releases the owner or operator from the requirements of this section by terminating the financial requirements.

(5) If an owner or operator elects to comply with subsections (1) and (2) of this section through one (1) liability mechanism covering both sudden and non-sudden occurrences, this liability assurance 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.

(6) Use of multiple liability mechanisms. An owner or operator may satisfy the requirements of this section by establishing both liability mechanisms for one (1) facility.

The mechanisms must be as specified in subsections (3) and (4), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism which must provide liability assurance for an amount at least equal to the amounts specified in subsections (1) or (2).

(7) If an owner or operator can demonstrate to the satisfaction of the director 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 director. The request for a variance must be submitted to the director as part of the permit application under Section 16 of 401 KAR 2:060 for a facility that does not have a permit, or pursuant to the procedures for permit modification under Section 6(1) of 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 director's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The director may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the director 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 Sections 6(1) and 6(2)(a)5 of 401 KAR 2:060.

(8) If the director 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 director 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 director's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. The director 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 director 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 Sections 6(1) and 6(2)(a)5 of 401 KAR 2:060.

Section 15. Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies. An owner or operator who fulfills the requirements of Sections 11 or 14 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 16. Wording of the Instruments. (1)(a) A trust agreement for a trust fund as specified in Section 11(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 "Agreement," 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 Care. The Trustee will make such payments from the Fund as the Director of the Division of Waste Management will direct, in writing, to provide for the payment of the costs of closure care of the facilities covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Director of the Division from the Fund for closure and post-closure expenditures in such amounts as the Director of the Division will direct, in writing. The Trustee will notify the Director of the Division when twenty (20) percent of the amount allocated for closure of the facility re-

mains in the Fund, and will not make further reimbursements for closure expenditures unles the Director of the Division 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 Director of the Division 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-21.(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 80a-1 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 Director of the Division 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 Director of the Division 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 Director of the Division, 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 Director of the Division, 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 Article 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 and the Director of the Division to the Trustee will be in writing, signed by the Secretary of the Department or the Director of the Division 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 or the Department 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 Director of the Division 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 Director of the Division or by the Trustee and the Director of the Division if the Grantor ceases to exist.

Article 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Division or by the Trustee and the Director of the Division 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 Director of the Division 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 16(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 11(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 11(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, 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 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 11 of this regulation or in Section 7 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, 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 Section 6 of 401 KAR 2:063, and Section 6 of 401 KAR 2:073 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 11 of 401 KAR 2:063 or Section 7 of 401 KAR 2:073 within 30 days after the date notice of cancellation is received by the Director of the Division, 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 Director of the Division 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 Director of the Division.

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 Director of the Division 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 Director of the Division as shown on the signed return receipt(s); or (2) while a compliance procedure is pending, as defined in Section 9 of 401 KAR 2:063 or Section 7 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 Director of the Division 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 16(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 11(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 for Natural Resources and Environmental Protection 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

fund as specified by Section 11 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, Section 6, 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 2:063, Section 11, within thirty (30) days of the date notice of cancellation is received by the Director of the Division, 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 Director of the Division that the Principal has been found in violation of 401 KAR 2:063, Section 11, in an order made pursuant to KRS Chapter 224, 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 Director of the Division. Upon notification by the Director of the Division that the Principal has been found in violation of the closure requirements of 401 KAR 2:063, the Surety(ies) must either perform closure in accordance with the closure plan(s) and other permit requirements or place the amount of the adjusted closure cost estimate(s) in the standby trust fund. Upon notification by the Director of the Division 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 trust 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 Director of the Division 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 Director of the Division as shown on the signed return receipt(s); or

(2) While a compliance procedure is pending, as defined in Section 9 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 Director of the Division. (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 Director of the Division of Waste Management.

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 16(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 letter of credit as specified in Section 11(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 Director of the Division of Waste Management in the Department for Natural Resources and Environmental Protection, 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 9 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 16(4) 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").

(5) A hazardous waste facility liability endorsement as required by Section 14 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 14(1)(a) and/or (2)(a) 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 Director of the Division of Waste Management, the Company agrees to furnish to the Director of the Division of Waste Management 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 Director of the Division of Waste Management, such sixty (60) days' notice to commence to run from the date the notice is actually received by the Director of the Division of Waste Management.

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.

(6) A letter from the chief financial officer, as specified in Section 14(4) of this regulation must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer
(Address to the Director of the
Division of Waste Management)

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial responsibility, as specified in Section 14 of 401 KAR 2:063 and Section 6 of 401 KAR 2:073.

(Fill out the following four paragraphs regarding facilities and level of financial responsibility. If your firm has no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current liability requirement. Identify each liability requirement as to whether it is for sudden or non-sudden liability.)

1. This firm is the owner or operator of the following facilities for which liability responsibility is demonstrated through the financial test specified in Section 14(4) of 401 KAR 2:063 and Section 6 of 401 KAR 2:073. The current liability requirements covered by the test are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in Section 14(4) of 401 KAR 2:063 and Section 6 of of 401 KAR 2:073, the liability responsibility of the following facilities owned or operated by subsidaries of this firm. The current liability requirements so guaranteed are shown for each facility: _____.

3. This firm is the owner or operator of the following hazardous waste management facilities for which liability responsibility is NOT demonstrated either to EPA or Kentucky through the financial test or any other financial responsibility mechanism specified in Section 14(4) of 401 KAR 2:063 or Section 6 of 401 KAR 2:073 or in Subpart H of 40 CFR Parts 264 and 265. The current liability requirements not covered by such liability mechanisms are shown for each facility: _____.

This firm (insert "is required" or "is not required") to file a form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of Section 14(4)(a)1 of 401 KAR 2:063 are used. Fill in Alternative II if the criteria of Section 14(4)(a)2 of 401 KAR 2:063 are used.)

Alternative I

1. Sum of current financial responsibility requirements (total of ALL financial requirements shown in the four paragraphs above). _____

*2. Total liabilities (if any portion of the financial responsibility is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4). _____

*3. Tangible net worth _____

*4. Net worth _____

*5. Current assets _____

*6. Current liabilities _____

*7. Net working capital (line 5 minus line 6) _____

*8. The sum of net income plus depreciation, depletion, and amortization _____

*9. Total assets in Kentucky (required only if less than 90 percent of firm's assets are located in Kentucky) _____

Answer yes or no to the following questions:

10. Is line 3 at least $10 million? _____

11. Is line 3 at least six times line 1? _____

12. Is line 7 at least six times line 1? _____

*13. Are at least 90 percent of firm's assets located in Kentucky? If not, complete line 14. _____

14. Is line 9 at least six times line 1? _____

15. Is line 2 divided by line 4 less than 2.0? _____

16. Is line 8 divided by line 2 greater than 0.1? _____

17. Is line 5 divided by line 6 greater than 1.5? _____

Alternative II

1. Sum of current financial responsibility (total of ALL financial responsibility shown in the four paragraphs above): _____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth _____

*6. Total assets in Kentucky (required only if less than 90 percent of firm's assets are located in Kentucky) _____

Answer yes or no to the following questions:

7. Is line 5 at least $10 million? _____

8. Is line 5 at least six times line 1? _____

*9. Are at least 90 percent of firm's assets located in Kentucky? If not, complete line 10. _____

10. Is line 6 at least six times line 1? _____

I hereby certify that the wording of this letter is identical to the wording specified in Section 16(6) of 401 KAR 2:063 as such regulations were promulgated on the date shown immediately below.

Signature: _____

Name: _____

Title: _____

Date: _____

Section 17. Use and Management of Containers. (1) Applicability. The regulations in this section apply to owners and operators of all hazardous waste sites or facilities that store containers of hazardous waste, except as Section 1(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 (see Section 22(2) for examples), 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 containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

Section 18. Tanks. (1) Applicability.

(a) The regulations in this Section apply to owners and operators of hazardous waste sites or 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 department will review the design of the tanks, including the foundation, structural support, seams and pressure controls. 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 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 subsection (3)(b) of this section;

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 Section 2(6)(b) 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 subsection (2) of this section. 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 mixed 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 19. Surface Impoundments. (1) Applicability. The regulations in this section apply to owners and operators of hazardous waste sites or facilities that use surface impoundments to treat or store hazardous waste, except as Section 1(1) provides otherwise.

(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 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 subsection (4) of this section.

(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 department in the permit.

(c) A leachate detection, collection, and removal system installed to comply with subsection (4)(b) of this section 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. The surface impoundment which contains free liquids at least once each operating day to ensure compliance with subsections (3)(a), (b), and (c) of this section 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 subsection (3)(d) of this section.

(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 nonsudden 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 breach (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. 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 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 subsection (7) of this section.

(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 2:075; 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 (see Section 22(2) for examples), must not be placed in the same surface impoundment except as Section 2(8)(b) is complied with.

Section 20. Waste Piles. (1) Applicability.

(a) The regulations of this section apply to owners and operators of hazardous waste sites or 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), (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 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 subsection (4) of this section.

(3) General operating requirements.

(a) 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 (or liners) 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 paragraph (a)2 of this subsection 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 or 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 subsection (9) of this section.

(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 or 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 (see Section 22(2) for examples), 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 other 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 21. Incinerators. (1) Applicability.

(a) The regulations in this section apply to owners and operators of hazardous waste sites or facilities that incinerate hazardous waste, except as Section 1(1) provides otherwise.

(b) If 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, Section 9, 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, Section 8, 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 401 KAR 2:075, Section 11(5), filed herein by reference; then the department may, in establishing the permit conditions, exempt the applicant from all requirements of this section except subsections (2) and (8) of this section.

(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).

(2) Waste analysis.

(a) As a portion of a trial burn plan required by Section

4(2) 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, or Section 16(2)(e).

(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 subsection (6)(b) of this section.

(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 subsection (4) of this section.

(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, Section 4(2), 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 subsection (6) of this section, 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 subsection (3) of this section) 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: 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 401 KAR 59:020.

(d) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under subsection (6) of this section) 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 Section 6(2) of 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 subsection (6) of this section except:

1. In approved trial burns under 401 KAR 2:060, Section 4(2); or

2. Under exemptions created by subsection (1) of this section.

(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, Section 16(2)(e).

(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 subsection (5)(b) of this section and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards for subsection (4) of this section.

(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 subsection (4) of this section 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 subsection (4) of this section are met.

(c) During start-up and shut-down of an incinerator, hazardous waste (except ignitable waste exempted in accordance with subsection (1) of this section) 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 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 subsection (4) of this section.

(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.

Section 22. Appendices. (1) Political jurisdictions in which compliance with Section 2(9)(a) must be demonstrated. If the proposed hazardous waste site or facility is within one (1) of the following counties, compliance with Section 2(9)(a) must be demonstrated unless the department has issued a variance pursuant to 401 KAR 2:055, Section 2.

Ballard	Crittenden	Hickman	McCracken
Bell	Fulton	Letcher	Trigg
Caldwell	Graves	Livingston	Union
Calloway	Harlan	Lyon	Webster
Carlisle	Henderson	Marshall	

(Note: On November 23, 1981, the administrator issued an interim final rule which deleted those counties. A final rule by the administrator excluding the Kentucky counties would be grounds for the granting of a variance.)

(2) Examples of potentially incompatible waste. Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as;

(a) Heat or pressure;
(b) Fire or explosion;
(c) Violent reaction;
(d) Toxic dusts, mists, fumes, or gases; or
(e) Flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one (1) group with materials in another group. The list is intended as a guide to owners or granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components. This list is not intended to be exhaustive. An owner or operator must, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not. It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator). In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1-A	Group 1-B
Acetylene sludge	Acid sludge
Alkaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners
Alkaline corrosive battery fluid	Electrolyte, acid
Caustic wastewater	Etching acid liquid or solvent
Lime sludge and other corrosive alkalies	Pickling liquor and other corrosive acids
Lime wastewater	Spent acid
Lime and water	Spent mixed acid
Spent caustic	Spent sulfuric acid

Potential consequences: Heat generation; violent reaction.

Group 2-A	Group 2-B
Aluminum	Any waste in Group 1-A or 1-B
Beryllium	
Calcuim	
Lithium	
Magnesium	
Potassium	
Sodium	
Zinc powder	
Other reactive metals and metal hydrides	

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3-A	Group 3-B
Alcohols	Any concentrated waste in Groups 1-A or 1-B
Water	Calcium
	Lithium
	Metal hydrides
	Potassium
	SO_2Cl_2,$SOCl_2$,PCl_3,CH_3SiCl_3
	Other water-reactive waste

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 4-A	Group 4-B
Alcohols	Concentrated Group 1-A or 1-B wastes
Aldehydes	Group 2-A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents	

Potential consequences: Fire, explosion, or violent reaction.

Group 5-A	Group 5-B
Spent cyanide and sulfide solutions	Group 1-B wastes

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 6-A	Group 6-B
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acids
Chlorites	Group 2-A wastes
Chromic acid	Group 4-A wastes
Hypochlorites	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

Potential consequences: Fire, explosion, or violent reaction.

(3) Recordkeeping instruction. The recordkeeping provisions of Section 5(4) specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping portions of the operating record. See Section 5(4)(b) for additional recordkeeping requirements. The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility in the following manner. Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

(a) A description by its common name and the EPA Hazardous Waste Numbers(s) from 40 CFR 261 which apply to the waste. The waste description also must include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Section 9 of 401 KAR 2:075, the description also must include the process that produced it (for example, solid filter cake from production of _____, EPA Hazardous Waste Number W051). Each hazardous waste listed in Section 9 of 401 KAR 2:075 and each hazardous waste characteristic defined in Section 8 of 401 KAR 2:075 has a four (4) digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one (1) listed hazardous waste, or where more than one (1) hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA Hazardous Waste Numbers.

(b) The estimated or manifest-reported weight, or volume and density, where applicable, in one (1) of the units of measure specified in Table 1.

(c) The method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal.

Table 1

Unit of Measure	Symbol[1]	Density
Pounds	P	
Short tons (2000 lbs.)	T	
Gallons (U.S.)	G	P/G
Cubic yards	Y	T/Y
Kilograms	K	
Tonnes (1000 kg)	M	
Liters	L	K/L
Cubic meters		M/C

[1]Single digit symbols are used here for data processing purposes.

Table 2—Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage

S01	Container (barrel, drum, etc.)	S03	Waste pile
S02	Tank	S04	Surface impoundment
		S05	Other (specify)

2. Treatment

(a) Thermal Treatment

T06	Liquid injection incinerator	T13	Wet air oxidation
T07	Rotary kiln incinerator	T14	Calcination
T08	Fluidized bed incinerator	T15	Microwave discharge
T09	Multiple hearth incinerator	T16	Cement kiln
T10	Infrared furnace incinerator	T17	Lime kiln
T11	Molten salt destructor	T18	Other (Specify)
T12	Pyrolysis		

(b) Chemical Treatment

T19	Absorption mound	T27	Cyanide destruction
T20	Absorption field	T28	Degradation
T21	Chemical fixation	T29	Detoxification
T22	Chemical oxidation	T30	Ion exchange
T23	Chemical precipitation	T31	Neutralization
T24	Chemical reduction	T32	Ozonation
T25	Chlorination	T33	Photolysis
T26	Chlorinolysis	T34	Other (Specify)

(c) Physical Treatment

(1) Separation of components

T35	Centrifugation	T42	Flotation
T36	Clarification	T43	Foaming
T37	Coagulation	T44	Sedimentation
T38	Decanting	T45	Thickening
T39	Encapsulation	T46	Ultrafiltration
T40	Filtration	T47	Other (Specify)
T41	Flocculation		

(2) Removal of Specific Components

T48	Absorption-molecular sieve	T58	High gradient magnetic separation
T49	Activated carbon	T59	Leaching
T50	Blending	T60	Liquid ion exchange
T51	Catalysis	T61	Liquid-liquid extraction
T52	Crystallization	T62	Reverse osmosis
T53	Dialysis	T63	Solvent recovery
T54	Distillation	T64	Stripping
T55	Electrodialysis	T65	Sand filter
T56	Electrolysis	T66	Other (Specify)
T57	Evaporation		

(d) Biological treatment

T67	Activated sludge	T73	Spray irrigation
T68	Aerobic lagoon	T74	Thickening filter
T69	Aerobic tank	T75	Tricking filter
T70	Anaerobic lagoon	T76	Waste stabilization pond
T71	Composting	T77	Other (Specify)
T78-79 (Reserved)			

3. Disposal

D80	Underground injection	D84	Surface impoundment (to be closed as a landfill)
D81	Landfill		
D82	Land treatment	D85	Other (Specify)
D83	Ocean disposal		

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

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 224.033, 224.255, 224.855, 224.860, 224.866, 224.880
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. General. 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. Preparedness and Planning. (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. (1) Closure. (a) The provisions for financial requirements contained in 40 CFR 265.140-265.143 are adopted and filed herein by reference except for 40 CFR 265.143(a) which can be used only as a standby trust fund in combination with another mechanism of this section.

(b) The director shall evaluate this cost estimate and either accept the estimate as made or shall revise it in accordance with acceptable guidelines, using, where available, actual data on closure costs associated with similar existing facilities.

(c) When the owner or operator has ceased operations at the hazardous waste site or facility and has completed closure of the site, he may apply to the director for return of the principle and interest in the closure fund. Upon determination that closure has been satisfactorily accomplished, the director shall release to the owner or operator all remaining funds accumulated in the closure fund.

(2) Cost estimate for post-closure monitoring and maintenance. The provisions for cost estimate for post-closure monitoring and maintenance which are contained in 40 CFR 265.144 are adopted and filed herein by reference.

(3) Financial assurance for post-closure monitoring and maintenance. By the effective date of these regulations, an owner or operator of each existing disposal facility must establish financial assurance for post-closure care of the facility for a term of twenty (20) years. Financial assurance must be established by a:

(a) Post-closure escrow fund.

1. An owner or operator must satisfy the requirements of this subsection by establishing a post-closure escrow fund which conforms to the requirements of this subsection. The escrow agent must be a bank or other financial institution which has the authority to act as an escrow agent and whose operations are regulated and examined by a federal or state agency. The escrow agreement shall contain terms sufficient to assure the integrity of the fund and provide for an annual valuation of said fund.

2. Payments to the escrow fund must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan of Section 6 of this regulation or over the twenty (20) years beginning with the effective date of this regulation, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments to the post-closure escrow fund must be made as follows:

a. The first payment must be made by the effective date of this regulation, except as provided in subparagraph 4 of this paragraph. The first payment must be at least equal to the post-closure cost estimated in subsection 2 divided by the number of years in the pay-in period.

b. 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: Next payment = ACE-CV/Y where ACE is the adjusted post-closure cost estimate, CV is the current value of the escrow fund, and Y is the number of years remaining in the pay-in period.

3. The owner or operator may accelerate payments into the escrow 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 paragraph (a)2 of this subsection.

4. 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 escrow agent's most recent annual valuation of the escrow fund. If the value of the fund is less than the amount of the new cost 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.

5. If the value of the escrow 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

director for release of the amount in excess of the adjusted post-closure cost estimate.

6. Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subparagraph 5 of this paragraph, the director will instruct the escrow agent to release to the owner or operator such funds as the director specifies in writing.

7. 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 director. Within sixty (60) days after receiving bills for post-closure activities, the director may instruct the escrow agent to make reimbursement in those amounts as the director specifies in writing, if the director determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified.

(b) Release of the owner or operator from the requirements of this subsection. When the owner or operator has completed, to the satisfaction of the director, all post-closure care requirements for thirty (30) years of post-closure care or the period specified by the director after closure, whichever period is shorter, the director will, at the request of the owner or operator, notify him in writing that he is no longer required by this subsection to maintain financial assurance for post-closure care of the particular facility. The director shall not reduce the post-closure period to less than twenty (20) years (see KRS 224.866(2)(b)). When the owner or operator has ceased operations at the hazardous waste site or facility and has completed closure of the site, he may apply to the director for return of the principle and interest in the closure fund. Upon determination that closure has been satisfactorily accomplished, the director shall release to the owner or operator all remaining funds accumulated in the closure fund.

(c) Use of a financial mechanism for multiple facilities. An owner or operator may use the financial assurance mechanism specified in this subsection to meet the requirements of this subsection 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 director 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 subtraction 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 director 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.

(4) Liability. The provisions for liability requirements are as contained in 401 KAR 2:063, Section 14. The owner or operator shall maintain liability requirements of this subsection during the entire operation of the hazardous waste site or facility and until termination.

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 except for:

(1) The provisions in 40 CFR 265.316 to permit the landfilling of free liquids if they are small amounts in overpacked drums; and

(2) 40 CFR 265.314(c).

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.

APPENDIX A TO 401 KAR 2:073
READER'S AID

40 CFR 265 in this regulation is incorporated by reference from the following Federal Registers:

45 FR 33232, May 19, 1980, Effective November 19, 1980; Amended by 45 FR 72040, October 30, 1980; 45 FR 76075, November 17, 1980; 45 FR 76630, November 19, 1980; 45 FR 78529, November 25, 1980; 45 FR 86968, 86970, 86973, December 31, 1980; 46 FR 2847, January 12, 1981, Effective July 13, 1981; 46 FR 7678, January 23, 1981, Effective July 22, 1981; 46 FR 8395, January 26, 1981; 46 FR 13494, February 20, 1981; 46 FR 18025, March 23, 1981; 46 FR 27476, May 20, 1981; 46 FR 33507, June 29, 1981; 46 FR 35247, July 7, 1981; 46 FR 56596, November 17, 1981; 47 FR 1255, January 11, 1982; 47 FR 2316, January 15, 1982.

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

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

401 KAR 2:170. Hazardous waste recycling facility permits and standards.

RELATES TO: KRS 224.033, 224.255, 224.855, 224.860, 224.866, 224.880
PURSUANT TO: KRS 13.082, 224.017, 224.033, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the recycling 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 of hazardous waste recycling facilities. This regulation establishes minimum standards for hazardous waste recycling facilities.

Section 1. General. (1) Purpose, scope, and applicability.

(a) The purpose of this regulation is to establish standards which define the acceptable recycling of hazardous waste.

(b) The standards in this regulation apply to the owners and operators of all recycling facilities of hazardous waste except as specifically provided otherwise in this subsection or in 401 KAR 2:075.

(c) The requirements of this regulation apply to a person recycling only those hazardous wastes which meet the criteria of Section 6(1)(a) of 401 KAR 2:075.

(d) The requirements of this regulation do not apply to the owner or operator of a facility which recycles hazardous wastes other than the hazardous waste(s) meeting the criteria of Section 6(1)(a) of 401 KAR 2:075. (Note: The facilities which are excluded by this paragraph are subject to either 401 KAR 2:063 or 401 KAR 2:073.)

(2) Registered facilities. The requirements for those recycling facilities which are registered with the department prior to the effective date of this regulation are set forth in Section 2.

(3) Non-registered facilities. Recycling facilities which were not registered with the department prior to the effective date of this regulation are subject to Section 3.

Section 2. Registered Facilities. (1) Registered recycling facilities, including those facilities registered after November 19, 1980, are hereby granted interim status.

(2) The owner or operator of a registered recycling facility must comply with the following waste management regulations to maintain interim status:

(a) 401 KAR 2:060, Sections 1, 2, 4(b), 6, 8, 9, 11, 12, 14, and 15;

(b) 401 KAR 2:073, Sections 2, 3, 4, 6, and 7(1);

(c) 401 KAR 2:070, Sections 3 and 4; and

(d) Section 4 of this regulation.

(3) The owner or operator of a recycling facility shall operate the facility in accordance with the requirements of KRS Chapter 224 and this regulation.

(4) The owner or operator of a recycling facility shall operate the facility in such a manner as to assure compliance with 401 KAR 2:055, Sections 6 and 7.

(5) The owner or operator of the recycling facility must inspect the site and operation at a sufficient frequency to assure compliance with 401 KAR 2:055, Sections 6 and 7.

(6) Closure of the recycling facility.

(a) A recycling facility must be closed in a manner that will assure compliance with 401 KAR 2:055, Sections 6 and 7.

(b) At closure the owner or operator must remove all hazardous waste and hazardous waste residues from the recycling facility site in a manner approved by the department.

(c) Any necessary corrective work required by the department shall be performed before the recycling facility is accepted as closed and financial responsibility funds released.

(d) The department may place additional requirements on the owner or operator of a recycling facility in addition to those stated where necessary to assure compliance with 401 KAR 2:055, Sections 6 and 7.

Section 3. Non-registered Facilities. (1) Permit required. No person shall engage in the recycling of hazardous waste without first obtaining a recycling facility permit from the department.

(2) In order for a recycling facility to become permitted under this regulation, the conditions and requirements in 401 KAR 2:060, Sections 2, 4(b), 5(2), (3), 6, 7, 8, 9, 11, 12, 13, 14, and 15 shall be met.

(3) Duration of permit. Recycling facility permits shall be effective for the designed life of the facility unless revoked. The department may issue any permit for a duration that is less than the full allowable term under this subsection.

(4) Standards. Permitted recycling facilities must comply with standards of this subsection.

(a) The following requirements of the waste management regulations apply to permitted recycling facilities:

1. 401 KAR 2:063, Sections 2, 3, 4, 5, 6(1), (2), (3), (4), (5), 8, 9, 10, 11, and 15;
2. 401 KAR 2:055, Sections 6 and 7;
3. 401 KAR 2:070, Sections 3 and 4; and
4. Section 4 of this regulation.

(b) The owner or operator of a recycling facility shall operate the facility in accordance with the requirements of KRS Chapter 224 and this regulation, the conditions of the facility permit issued by the department, and the operational plan filed with and approved by the department.

(c) The owner or operator of a recycling facility shall operate the facility in such a manner as to assure compliance with 401 KAR 2:055, Sections 6 and 7.

(d) The owner or operator of the recycling facility must inspect the site and operation at a sufficient frequency to assure compliance with 401 KAR 2:055, Sections 6 and 7.

(e) Closure of the recycling facility.

1. A recycling facility must be closed in a manner that will assure compliance with 401 KAR 2:055, Sections 6 and 7.

2. At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ashes, scrubber sludges, contaminated equipment and still bottoms) from the recycling facility site.

3. Any necessary corrective work required by the department shall be performed before the residual landfill is accepted as closed and financial responsibility funds released.

Section 4. Liability Requirements. The liability requirements of this section apply to both registered recycling facilities and permitted recycling facilities.

(1) An owner or operator of a hazardous waste recycling 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 (see subsection (2) of this section) or liability self-insurance (see subsection (3) of this section) for sudden occurrences in the amount of at least $500,000 per occurrence with an annual aggregate of at least $1,000,000, exclusive of legal defense costs. The financial responsibility must be maintained during the entire operation and until termination.

(2) As evidence of this liability requirement, any owner or operator using the liability insurance mechanism must deliver an originally signed duplicate of the insurance policy to the director by certified mail. An owner or operator of a new facility must send the originally signed duplicate of the insurance policy to the director 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 subsection.

(3) Liability self-insurance.

(a) The level of self-insurance shall not exceed ten percent (10%) of equity. An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either subparagraph 1 or 2 of this paragraph:

1. The owner or operator must have:

a. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum or net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

b. Net working capital and tangible net worth each at least six (6) times the sum of the current requirement (see subsection (1) and (2) of this section); and

c. Tangible net worth of at least $10 million; and

d. Assets in the Commonwealth of Kentucky amounting to either, at least, ninety percent (90%) of his total assets or at least six (6) times the sum of the appropriate liability requirement.

2. The owner or operator must have:

a. A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

b. Tangible net worth at least six (6) times the sum of the appropriate liability requirements; and

c. Tangible net worth of at least $10 million; and

d. Assets located in the Commonwealth of Kentucky amounting to either, at least, ninety percent (90%) of his total assets or at least six (6) times the sum of the appropriate liability requirement (see subsection (1) of this section).

(b) To demonstrate that he meets this test; the owner or operator must submit the following items to the director:

1. A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 16(6) of 401 KAR 2:063;

2. A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

3. A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

a. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

b. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(c) An owner or operator of a new facility must submit the items specified in paragraph (b) of this subsection to the director at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(d) After the initial submission of items specified in paragraph (b) of this subsection, the owner or operator must send updated information to the director within ninety (90) days after the closure of each succeeding fiscal year. This information must consist of all three (3) items specified in paragraph (b) of this subsection.

(e) If the owner or operator no longer meets the requirements of paragraph (a) of this subsection, he must send notice to the director of intent to establish liability insurance as specified in subsection (2) of this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide liability insurance within 120 days after the end of such fiscal year.

(f) The director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (a) of this subsection, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (b) of this subsection. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (a) of this subsection, the owner or operator must provide liability insurance as specified in subsection (2) of this section within thirty (30) days after notification of such a finding.

(g) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (b)2 of this subsection). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator must provide liability insurance as specified in subsection (2) of this section within thirty (30) days after notification of the disallowance.

(h) The owner or operator is no longer required to submit the items specified in paragraph (b) of this section when:

1. An owner or operator substitutes liability insurance as specified in this subsection;

2. The director releases the owner or operator from the requirements of this section by terminating the financial requirements.

(4) Use of multiple liability mechanisms. An owner or operator may satisfy the requirements of this section by establishing both liability mechanisms for one (1) facility. The mechanisms must be as specified in subsections (2) and (3), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism

which must provide liability assurance for an amount at least equal to the amounts specified in subsection (1).

(5) If an owner or operator can demonstrate to the satisfaction of the director that the levels of financial responsibility required by subsection (1) of this section are not consistent with the degree and duration of tasks associated with the recycling at each facility or group of facilities, the owner or operator may obtain a variance from the director. The request for a variance must be submitted to the director as part of the permit application under Section 16 of 401 KAR 2:060 for a facility that does not have a permit, or pursuant to the procedures for permit modification under Section 6(1) of 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 director's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of facilities. The director may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the director 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 Sections 6(1) and 6(2)(a)5 of 401 KAR 2:060.

(6) If the director determines that the levels of financial responsibility required by subsection (1) of this section are not consistent with the degree and duration of risks associated with recycling at any facility or group of facilities, the director may adjust the level of financial responsibility required under subsection (1) of this section as may be necessary to protect human health and the environment, such adjusted level to be based on the director's assessment of the degree and duration of risks associated with the ownership or operation of each facility or group of such facilities. The director may also require an owner or operator of a recycling, treatment or storage facility or group of facilities to comply with Section 14(2) of 401 KAR 2:063 if the director 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 Sections 6(1) and 6(2)(a)5 of 401 KAR 2:060.

JACKIE SWIGART, Secretary

ADOPTED: March 15, 1982

RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.

SUBMIT COMMENTS TO: J. Alex Barber, Director, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 51:017. Prevention of significant deterioration of air quality.

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 prevention of significant deterioration of ambient air quality.

Section 1. Applicability. The provisions of this regulation are applicable to any major stationary source or any major modification which:

(1) Is constructed after the effective date of this regulation;

(2) Emits any pollutant regulated by the Clean Air Act; and

(3) Is constructed in areas designated as attainment or unclassifiable for any pollutant as defined in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Major stationary source" means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (a) of this subsection, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Clean Air Act; and

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the changes would constitute a major stationary source by themselves.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions in-

crease of any pollutant subject to regulation under the Clean Air Act.

(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change or change in the method of operation shall not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any permit condition which was established after January 6, 1975; or

b. The source is approved to use under any permit issued under this regulation, previously adopted regulations 401 KAR 51:015 and 401 KAR 51:016E, or under 40 CFR 52.21;

5. An increase in the hours of operation or in the production rate, unless such change is prohibited after January 6, 1975 pursuant to 401 KAR 51:015, after the effective date of this regulation pursuant to this regulation; or under 401 KAR 50:035 and 401 KAR 51:016E; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between January 6, 1975 and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this regulation, 401 KAR 51:015, 401 KAR 51:016E, or 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline data is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(f) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceed the old level.

(g) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable at and after the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(h) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 to 63.

(11) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or

major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Title 401, Chapters 57 and 59. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(13) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (c) of this subsection; and

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(c) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

1. Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

2. Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application is submitted by a major stationary source or major modification subject to the requirements of federal or state prevention of significant deterioration regulations. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 401 KAR 51:010 for the pollutant on the date of its complete application; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(15) "Baseline area" means any area (and every part thereof) designated as attainment or unclassifiable under 401 KAR 51:010 in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ (annual average) of the pollutant for which the baseline date is established. Area redesignations under Section 107(d)(1)(D)or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a baseline date; or

(b) Is subject to this regulation and would be constructed in the Commonwealth of Kentucky.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards set forth in Title 401, Chapters 57 and 59;

(b) The applicable regulatory emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(17) "Enforceable" means all limitations and conditions, including those requirements developed pursuant to Title 401, Chapters 50 to 63.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.

(19) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21) (a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application

for a permit, that the application contains all of the information necessary for processing the application.

(23) "Significant" means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act that is not listed in Appendix A to this regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Appendix A to this regulation, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of a Class I area, and have an impact on such area equal to or greater than one (1) $\mu g/m^3$ (twenty-four (24) hour average).

(24) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

Section 3. Ambient Air Increments. In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the levels specified in Appendix B of this regulation. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 4. Ambient Air Ceilings. No concentration of a pollutant specified in Section 1 shall exceed:

(1) The concentration permitted under the national secondary ambient air quality standard; or

(2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 5. Area Classifications. (1) Mammoth Cave National Park shall be a Class I area.

(2) Any other area, unless otherwise specified in the legislation creating such an area, is designated Class II.

Section 6. Exclusions from Increment Consumption. (1) The department may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 50:035, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have been converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from such sources before the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal statute over the emissions from such sources before the effective date of such plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator of the U.S. EPA.

(2) No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the plan to which subsection (1)(b) of this section refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

(3) No exclusion under this section shall occur after May 7, 1981, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been submitted to the U.S. EPA.

(4) The plan revision referred to in subsection (3) of this section shall specify the following provisions:

(a) The time over which the temporary emission increase of sulfur dioxide or particulate matter would occur. Such time shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) That the time period for excluding certain contributions in accordance with paragraph (a) of this subsection is not renewable;

(c) That no emissions increase will occur from a stationary source which would:

1. Impact a Class I area or an area where an applicable increment is known to be violated; or

2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations will be in effect at the end of the time period specified in accordance with paragraph (a) of this subsection which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

Section 7. Stack Heights. (1) The degree of emission limitation required for control of any air pollutant under this regulation shall not be affected in any manner by:

(a) So much of the stack height of any source as exceeds good engineering practice; or

(b) Any other dispersion technique.

(2) Subsection (1) of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 8. Review of Major Stationary Sources and Major Modifications; Source Applicability and Exemptions. (1) No major stationary source or major modifications to which the requirements of Sections 9 to 17 apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.

(2) The requirements of Sections 9 to 17 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulations under the Clean Air Act that it would emit, except as otherwise provided in Section 1.

(3) The requirements of Sections 9 to 17 shall apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under 401 KAR 51:010. Major volatile organic compound sources locating in an area unclassified for ozone may choose to accept the non-attainment area review requirement immediately pursuant to 401 KAR 51:052 and conduct post-approval monitoring for ozone.

(4) The requirements of Sections 9 to 17 shall not apply

to a particulate major stationary source or major modification if:

(a) The owner or operator:

1. Obtained a federal, state or local preconstruction approval effective before August 7, 1980;

2. Commenced construction before August 7, 1980; and

3. Did not discontinue construction for a period of eighteen (18) months or more; or

(b) The source of modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements;

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59; or

(d) The source is a portable stationary source which has previously received a permit under this regulation; and:

1. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary;

2. The emissions from the source would not exceed its allowable emissions;

3. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

4. Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(5) The requirements of Sections 9 to 17 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, relative to that pollutant, the source or modification is located in an area designated as nonattainment under 401 KAR 51:010.

(6) The requirements of Sections 10, 12 and 14 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modifications:

(a) Would impact no Class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(7) The requirements of Sections 10, 12 and 14 as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulations under the Clean Air Act from the modification after the application of best available control technology would be less than fifty (50) tons per year.

(8) The department may exempt a stationary source or modification from the requirements of Section 12 with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the amounts given in Appendix C to this regulation; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Appendix C to this regulation, or the pollutant is not listed in Appendix C to this regulation.

Section 9. Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under Title 401, Chapters 50 to 63 and each applicable emissions standard and standard of performance under Title 401, Chapters 57 and 59.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Clean Air Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operations in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Section 10. Source Impact Analysis. The owner or operator of the proposed source or modification shall

demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

Section 11. Air Quality Models. (1) All estimates of ambient concentrations required under this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015.

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under Section 17. Written approval of the U.S. EPA must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models," filed by reference in 401 KAR 50:015, should be used to determine the comparability of air quality models.

Section 12. Air Quality Analysis. (1) Preapplication analysis.

(a) Any application for a permit under this regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

1. For the source, each pollutant that it would have the potential to emit in a significant amount as defined in Section 2(23);

2. For the modification, each pollutant for which it would result in a significant net emissions increase.

(b) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application, except that, if the applicant demonstrates through historical data or dispersion models that the monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months) will be obtained during a time period when maximum air quality levels can be expected, the data that is required shall have been gathered over at least that shorter period.

(e) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 401 KAR 51:052 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraphs (a) to (d) of this subsection.

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58, filed by reference in 401 KAR 50:015, during the operation of monitoring stations for purposes of satisfying subsections (1) and (2) of this section.

Section 13. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this regulation.

(1) With respect to a major source or major modification to which Sections 9, 11, 13 and 15 apply, such information shall include:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) A detailed schedule for construction of the source or modification;

(c) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the department, the owner or operator shall also provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

Section 14. Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

Section 15. Sources Impacting Federal Class I Areas; Additional Requirements. (1) Notice to federal land managers. The department shall provide notice of any permit application for a proposed major stationary source or major modification the emissions from which would affect a Class I area to the federal land manager, and the federal official charged with direct responsibility for management, of any lands within any such area. The department shall provide such notice promptly after receiving the application. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under Section 17, and shall make available to them any materials used in making that determination, promptly after the department makes it.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the department, whether a proposed source or modification will have an adverse impact on such values.

(3) Denial; impact on air quality related values. The federal land manager of any such lands may demonstrate to the department that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area as defined in Appendix B to this regulation. If the department concurs with such demonstration then the department shall not issue the permit.

(4) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the department may, provided that the applicable requirements of this regulation are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the maximum allowable increases over baseline concentration for such pollutants specified in Appendix D to this regulation.

(5) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under subsection (4) of this section may demonstrate to the Governor of the Commonwealth of Kentucky that the source cannot be constructed by reason of any maximum allowable increase in sulfur dioxide for a period of twenty-four (24) hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department shall issue a permit to such source or modification pursuant to the requirements of subsection (7) of this section, provided that the applicable requirements of this regulation are otherwise met.

(6) Variance by the governor with the president's concurrence. In any case where the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America. If the variance is approved, the department shall issue a permit pursuant to the requirements of subsection (7) of this section, provided that the applicable requirements of this regulation are otherwise met.

(7) Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subsections (5) or (6) of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the maximum allowable increases over the baseline concentration as specified in Appendix E of this regulation and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period.

Section 16. Public Participation. The department shall follow the applicable procedures of 401 KAR 50:035 in processing applications under this regulation.

Section 17. Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after the effective date of this regulation without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Sections 9 to 18 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Section 18. Environmental Impact Statements. Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the department conducted pursuant to this regulation shall be coordinated with the broad environmental reviews under that Act and under Section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

Section 19. Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the department in

writing to approve a system of innovative control technology.

(2) The department shall, with the consent of the governor(s) of other affected state(s), determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 9(2) by a date specified by the department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance.

(c) The source or modification would meet the requirements of Sections 9 and 10 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(d) The source or modification would not before the date specified by the department:

1. Cause or contribute to a violation of an applicable national ambient air quality standard;
2. Impact any Class I area; or
3. Impact any area where an applicable increment is known to be violated; and

(e) All other applicable requirements including those for public participation have been met.

(3) The department shall withdraw any approval to employ a system of innovative control technology made under this regulation if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

APPENDIX A TO 401 KAR 51:017
Significant Net Emissions Rate

POLLUTANT	EMISSIONS RATE
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl chloride	1 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

APPENDIX B TO 401 KAR 51:017
Ambient Air Increments

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
Annual geometric mean	5
24-hour maximum	10
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Class II	
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

APPENDIX C TO 401 KAR 51:017
Significant Air Quality Impact

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 $\mu g/m^3$	8-hour average
Nitrogen dioxide	14 $\mu g/m^3$	annual average
Total suspended particulate	10 $\mu g/m^3$	24-hour average
Sulfur dioxide	13$\mu g/m^3$	24-hour average
Ozone	No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this regulation would be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1$\mu g/m^3$	3-month average
Mercury	0.25$\mu g/m^3$	24-hour average
Beryllium	0.001$\mu g/m^3$	24-hour average
Fluorides	0.25$\mu g/m^3$	24-hour average
Vinyl chloride	15$\mu g/m^3$	24-hour average
Hydrogen sulfide	0.2$\mu g/m^3$	1-hour average

APPENDIX D TO 401 KAR 51:017
Ambient Air Increments for Class I Variances

	Maximum Allowable Increase (micrograms per cubic meter)
Particulate Matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

APPENDIX E TO 401 KAR 51:017
Ambient Air Increments for Presidential or Gubernatorial SO_2 Variances

Maximum Allowable Increase
(Micrograms per cubic meter)

	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1982
RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 51:052. Review of new sources in or impacting upon non-attainment areas.

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 establishes requirements for the construction, modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained.

Section 1. Applicability. The requirements of this regulation shall apply to new major sources or major modifications commenced after the classification date defined below and that will locate in or impact upon any area designated as non-attainment in 401 KAR 51:010.

Section 2. Definitions. As used in this regulation terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Major stationary source" means:
(a) Any stationary source which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act; or
(b) Any physical change that would occur at a stationary source not qualifying under paragraph (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.
(c) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.
(2) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.
(a) Any net emissions increase that is significant for volatile organic compounds shall be significant for ozone.
(b) A physical change or change in the method of operation shall not include:
1. Routine maintenance, repair and replacement;
2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act;
3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
4. Use of an alternative fuel or raw material by a stationary source which:
a. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any permit condition which was established after December 21, 1976; or
b. The source is approved to use under any permit issued under this regulation, previously adopted regulations 401 KAR 51:015 and 401 KAR 51:016E, or under 40 CFR 52.21;
5. An increase in the hours of operation or in the production rate, unless such change is prohibited under a permit condition which was established after December 21, 1976 pursuant to duly adopted regulations; or

6. Any change in ownership at a stationary source.

(3) "Net emission increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between December 21, 1976 and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is enforceable at and after the time that actual construction on the particular change begins;

3. The department has not relied on it in issuing any permit; and

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two (2) digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) "Emission unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(8) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of Title 401, Chapters 50 and 63.

(11) "Allowable emissions" means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to enforceable permit conditions which limit operating rate, or hours or operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 401, Chapters 57 and 59;

(b) The applicable regulatory emission limitations, including those with a future compliance date; or

(c) The emission rate specified as an enforceable permit condition, including those with a future compliance date.

(12) "Enforceable" means having the legal authority to compel a source to comply with limitations and conditions including those developed pursuant to Title 401, Chapters 50 to 63.

(13) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this regulation, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a marine vessel.

(14) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (a) to (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The department may presume that source specific allowable emissions for the emission unit are equivalent to

the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(15) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(16) "Significant" means in reference to a net emissions increase or the potential of a source to emit any pollutant, a rate of emissions that would equal or exceed any rates given in Appendix A of this regulation.

(17) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in any implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard under Title 401, Chapters 57 and 59.

(18) "VOC" means volatile organic compounds.

(19) "Classification date" means the effective date of this regulation.

(20) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the department and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(21) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(22) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than fifty (50) percent of the heat input to be considered a resource recovery facility under this regulation.

Section 3. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance. The department shall examine each proposed major new source and proposed major modification to determine if such source or modification will meet all applicable emission requirements in Title 401, Chapters 50 to 63. If the department determines that the proposed source or modification cannot meet the applicable emission requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact. In addition, the department shall determine whether the major stationary source or major modification would be constructed in an area designated in 401 KAR 51:010 as non-attainment for a pollutant for which the stationary source or modification is major. If a designated non-attainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source would not cause a new violation.

(3) Fugitive emission sources. Section 5 shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Title 401, Chapters 57 and 59.

Section 4. Sources Locating in Designated Attainment or Unclassifiable Areas. (1) This section shall apply only to new major stationary sources or new major modifications which will locate in designated attainment or unclassifiable areas specified in 401 KAR 51:010 if the source or modification would cause impacts which exceed the significance levels specified in Appendix B of this regulation at any locality that does not meet the national ambient air quality standards.

(2) Sources to which this section applies must meet the requirements in Section 5(1), (2) and (4). However, such sources may be exempt from Section 5(3).

(3) For sources of sulfur dioxide, particulate matter, and carbon monoxide, the determination of whether a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simula-

tion model pursuant to 401 KAR 50:040.

(4) For sources of nitrogen oxides, the initial determination of whether a new major source or major modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOC, locating outside a designated ozone non-attainment area as defined in 401 KAR 51:010, will be presumed to have no significant impact on the designated non-attainment area. If ambient monitoring indicates that the area of source location is in fact non-attainment, then the source may be permitted under the applicable provisions of this regulation until the area is designated non-attainment in 401 KAR 51:010. Once the area of source location has been redesignated to non-attainment status in 401 KAR 51:010, the provisions of Section 5(3) and (4) as they relate to emissions of VOC shall not apply.

(6) The determination as to whether a new major source or major modification would cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas the operation of which would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation may be approved only if both the following conditions are met:

(a) The new source is required to meet an emission limitation, or a design, operational or equipment standard, or existing sources are controlled, such that the new source will not cause a violation of any national ambient air quality standard.

(b) The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Section 8.

Section 5. Conditions for Approval. The provisions of this section shall apply to new major stationary sources or major modifications which would be constructed in an area designated in 401 KAR 51:010 as non-attainment for which the stationary source or modification is major. Approval may be granted only if the following conditions are met:

(1) The new major source or major modification shall be required to meet an emission limitation which specifies the lowest achievable emission rate for such source.

(2) The applicant shall certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth of Kentucky are in compliance with all applicable emission limitations and standards specified in Title 401, Chapters 50 to 63, or are in compliance with an expeditious enforceable compliance schedule or a court decree establishing a compliance schedule.

(3) Emissions from existing sources in the affected area of the proposed new major source or modifications (whether or not under the same ownership) shall be reduced (offset) such that there will be reasonable progress toward attainment of the applicable national ambient air quality standard. Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(4) The emission reductions shall be such as to provide a positive net air quality benefit in the affected area. Atmospheric simulation modeling is not necessary for volatile organic compounds and oxides of nitrogen. Except as provided in Section 4(5), compliance with subsection (3) of this section and Section 7(7) will be adequate to meet this condition.

(5) For a major stationary source or major modification locating in an area designated non-attainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this regulation shall specify that construction shall not commence until the U.S. EPA has approved the department's plan relating to the requirements of Part D, Title I, of the Clean Air Act.

Section 6. Exemptions from Certain Conditions. The following sources are exempt from Secton 5(3) and (4):

(1) Resource recovery projects burning municipal solid waste;

(2) Sources which must switch fuels due to lack of adequate fuel supplies or a source which is required to be modified as a result of federal regulations or other federal statutes and from which no exemption from such regulation or statute is available to the source. Such exemption shall be granted only if all the requirements of subsection (3) of this section are met;

(3) The exemptions contained in this section for sources identified under subsections (1) and (2) shall be granted only if:

(a) The applicant demonstrates to the department's satisfaction that it has made its best efforts to obtain sufficient emission offsets to comply with Section 5(3) and (4) and that such efforts were unsuccessful;

(b) The applicant has secured all available emission offsets; and

(c) The applicant will continue to seek the necessary emissions offsets and apply them when they become available.

(4) Such an exemption may result in the need to revise the applicable requirements of the department to provide additional control of existing sources so as to achieve reasonable progress towards attainment of applicable ambient air quality standards.

(5) Temporary emission sources, such as pilot plants, portable facilities which will be relocated after a short period of time not to exceed 120 days, and emissions resulting from the construction phase of a new source, shall be exempt from Section 5(3) and (4).

(6) Secondary emissions associated with major sources or major modifications locating in or impacting upon a non-attainment area may be exempt from Section 5(1) and (2), providing that the source of the secondary emissions is not itself a major stationary source or major modification. If the source of the secondary emissions is itself a major source or major modification, then that source is subject to the provisions of this regulation.

Section 7. Baseline for Determining Credit for Emission Offsets. The baseline for determining credit for emission reductions or offsets will be the emission limitations in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound per hour basis when all facilities involved in the

emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons per year basis providing that baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. Where the department requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(1) No applicable emission limitation. Where the requirements of the department do not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be actual emissions determined under actual operating conditions for the previous two (2) year period. Where the emission limitations required by the department allow greater emissions than the uncontrolled emission rate of the source, emission offset credit will be allowed only for control below the uncontrolled emission rate.

(2) Combustion of fuels. The emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the emission limitation requirements of the department for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction (either actual or allowable) shall not be used for emission offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is not acceptable unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date.

(3) Operating hours and source shutdown. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified in writing of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(4) Credit for hydrocarbon substitution. No emission offset credit may be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane and trichlorofluoroethane.

(5) Banking of emission offset credit. New sources obtaining permits by applying offsets after January 16, 1979 may bank offsets that exceed the requirements of reasonable progress toward attainment for future use. An owner or operator of an existing source that reduces its own emissions may bank any resulting reduction beyond those required by regulation for use under this regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used under the preconstruction review program required in the Clean Air Act as long as these banked emissions are identified and accounted for in the Commonwealth's control strategy. The banked emissions may be used pursuant to procedures specified in 401 KAR 51:055.

(6) Offset credit for meeting NSPS or NESHAPS. Where a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 59 and 57 respectively, and a different emission limitation required by the department, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(7) Location of offsetting emissions. In the case of emission offsets involving nitrogen oxides, offsets may be obtained anywhere within the state. For sulfur dioxide, particulate matter and carbon monoxide, the department shall require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. In the case of emission offsets involving VOC, offsetting emissions may be obtained only within the county in which the source is to be located.

Section 8. Administrative Procedures. The necessary emission offsets may be proposed either by the owner of the proposed source or the department. The emission reduction committed to must be enforceable by the department, and must be accomplished by the start-up date of the new source. If emission reductions are to be obtained in a state that neighbors the Commonwealth of Kentucky for a new source to be located in the Commonwealth, the emission reductions committed to must be enforceable by the neighboring state and/or local agencies and the U.S. EPA.

(1) Source initiated emission offsets. The owner and/or operator of a source may propose emission offsets which involve reductions from sources controlled by the owner (internal emission offsets) and/or reductions from other sources (external emission offsets). As long as the emission offsets obtained represent reasonable progress toward attainment, they shall be acceptable. An internal emission offset shall be made enforceable by inclusion as a condition of the new source permit. An external emission offset will not be accepted unless the affected source(s) is subject to a new emission limitation requirement of the department to ensure that its emissions will be reduced by a specified amount in a specified time. The form of the new emission limitation may be a department regulation, operating permit condition, or consent or enforcement order.

(2) Department initiated emission offsets. The department may commit to reducing emissions from existing sources (including mobile sources) to provide a net air quality benefit in the impact area of the proposed new source so as to accommodate the proposed new source. The commitment must be reflected in the emission limitation requirements of the department for the new and existing sources as required by this section.

Section 9. Source Obligation. (1) Any owner or operator who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after the effective date of this regula-

tion without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, or if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen (18) month period upon satisfactory showing that an extension is justified.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of Title 401, Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

APPENDIX A TO 401 KAR 51:052
Significant Pollutant and Emissions Rate

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy

APPENDIX B TO 401 KAR 51:052
Significant Levels of Air Quality Impact

Pollutant	Annual Average	Averaging Time 24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	—	25 $\mu g/m^3$	—
Total Suspended Particulates	1.0 $\mu g/m^3$	—	—	—	—
Nitrogen Dioxide	1.0 $\mu g/m^3$	—	—	—	—
Carbon Monoxide	—	—	0.5mg/m^3	—	2mg/m^3

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1982
RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearing scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 51:055. Controlled trading.

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 establishes procedures for the creation, holding, transfer and use of surplus emission reductions.

Section 1. Applicability. The provisions of this regulation shall apply to sources which emit the following pollutants: Particulate matter, sulfur dioxide (SO_2), volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NO_x), lead (Pb), fluoride (F), total reduced sulfur (TRS), and sulfuric acid mist.

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) "Emission reduction credit (ERC)" means a surplus emission reduction registered by the department in accordance with the requirements of this regulation which represents a decrease in the quantity of a pollutant discharged from a source below the level specified in Title 401, Chapters 59 and 61, 401 KAR 63:020 or any emission rate specified as a permit condition by the department.

(2) "Banking" means a system for recording ERCs so that they may be used or transferred for use at a future date.

(3) "Bubble" means an alternative emission control strategy where several sources or affected facilities are regarded as being placed under a hypothetical dome to produce a single emission point. Sources or affected facilities under a bubble may reallocate emission decreases and increases as long as the requirements of this regulation are met.

(4) "Netting" means the use of an ERC to avoid the requirements of Title 401, Chapter 51 by reducing emissions at a source to compensate for any increased emissions at the same source.

(5) "Offset" means the use of an ERC obtained from an existing source or affected facility to counterbalance the increase in emissions from a new or modified source or affected facility in order to ensure that reasonable further progress is maintained.

(6) "State Implementation Plan (SIP)" means the most recently prepared plan or revision thereof required by Section 110 of the Clean Air Act which has been approved by U.S. EPA.

(7) "Actual emissions" means the actual rate of emissions of a pollutant from an affected facility as determined in accordance with the following:

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the affected facility actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated us-

ing the actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

(b) For any affected facility which has not yet begun normal operation on the particular date on which an application for credit is submitted, actual emissions shall equal the potential to emit of the unit on that date.

(8) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the department and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

Section 3. Application Procedures. (1) Any owner or operator of a source at which a reduction in emissions has occurred or will occur may apply for creation of an ERC in accordance with the requirements of this regulation.

(2) Any owner or operator shall apply for creation of an ERC on appropriate forms supplied by the department.

(3) Applications requesting creation of an ERC based on emission reductions that have already occurred are subject to the following:

(a) No application may be submitted for emission reductions which occurred prior to January 6, 1975.

(b) For emission reductions which occurred between January 6, 1975 and the effective date of this regulation, applications must be submitted within six (6) months after the effective date of this regulation.

(c) For emission reductions which occur after the effective date of this regulation, applications must be submitted within one (1) year from the effective date of these reductions.

(4) Applications requesting an ERC for emission reductions that have not occurred at the time of application will be reviewed by the department and conditionally approved or denied. An ERC will be registered only after the reduction has taken place.

(5) Before an ERC may be created, the source owner or operator must obtain a revised operating permit which includes specific quantifiable and enforceable emission limits reflecting the reduced emissions.

Section 4. Creation of Emission Reduction Credits. No ERC may be created unless the following criteria are met:

(1) The emission level after the reduction must be enforceable by means of a permit condition or consent order.

(2) The emission reduction must represent a real and permanent decrease in emissions below the applicable baseline level. The baseline used for reviewing emissions reductions shall be actual emissions determined as follows:

(a) If emissions from the source are separately identified in the emission inventory used in the State's SIP demonstration of attainment of the national ambient air quality standards, the baseline will be the emissions attributed to the source in the latest SIP revision.

(b) If emissions from the source are not separately identified in the State's SIP demonstration of attainment of the national ambient air quality standards, the baseline will be the average emissions calculated from the operating history of the source or affected facility for the past two (2) years before application is filed. If historical data for the past two (2) years are deemed inadequate by the department, action on an application may be deferred for up to one (1) year while operating data are compiled by the applicant. The source shall demonstrate to the department's satisfaction that the baseline emissions are best estimates.

(3) An applicant proposing an emission decrease from process curtailments or source shutdowns must demonstrate that the proposed decrease will not be negated by emission increases occurring at other sources in the immediate vicinity in response to the applicant's curtailment or shutdown.

Section 5. Confirmation of Emission Reduction Credits. (1) To confirm emission reductions, the department may require source tests, continuous monitors or any other means of calculation approved by the department.

(2) In cases where the department determines that the emission reduction estimates made by the applicant are incorrect, the department reserves the right to grant ERCs for a smaller quantity of emission reductions than requested.

(3) After all of the requirements of this regulation have been met and the emission reduction has actually occurred, the department will register an ERC in the records kept for that purpose.

Section 6. Special Requirements. For those nonattainment areas in the Commonwealth of Kentucky without fully or conditionally approved SIPs, the following requirements shall be met:

(1) All affected facilities to be used in creating ERCs, for which reasonably available control technology (RACT) has not already been defined, and which are part of a source with potential emissions exceeding 100 tons per year shall be required to use a level of control which shall represent RACT. The RACT level of control shall be used as a baseline for computing the ERC. If the transaction covers two (2) or more sources, only those sources whose combined potential emissions exceed 100 tons per year shall be required to use RACT emission levels as the basis for calculating ERCs.

(2) Owners or operators of sources whose potential emissions are equal to or less than 100 tons per year shall:

(a) Use RACT limits in accordance with subsection (1) of this section, which shall be used as the baseline for calculating the ERC; or

(b) Use the baseline established under Section 4(2). If the source owner or operator uses the baseline under Section 4(2), he shall be required by the department to produce emission reductions to meet any future RACT requirements imposed on the source.

(3) No new emission limits shall be imposed on sources that use RACT under subsection (2)(a) of this section from the date the ERC is registered for a period of time consistent with the statutory deadlines for attainment of ambient air quality standards contained in the Clean Air Act, unless the department determines that more stringent emission limits are necessary in order to meet such statutory requirements.

Section 7. Planned Future Control Requirements. If a proposed ERC involves emission reductions resulting from air quality control tactics or technologies which have been proposed by U.S. EPA as future control requirements for sources in identified categories, the department will grant credit only for reductions which exceed those which would result from application of those tactics and technologies.

Section 8. Banking of Emission Reduction Credits. (1) An ERC may be used at the time it is registered or may be held for future transfer or use, except as provided in subsection (2) of this section.

(2) If an ERC is not used within five (5) years from its registration, control of the ERC will revert to the department.

(3) During the time that an ERC is held in the emissions banking system, its quantity (expressed in tons per year) will be subject to the following:

(a) Any ERC will be discounted by the department when a control requirement is adopted after registration of the ERC which requires additional control of the same type of emission from the same type of source as represented by the ERC. The percent reduction in amount of an ERC will be equal to the difference between the percent reduction required by the new control requirements and the percent reduction required by the previous control requirements. Similarity between types of sources will be determined using the Standard Industrial Classifications Manual.

(b) If new information becomes available to the department which results in more accurate emissions estimates, the department will adjust the value of affected ERCs accordingly.

(c) If an owner or operator of a source who created an ERC fails to comply with the requirements of the revised permit resulting from creating the ERC, the department shall adjust the quantity of ERCs registered in the banking system for that owner or operator.

Section 9. Transfer of Emissions Reduction Credits. An ERC may be transferred in whole or in part by any means of conveyance permitted by the laws of the Commonwealth of Kentucky. The role of the department in trading of an ERC will be limited to providing information on the documentation and registration of ERCs. No transfer shall be effective until the department is notified thereof in writing, confirms receipt of the notice, and notes the transfer of ownership in the department registry for that purpose.

Section 10. Use of Emission Reduction Credits. (1) Registered ERCs may be used in accordance with this regulation to establish alternative emission limits (bubbles), to offset increased emissions from new or modified sources or to use netting to avoid new source review.

(2) Application for use of ERC's shall be made on forms provided by the department.

(3) Before an ERC may be used, the source owner or operator must obtain a revised operating permit which includes specific quantifiable emission limits.

(4) Use of an ERC shall be allowed only in transactions where emissions being exchanged are in the same criteria pollutant category. Hazardous and non-hazardous emissions may only be traded against each other if the hazardous emission is decreased. Coke oven emissions may only be traded against other particulate emissions if the coke oven emissions decrease.

(5) No use of an ERC may allow a new or modified source to exceed the standards of performance in 40 CFR 60, filed by reference in 401 KAR 50:015, Title 401, Chapter 57 or 59, or those standards defined by lowest achievable emission rate (LAER) or best available control technology (BACT) for those sources to which such standards apply.

Section 11. Air Quality Modeling Requirements. (1) No air quality modeling or SIP revision under Section 16 shall be required for use of ERCs representing stack emissions of particulate matter and sulfur dioxide if all of the following conditions are met:

(a) The relevant affected facilities are in the same immediate vicinity; i.e., the distance between any of the affected facilities shall be no greater than 250 meters; and

(b) The relevant emission points are of similar effective stack height; i.e., the effective stack height at which the increase occurs must be as high, or higher, than the effective stack height at which the decrease occurs.

(2) Only limited modeling will be necessary for use of ERCs for trades where total emissions do not increase, and will not cause a significantly different air quality impact as compared to the original affected facilities. A "significantly different impact" is one (1) that equals or exceeds the levels specified in Appendix A to this regulation for affected facilities in areas specified as non-attainment in 401 KAR 51:010 or Appendix B of this regulation for affected facilities in attainment and unclassified areas so designated in 401 KAR 51:010. The limited modeling need only include the affected facilities involved in creating and using the ERCs.

(3) For use of all other ERCs representing emissions which do not meet the conditions of subsections (1) and (2) of this section, diffusion modeling considering all sources in the area of impact will be required as follows:

(a) Modeling must show that use of the ERC will neither create a new violation of the ambient air quality standards nor interfere with reasonable further progress, as determined by the department, toward attaining the national ambient air quality standards as planned in the SIP; and

(b) Modeling must show that use of the ERC will not create a violation of a prevention of significant deterioration increment as defined in 401 KAR 51:017 in attainment or unclassified area.

(4) No air quality modeling or SIP revision under Section 16 shall be required for use of ERCs representing stack emissions of volatile organic compounds (VOC) or nitrogen oxides (NO_x).

(5) No SIP revision under Section 16 shall be required for use of ERCs representing stack emissions of particulate matter and sulfur dioxide if an appropriate air quality model as specified in "Guidelines on Air Quality Models," filed by reference in 401 KAR 50:015, or a modeling procedure approved by U.S. EPA for the purpose of this subsection, is used.

Section 12. Use of Emission Reduction Credits in Offsets and Netting. All ERCs created according to this regulation may be used by source owners and operators to meet the requirements of 401 KAR 51:017 and 401 KAR 51:052. ERCs representing stack emissions of volatile organic compounds (VOC) shall be available for use only by sources located in the county in which the ERCs were created.

Section 13. Alternative Emission Standards (Bubbles). (1) The owner of a source, or the owners of two (2) or more different sources, may propose a bubble which establishes alternative standards for the sources included in the bubble.

(2) Total allowable emissions from a bubble will be determined as follows:

(a) The total emissions from a bubble excluded from SIP revision requirements under Section 16 may not exceed the arithmetic sum of the baseline level of emissions determined for each source under Section 4(2) or Section 6.

(b) Total emissions from a bubble approved as a SIP revision may exceed the sum of the baseline level of emis-

sions determined for each source under Section 4(2) or Section 6.

(3) The total allowable emissions determined under subsection (2) of this section may be reallocated among affected facilities included in the bubble in accordance with the requirements for creating, transferring, and using ERCs contained in this regulation.

(4) Source specific alternative emission standards shall be incorporated by the department into operating permits for the affected sources.

(5) Compliance status of sources:

(a) Only sources which are in compliance with all applicable air quality regulations of the department may apply for alternative emission limits under this regulation. To be in compliance, a source owner or operator must:

1. Demonstrate that all affected facilities involved in the proposed trade are in compliance with applicable regulations at the time an application is submitted;
2. Demonstrate that the source is meeting the requirements of a legally enforceable compliance schedule for all affected facilities involved in the proposed trade; or
3. For a source out of compliance, be subject to a legally enforceable compliance schedule which ensures compliance with alternative standards for all affected facilities involved in the proposed trade and otherwise meets the requirements of the Clean Air Act.

(b) Submission of an application for a bubble will not affect any existing obligation of a source to comply with applicable laws, regulations and orders unless the department issues an order specifically extending a compliance schedule. No such order may extend compliance schedules beyond mandatory attainment dates in the Clean Air Act, or interfere with reasonable further progress as required by the department.

(c) No alternative emission standard will be established for a source which is presently subject to federal enforcement action unless the U.S. EPA approves the alternative standard and the schedule for meeting it. As used in this paragraph, "federal enforcement action" means any of the following actions under the applicable sections of the Clean Air Act:

1. Order issued under section 113(a).
2. Civil action filed under section 113(b).
3. Criminal actions filed under section 113(c).
4. Notice imposing noncompliance penalties issued under section 120.
5. Citizen suit filed under section 304.

(d) Upon receiving notice from the department that a new or more restrictive emission standard has become applicable to any affected facility included in a bubble under this section, the owner or owners of those affected facilities shall submit revised permit applications. The revised applications must demonstrate either reductions in total bubble emissions, or use of ERCs which are equal to or greater than the reduction required to comply with the new emission standards. If the owners or operators of an affected facility do not submit permit applications that demonstrate the necessary reductions, the department shall issue an order requiring compliance with the new or more restrictive emission standards. The requirements of this paragraph shall not apply to sources under Section 6(3).

Section 14. Public Participation. For purposes of public notification and opportunity for public comment the department shall follow the requirements of 401 KAR 50:035 for all applications for the use of ERCs.

Section 15. Transmittals to U.S. EPA. The department will transmit copies of the following documents to the U.S. EPA promptly after the documents are prepared:

(1) Copies of public notices and supporting documents relating to proposed department action on applications for use of an ERC.

(2) Copies of permits reflecting department approval of use of an ERC, including data on emission limits before and after the approval.

Section 16. Amendments to the SIP; Requirements for Exemptions. (1) The department will approve proposed use of the ERC without action to formally amend the SIP if all of the following conditions are met:

(a) The proposal complies with all of the requirements of this regulation;

(b) Total emissions do not increase;

(c) The sources affected by the proposal are included in the SIP emissions inventory;

(d) The proposal has been exempted from modeling requirements under Section 11(1) or involves sources whose combined total potential to emit is less than 100 tons per year; and

(e) The proposal includes only stack emissions.

(2) The department will approve use of an ERC without action to formally amend the SIP if the transaction involves emissions of volatile organic compounds (VOC) or nitrogen oxides (NO_x), if total actual emissions do not increase, and if all other requirements of this regulation are met.

(3) The department will approve the use of an ERC without action to formally amend the SIP for transactions involving fugitive emissions if:

(a) Total actual emissions do not increase;

(b) All other requirements of this regulation are met;

(c) Fugitive emissions from processes are traded against similar sources;

(d) Stack emissions are traded against those fugitive emissions which can reasonably be represented by a stack emission dispersion pattern; and

(e) For those fugitive emissions which cannot be reasonably represented by a stack emission dispersion pattern, the source shall agree to conduct post-approval monitoring to assure that the predicted improvement in air quality has occurred and shall use the additional control measures as shall be necessary to cause such improvement to occur.

(4) All other proposals for using ERCs shall be submitted to the U.S. EPA and approved as a SIP revision.

APPENDIX A TO 401 KAR 51:055
Significance Levels for Non-Attainment Areas

Pollutant	Averaging Time (Hours)				
	Annual	24	8	3	1
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
TSP	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
NO_2	1.0 $\mu g/m^3$				
CO			0.5mg/m^3		2mg/m^3

APPENDIX B TO 401 KAR 51:055
Significance Levels for Attainment and Unclassified Areas

Pollutant	Annual	Averaging Time (Hours) 24	8	3	1
SO_2	1.0 $\mu g/m^3$	13 $\mu g/m^3$		25 $\mu g/m^3$	
TSP	1.0 $\mu g/m^3$	10 $\mu g/m^3$			
NO_2	1.0 $\mu g/m^3$				
CO			575 mg/m^3		2mg/m^3

JACKIE SWIGART, Secretary
ADOPTED: March 15, 1982
RECEIVED BY LRC: March 15, 1982 at 4:30 p.m.
SUBMIT COMMENT TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 973.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

401 KAR 63:031. Leaks from gasoline tank trucks.

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 volatile organic compound emissions from leaks from gasoline tank trucks.

Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility which loads or unloads gasoline on or after November 1, 1982.

(2) The provisions of this regulation shall not apply to affected facilities which are subject to the regulations of a local air pollution control district within the Commonwealth of Kentucky which have been approved by the department and the U.S. EPA.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010, 401 KAR 61:055, 401 KAR 61:056, and 401 KAR 61:085.

(1) "Affected facility" means gasoline tank trucks that are equipped for vapor collection and which load or unload at bulk terminals regulated by 401 KAR 59:100 or 401 KAR 61:055, bulk plants in urban counties regulated by 401 KAR 59:101 or 401 KAR 61:056, and service stations regulated by 401 KAR 59:175 or 401 KAR 61:085.

(2) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

(3) "LEL" means lower explosive limit, measured as propane.

(4) "Kentucky pressure-vacuum test sticker" means a sticker which is issued each year by the department, in accordance with the provisions of Section 5, to the owner or operator of a gasoline tank truck subject to this regulation or which may be issued by a local air pollution control district within the Commonwealth of Kentucky with an equivalent regulation approved by the department and the U.S. EPA. This sticker indicates the compliance of the gasoline tank truck as witnessed by the department with the standard in Section 3(1) or compliance with a program determined equivalent by the department but administered by another state in which the gasoline tank truck is based.

Section 3. Standard for Volatile Organic Compounds. (1) No owner or operator of a gasoline tank truck subject to this regulation shall allow loading or unloading unless the gasoline tank truck has a valid Kentucky pressure-vacuum test sticker attached and visibly displayed. This sticker indicates that the gasoline tank truck and its vapor collection system have been tested as having a pressure change of no more than seventy-five (75) mm water (three (3) in. water) in five (5) minutes when pressurized to 450 mm water (eighteen (18) in. water) or evacuated to 150 mm water (six (6) in. water) using the test procedure referenced in Section 4. The sticker shall be attached to the tank, located near the Department of Transportation Certification plate, and clearly visible.

(2) During loading or unloading operations at regulated service stations, bulk plants in urban counties, and bulk terminals, there shall be no reading greater than or equal to 100 percent of the lower explosive limit (LEL, measured as propane) at a distance of 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure referenced in Section 4.

(3) During loading or unloading at service stations, bulk plants in urban counties, and bulk terminals, there shall be no avoidable visible liquid leaks.

Section 4. Compliance. (1) The test procedure as defined in Appendix A to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department shall be used to determine compliance with the standard prescribed in Section 3(1). The owner or operator of the tank truck shall have the tank truck tested annually in the presence of a representative from the department and shall maintain records of test data, date of testing, identification of tank truck, type of repair, retest data and date. Records shall be maintained by the owner or operator for two (2) years after the date of testing and made available upon request by the department. The owner or operator of a gasoline tank truck shall provide the department ten (10) working days prior notice of the test to enable the department to have an observer present.

(2) The test procedure as defined in Appendix B to "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (OAQPS 1.2-119, U.S. EPA, Office of Air Quality Planning and Standards), filed by reference in 401 KAR 50:015, or an equivalent procedure approved by the department, shall be used by the department to determine compliance

with the standard prescribed in Section 3(2) during inspections conducted pursuant to KRS 224.033(10). Trucks with leaks greater than or equal to 100 percent of the LEL shall be repaired and shall pass the pressure and vacuum test described in Section 3(1) within fifteen (15) days.

Section 5. Sticker Application and Fee. (1) The owner or operator of a gasoline tank truck subject to this regulation shall apply to the department each year for a sticker. Applications shall be made on forms prepared by the department for such purpose. Applications shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the source owner or operator; or, in the case of political subdivisions, by the highest executive or official of such subdivision. Such signature shall constitute personal affirmation that the statements made in the application are true and complete. Failure to supply information required or deemed necessary by the department shall result in denial of the application. The department shall deny an application if the applicant willfully makes material misstatements in the application. Applications shall be received by the department at least fifteen (15) working days before a test.

(2) Any owner or operator who submits an application for a sticker shall include with the application a certified check or money order in the amount of the sticker fee assessed by the department, payable to the Kentucky State Treasurer. The sticker fee for each gasoline tank truck is seventy dollars ($70) per year. Retests on current applications for obtaining a sticker shall not require additional applications or fees. The fee is ten dollars ($10) for each gasoline tank truck which is in compliance with a program determined equivalent by the department, but administered by another state in which the gasoline tank truck is based. The provisions of 401 KAR 50:035 and 401 KAR 50:036 shall not apply to the owner or operator of a gasoline tank truck subject to this regulation. Sticker fees are not refundable if a sticker is denied or an application is withdrawn. Fees are payable at the time of application.

(3) Provisions of subsection (2) of this section shall not apply to publicly owned affected facilities.

JACKIE SWIGART, Secretary
ADOPTED: February 25, 1982
RECEIVED BY LRC: March 2, 1982 at 2:45 p.m.
SUBMIT COMMENTS TO: Mr. Larry Wilson, Supervisor, Development and Evaluation Branch, Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601.
See public hearings scheduled on page 973.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 9:091. Repeal of 806 KAR 9:090.

RELATES TO: KRS 304.9-105
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-105(7) requires that a person to whom a solicitor's license has been or is to be issued is regularly employed by a presently licensed resident agent, or is to be so employed subject to the issuance of the license. KRS 304.9-110 (now repealed) required a person to whom a solicitor's license has been or is to be issued to be a "full-time employee" of a licensed resident agent. Because KRS 304.9-110 has been repealed, and it is no longer required that the person to whom a solicitor's license has been or is to be issued be a full-time employee of a licensed resident agent, 806 KAR 9:090 is being repealed.

Section 1. 806 KAR 9:090, Solicitor as "full-time employee" defined, is hereby repealed.

DANIEL D. BRISCOE, Commissioner
ADOPTED: March 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: March 12, 1982 at 4:15 p.m.
SUBMIT COMMENT TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.
See public hearings on page 973.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 12:070. Application requirements.

RELATES TO: KRS 304.14-090, 304.14-120
PURSUANT TO: KRS 13.082, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. This regulation requires that an application for life insurance which was personally solicited by an agent be signed by the applicant, and further requires the agent to witness this signature and to certify that the agent propounded each question to the applicant and accurately recorded the applicant's answers.

Section 1. Every application for life insurance solicited personally by an agent shall have the location where the application is signed, the applicant's signature witnessed by the soliciting agent, who shall at that time certify that each

question thereon was propounded by him personally to the applicant and that the applicant's answers thereto have been accurately recorded thereon.

DANIEL D. BRISCOE, Commissioner
ADOPTED: March 12, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: March 12, 1982 at 4:15 p.m.
SUBMIT COMMENT TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.
See public hearings on page 973.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Harness Racing Commission

811 KAR 1:205. Guidelines for fairs to qualify for funds for purses from the Kentucky Harness Racing Commission.

RELATES TO: KRS 230.630, 230.640, 230.680, 230.690, 230.710, 230.770
PURSUANT TO: KRS 13.082, 230.630
NECESSITY AND FUNCTION: To regulate races and purses and payments in races conducted at fairs in which funds for purses are provided by the Kentucky Harness Racing Commission. The function of this regulation is to establish mandatory guidelines in order for fairs to qualify for funds for purses from the Kentucky Harness Racing Commission.

Section 1. Each fair shall have a safe and adequate track with entire track, including start and finish lines, visible to judges and spectators. The track shall be inspected and approved by a representative of the Kentucky Harness Racing Commission.

Section 2. All tracks must have a hub rail of some type to be approved by the Kentucky Harness Racing Commission.

Section 3. Each fair shall have safe and adequate stalls for participating horses. If permanent barns are not available, tents or other tie-in type stalls may be used. This can be accomplished by knowing the number of "ship in" horses and possibly by stabling some horses off the grounds in private barns.

Section 4. Nomination fees shall be the same at all tracks and shall be set by the Kentucky Harness Racing Commission. From the proceeds therefrom, the Kentucky Harness Racing Commission shall provide the services of photo-finish, appropriate advertising, and charter with full financial accounting to each participating fair at the close of each racing season. Monies remaining from said nomination fees shall be carried over to the following year.

Section 5. All fairs shall use licensed presiding judges to preside over the racing.

Section 6. All fairs shall use a licensed starter with adequate equipment.

Section 7. The entry fee shall be set by the Kentucky Harness Racing Commission and same shall be collected by each fair and used for purses for overnight racing events, paying starters, paying presiding judges, promoting fair racing or otherwise as needed in the discretion of the fair collecting the fee. Each fair shall be responsible for making a full accounting of the entry fees to the Kentucky Harness Racing Commission within sixty (60) days of the completion of the meet.

Section 8. Each fair shall apply to the Kentucky Harness Racing Commission for a license to race and for approval of funds by December 15 of the year prior to the racing year. At the time of application, the request for pari-mutuel wagering shall be included.

Section 9. All fairs shall have a complete racing program to be eligible for funds from the Kentucky Harness Racing Commission which shall include overnight events for horses of all ages and classes. Purse distribution shall be determined by a majority of participating fair managers, subject to approval of the Kentucky Harness Racing Commission.

Section 10. The Kentucky Harness Racing Commission shall award dates and approval of funds by January 15 of the applicable racing year.

Section 11. Each fair shall have a printed program, and, if there is pari-mutuel betting, the program shall show number of starts, number of firsts, seconds and thirds, best winning time, and money earned.

CARL B. LARSEN, Supervisor
ADOPTED: January 8, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: February 16, 1982 at 8:45 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Carl B. Larsen, Supervisor of Racing, Kentucky Harness Racing Commission, 1051 H Newtown Road, Lexington, Kentucky 40511.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board

902 KAR 20:072. Operation and services; ambulatory care clinics.

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 ambulatory care clinics and the services to be provided by ambulatory care clinics.

Section 1. Scope of Operations and Services. An ambulatory care clinic is an establishment with organized

medical staffs, permanent facilities and medical services to provide diagnosis and treatment for patients who have a variety of medical conditions and do not currently require inpatient care.

Section 2. Definitions. "Clinic" means ambulatory care clinic.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the clinic and for compliance with federal, state and local laws and regulations pertaining to the operation of the clinic.

(b) The licensee shall establish written policies for the administration and operation of the clinic.

(c) The licensee shall establish lines of authority and designate the person who will be principally responsible for the daily operation of the clinics.

(2) Policies.

(a) Administrative policies. The clinic shall have written administrative policies covering all aspects of the clinic's operation, including:

1. A description of organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with inpatient facilities and other providers;
3. Policies and procedures for the guidance and control of personnel performances;
4. A description of services included in the clinic's program;
5. A description of the administrative and patient care records and reports;
6. Procedures to be followed in the storage, handling and administration of drugs and biologicals; and
7. A policy to specify the provision of emergency medical services.

(b) Patient rights policies. The clinic shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances.
2. Is informed of services available at the clinic and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements.
3. Is informed of his medical condition, unless medically contraindicated (as documented in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research.
4. Is encouraged and assisted to understand and exercise his patient rights; to this end he may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.
5. Is assured confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract.
6. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.

(3) Personnel.

(a) The clinic shall have at least one (1) licensed physician(s) and at least one (1) registered nurse(s) present during operating hours. A licensed physician shall be designated as medical director.

1. Physician. The physician shall be in active practice, and shall be responsible for all medical aspects of the center, and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. Physicians employed by or having an agreement with the clinic to perform direct medical services shall be qualified to practice general medicine (e.g., general practitioners, family practitioners, obstetrician/gynecologists, pediatricians, and internists). Physicians employed by or having an agreement with the clinic to perform direct medical services should be members of the medical staff, or hold at least courtesy staff privileges, at one (1) or more hospitals with which the clinic has a formal linkage agreement.
2. Nurse. The registered nurse(s) shall provide services within their respective scope of practice pursuant to KRS Chapter 314.

(b) In-service training. All clinic personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel, regular in-service training programs, emphasizing professional competence, and the human relationship necessary for effective health care.

(4) Medical records.

(a) The clinic shall maintain medical records to contain at least the following:

1. Medical and social history, including data obtainable from other providers;
2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;
3. Reports of all physical examinations, laboratory, X-ray, and other test findings; and
4. Documentation of all referrals made, to include reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The clinic shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the clinic shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(5) Linkage agreements.

(a) The clinic shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the clinic. These linkages shall include:

1. Hospitals; and
2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the clinic, provisions for appropriate coordination of discharge planning with clinic staff, and provisions for the clinic to receive a copy of the discharge summary for each patient referred to the clinic.

(6) Utilization review and medical audit. In order to determine the appropriateness of the services delivered there shall be a written plan for utilization review developed by the clinic which specifies the frequency of reviews and composition of the body conducting the review.

Section 4. Provision of Services. (1) Hours of operation and coverage. Scheduled hours of the clinic's operation shall reasonably accommodate the various segments of the population served. Provisions shall be made for scheduled evening hours and/or weekend hours.

(2) Basic services. The clinic shall provide directly (except as noted) at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs (including prenatal and postnatal care) of all age groups;

(b) Emergency services.

1. The clinic shall provide emergency medical services during the regularly scheduled hours for treatment of injuries and minor trauma.

2. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

(c) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his own health;

(e) Chronic illness management; and

(f) Laboratory, X-ray and treatment services provided directly or arranged through other providers.

(3) Telephone screening and referral. The clinic shall provide telephone screening and referral services for prospective patients after regularly scheduled hours of operation.

Section 5. 902 KAR 20:070E and 902 KAR 20:070, Outpatient clinics and ambulatory care facilities, and 902 KAR 20:075E and 902 KAR 20:075, Outpatient clinics and ambulatory care services, are hereby repealed.

FRANK W. BURKE, Sr., Chairman
ADOPTED: January 20, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: March 10, 1982 at 1 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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the March 1, 1982 Meeting

(Subject to subcommittee approval at the April 7, 1982 meeting.)

The Administrative Regulation Review Subcommittee held its regular meeting on Monday, March 1, 1982, at 10 a.m., in Room 110 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning and Helen Garrett; and Representatives James E. Bruce and Albert Robinson.

Guests: Billy Hunt, Kentucky Teachers' Retirement System; Mohammad Alauddin, Ken Hahn, Steve Taylor, Joshua Santana, and Steve Blanton, Department for Natural Resources and Environmental Protection; Ronda Paul, Department of Banking and Securities; Ellen Krutcher, Public Service Commission; J. D. Wolf, Department of Agriculture; T. Wayne Still, University of Kentucky; A. R. Romine, Department of Transportation; Judy Hower, Department of Energy; David Allen, Donna Kaye Smith, Ked Fitzpatrick, Sharon Rodriguez, Jim Thompson, and Greg Lawther, Department for Human Resources; Sharon Weisenbeck, Patricia Howard, and Martin Glazer, State Board of Nursing; Cattie Lou Miller, Department of Finance; Ray Kring, Kentucky Chamber of Commerce; Paul Davis, Kentucky Pharmacists Association; Jim Ludwiczak, Green Coal Company; Charles Brown, Texas Gas Trans. Corp.; Scott Smith, McCoy and McCoy; Eugene Mooney, Addington; Mark Morgan; John Reed, Kentucky Flood Control Advisory Commission; John Nuckols; Ron Sanders; Judith Greer; and Tim Murphy, Kentucky Rivers Coalition.

Staff: Susan Harding, Cindy De Reamer, O. Joseph Hood, Garnett Evins and Scott Payton.

Press: John Robb and Travis Shields, WLEX-TV; Al Cross, Courier-Journal; Herb Sparrow, Associated Press.

Chairman Brinkley announced that a quorum was present and called the meeting to order.

The subcommittee took no action on the following emergency regulations:

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

Utilities

807 KAR 5:006E. General rules.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services

Emergency Medical Services

902 KAR 14:015E. Salary payment assistance. (Senator Bunning and Representative Robinson voiced their objection to the regulation.

Bureau for Manpower Services
Human Services
903 KAR 2:010E. Weatherization Assistance Program.
Public Assistance
904 KAR 2:016E. Standards for need and amount; AFDC.
904 KAR 2:040E. Procedures for determining initial and continuing eligibility.
Food Stamp Program
904 KAR 3:045E. Coupon issuance procedures.

The following regulation was deferred at the request of the issuing agency:

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Utilities
807 KAR 5:054. Small power production and cogeneration.

The following regulations were deferred by the subcommittee:

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Real Estate Commission
201 KAR 11:045. Written offers to be submitted to owner-client.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Utilities
807 KAR 5:001. Rules of procedure.
807 KAR 5:006. General rules.
807 KAR 5:016. Advertising.
807 KAR 5:021. Gas.
807 KAR 5:026. Gas service; service lines.
807 KAR 5:031. Gas well determinations.
807 KAR 5:041. Electric.
807 KAR 5:046. Prohibition of master metering.
807 KAR 5:051. Electric consumer information.
807 KAR 5:056. Fuel adjustment clause.
807 KAR 5:061. Telephone.
807 KAR 5:066. Water.
807 KAR 5:071. Sewage.
807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Certificate of Need and Licensure Board
902 KAR 20:135. Certificate of need application fee schedule.

After opposing testimony was presented by Mark Morgan, Tim Murphy, and John Nuckols, the following regulations were accepted by the subcommittee and ordered filed:

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Surface Mining and Reclamation
Oil Shale Operations
405 KAR 30:010. Definitions.
405 KAR 30:020. General provisions.
405 KAR 30:040. Amount and duration of performance bonds.
405 KAR 30:060. Form, terms and conditions of performance bonds and liability insurance.
405 KAR 30:070. Procedures, criteria and schedule for release of performance bonds.
405 KAR 30:080. Bond forfeiture.
405 KAR 30:090. General provisions for inspection and enforcement.
405 KAR 30:100. Enforcement.
405 KAR 30:110. Public participation in inspection and enforcement.
405 KAR 30:140. Written approval required for transfer of permit; successor in interest.
405 KAR 30:150. Oil shale records open to public inspection; confidential nature of certain data.
405 KAR 30:170. Citizen demands for enforcement.
405 KAR 30:180. Petitions for rulemaking.
405 KAR 30:190. Process and criteria for designating lands unsuitable for oil shale operations.
405 KAR 30:200. Petition requirements to designate lands unsuitable.
405 KAR 30:210. Signs and markers.
405 KAR 30:220. Postmining land use.
405 KAR 30:230. Air resources protection.
405 KAR 30:240. Protection of fish, wildlife, and related environmental values.
405 KAR 30:250. Use of explosives.
405 KAR 30:260. Access roads, haul roads, overland conveyor systems, pipelines, and other transport facilities.
405 KAR 30:270. Casting and sealing of drilled holes.
405 KAR 30:280. Prime farm land.
405 KAR 30:290. Topsoil.
405 KAR 30:300. Protection of the hydrologic system.
405 KAR 30:310. Diversion of flows and water withdrawal.
405 KAR 30:320. Water quality standards, effluent limitations, and monitoring.
405 KAR 30:330. Sediment control measures.
405 KAR 30:340. Leachate control.
405 KAR 30:350. Permanent impoundments.
405 KAR 30:390. Backfilling and grading.
405 KAR 30:400. Revegetation.
405 KAR 30:410. In situ operations.

In a discussion of amending material adopted by reference in 200 KAR 5:302, Management and procedures manual, Cattie Lou Miller of the Department of Finance agreed to withdraw the proposed amendment.

The following regulations were accepted by the subcommittee and ordered filed:

AGRICULTURAL EXPERIMENT STATION
Seed
12 KAR 1:020. Noxious weed seed.
12 KAR 1:105. Schedule of charges.

TEACHERS' RETIREMENT SYSTEM
General Rules
102 KAR 1:057. Credit for military service.
102 KAR 1:190. Types of investments.
102 KAR 1:195. Payroll reports.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Real Estate Commission
201 KAR 11.016. Repeal of 201 KAR 11:015.
Board of Nursing Education and Nurse Registration
201 KAR 20:070. Licensure by examination.
201 KAR 20:110. Licensure by endorsement.

CABINET FOR DEVELOPMENT
Department of Agriculture
Livestock Sanitation
302 KAR 20:110. Treatment of imported mares.
302 KAR 20:120. Treatment of imported stallions.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Hazardous Material and Waste Management
401 KAR 2:101. Standards for landfarming facilities. (As Amended.)

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
Traffic
603 KAR 5:070. Truck dimension limits.
603 KAR 5:096. Highway classifications.

DEPARTMENT OF BANKING AND SECURITIES
Finance Charges
808 KAR 4:020. Compliance with Federal Consumer Credit Protection Act. (As Amended.)
Securities
808 KAR 10:200. Investment advisers' minimum liquid capitalization.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
Medical Assistance
904 KAR 1:022. Skilled nursing facility services.
904 KAR 1:024. Intermediate care facility services.

On motion of Senator Bunning, seconded by Senator Garrett, the meeting was adjourned at 12:30 p.m. until April 7, 1982, at 10:00 a.m. in Room 103 of the Capitol Annex.

Administrative Register of Kentucky

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