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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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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. *However, before permitting the disposal of free liquids in small amounts in overpacked drums (40 CFR 265.316), the liquids must be treated or stabilized chemically or physically so as to meet all specifications in KRS 224.866(2).* [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; *47 FR 15064, April 7, 1982; 47 FR 16558, April 16, 1982.*

JACKIE SWIGART, Secretary

ADOPTED: July 12, 1982
RECEIVED BY LRC: July 12, 1982 at 12 noon.

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

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 *Cabinet* 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.

(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 pretreatment system does not exceed one (1) part per million; or

b. One (1) or more of the following spent solvents listed in Section 9(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 pretreatment 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.

(i) 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, and 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.

(4) Samples.

(a) Except as provided in paragraph (b) of this subsection, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this regulation or 401 KAR 2:060, 2:063, 2:070, 2:073, 2:080, and 2:085 or to the notification requirements of 401 KAR 2:060 or 2:070 when:

1. The sample is being transported to a laboratory for the purpose of testing; or

2. The sample is being transported back to the sample collector after testing; or

3. The sample is being stored by the sample collector before transport to a laboratory for testing; or

4. The sample is being stored in a laboratory before testing; or

5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

6. The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in paragraphs (a)1 and 2 of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

1. Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

2. Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

a. Assure that the following information accompanies

the sample:

(i) The sample collector's name, mailing address, and telephone number;

(ii) The laboratory's name, mailing address, and telephone number;

(iii) The quantity of the sample;

(iv) The date of shipment; and

(v) A description of the sample.

b. Package the sample so that it does not leak, spill, or vaporize from its packaging.

c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (a) of this subsection.

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, and 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, and 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, and 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, or 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; or

4. Permitted to manage municipal or industrial solid waste and is specifically approved for that waste. [; or]

[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.

(c) It is one (1) of the following materials being used, reused, recycled or reclaimed in the specified manner: spent pickle liquor which is reused in wastewater treatment at a facility holding a National Pollutant Discharge Elimination System (NPDES) permit, or which is being accumulated, stored, or physically, chemically or biologically treated before such reuse.

(2) Except for those wastes listed in subsection (1)(c) of this section, 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, and 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, and 2:085 [and 2:170].

(2) (a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified 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 cabinet [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 secretary, [U.S. Environmental Protection Agency] which meets the requirements of 40 CFR 260.22 herein filed by reference and which results in a variance [regulatory amendment under 40 CFR 260.20 herein filed by reference] that excludes the waste from lists in this section [Subpart D of 40 CFR 261]; and

[2. A copy of the petition specified in subparagraph 1 is filed with the secretary; and]

2. [3.] The secretary notifies the petitioner that the cabinet [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 cabinet [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 manufactur-

ing 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 subsection unless:

1. The container or inner liner has been triple rinsed using 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 subsection.

(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: July 12, 1982
RECEIVED BY LRC: July 12, 1982 at 12 noon.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Pollution
Amended After Hearing

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 *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of *volatile organic compound* [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

Public Hearings Scheduled

DEPARTMENT OF INSURANCE

A public hearing will be held on August 2, 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 7:090. Custodial accounts for investment securities of insurance companies. [9 Ky.R. 89]
9:15 a.m. 806 KAR 13:016. Repeal of 806 KAR 13.015. [9 Ky.R. 91]
9:15 a.m. 806 KAR 13:031. Repeal of 806 KAR 13:030. [9 Ky.R. 91]
9:15 a.m. 806 KAR 13:040. Automobile fleet insurance defined. [9 Ky.R. 44]
9:15 a.m. 806 KAR 13:051. Repeal of 806 KAR 13:050. [9 Ky.R. 92]
9:15 a.m. 806 KAR 13:061. Repeal of 806 KAR 13:060. [9 Ky.R. 92]
9:15 a.m. 806 KAR 13:070. Kentucky Automobile Insurance Plan. [9 Ky.R. 45]
9:15 a.m. 806 KAR 13:081. Repeal of 806 KAR 13:080. [9 Ky.R. 92]
9:15 a.m. 806 KAR 14:005. Rate and form filing. [9 Ky.R. 45]
10:00 a.m. 806 KAR 9:161. Repeal of 806 KAR 9:160. [9 Ky.R. 91]

CABINET FOR HUMAN RESOURCES

A public hearing will be held on August 10, 1982, at 1:00 p.m. (EDT) in the Department for Social Services Conference Room, 6th Floor, 275 East Main Street, Frankfort, Kentucky on the following regulation:

905 KAR 2:010. Standards for all child care facilities. [9 Ky.R. 68]

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

A public hearing will be held on August 26, 1982, at 10:00 a.m. in Room G-11, Ground Floor, Capital Plaza Tower, Frankfort on the following regulation:

405 KAR 26:001. Operations of two (2) acres or less. [9 Ky.R. 81]

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-475
June 23, 1982

EMERGENCY REGULATION
Department of Revenue
Withholding Methods

WHEREAS, the personal income tax laws of the Commonwealth permit a federal income tax deduction from Kentucky income in determining Kentucky income tax liability; and

WHEREAS, the federal income tax rates for individuals were substantially reduced by the Economic Recovery Act of 1981 resulting in a five percent (5%) reduction in federal income withholding effective October 1, 1981 and an additional ten percent (10%) decrease effective July 1, 1982; and

WHEREAS, KRS 141.310 requires the Department of Revenue to revise the Kentucky withholding tax tables to compensate for substantial changes in the deductible federal income tax; and the Commissioner of Revenue advises that the October 1, 1981 and July 1, 1982 federal tax reductions constitute such a substantial change in the deductible federal income tax; and

WHEREAS, the revised federal withholding rates required to recalculate the Kentucky withholding tables were not made available to the Department of Revenue until May 24, 1982 which left insufficient time to prepare revised tables and submit them with a permanent regulation; and

WHEREAS, to ensure timely compliance with KRS 141.310 it is necessary to make changes in the Kentucky withholding tax tables to coincide with the effective date of the federal ten percent (10%) withholding reduction; and

WHEREAS, the Department has submitted a proposed regulation to the Legislative Research Commission according to KRS 13.035(1) to become a permanent regulation and the Commissioner of Revenue advises that to en-

sure orderly administration of income tax withholding and to reduce employer accounting and recordkeeping changes, that Kentucky withholding changes should be effective with the federal changes, it is in the best interest of the Commonwealth to find that an emergency exists in order to timely implement such changes:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.088(1), do hereby acknowledge the findings of the Commissioner of Revenue that an emergency exists and direct that the attached amended regulations shall become effective immediately upon being filed with the Legislative Research Commission.

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

DEPARTMENT OF REVENUE

103 KAR 18:110E. Withholding methods.

RELATES TO: KRS *141.310,* 141.370
PURSUANT TO: KRS 13.082
EFFECTIVE: June 23, 1982
NECESSITY AND FUNCTION: KRS 141.370 requires the department to establish individual income tax withholding tables by regulation. This regulation establishes such withholding tables and describes procedure for supplement and mechanical withholding. *KRS 141.310 requires the department to revise the tables to compensate for substantial changes in the deductible federal income tax.* These tables are revised to reflect *decreases in the federal tax rates made by the 1981 Economic Recovery Tax Act* [the standard deduction increase enacted by the 1976 General Assembly].

Section 1. General. The Department of Revenue is required by KRS 141.370 to prescribe tables for withholding Kentucky individual income tax from salaries and wages of employees. These tables withhold the tax levied by KRS 141.020 and reflect the standard deductions ($650) prescribed by KRS 141.081, and the deductible federal income tax referred to in KRS 141.310. The tables referred to in Section 4 are hereby prescribed by the Department of Revenue.

Section 2. Supplemental Withholding. In addition to tax required to be withheld by the tables in Section 4, an employee may authorize his employer to withhold additional Kentucky income tax. An employee may authorize additional withholding by filing an amended Withholding Exemption Certificate (Revenue Form K-4) with his employer. The amended certificate may claim fewer personal exemptions than he is allowed, authorize the employer to withhold a specific amount of additional tax, or both.

Section 3. Mechanical Withholding. The department provides a computer formula for withholding Kentucky income tax, and any employer with suitable equipment may use the formula in lieu of the tables referred to in Section 4. No other formula or withholding method may be used unless specific written approval is granted by the department.

Section 4. Withholding Tables. Employers shall withhold Kentucky individual income tax from wages and salaries, paid on and after July 1, *1982* [1976], in accordance with the tables filed herein by reference and which are obtainable from the [Income Tax Division] Department of Revenue, Frankfort, Kentucky, 40601.

RONALD G. GRAY, Commissioner
ADOPTED: June 14, 1982
RECEIVED BY LRC: June 23, 1982 at 4 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-441
June 14, 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 Summer Energy Program; and

WHEREAS, the Secretary has promulgated a regulation setting forth the Department's policies for the Summer Energy Program with respect to eligibility criteria and benefits; and

WHEREAS, the time delays inherent in complying with the procedural requirements of KRS Chapter 13 would preclude the effectiveness of the regulation during the summer 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 13.088(1), 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 13.088(1), 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 Summer Emergency Program, and direct that said regulation shall become effective upon filing with the Legislative Research Commission as provided in KRS 13.088(1) of the Kentucky Revised Statutes.

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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 2:105E. Summer energy program; eligibility criteria.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 16, 1982
NECESSITY AND FUNCTION: The Department for Human Resources is authorized by KRS 194.050 to ad-

minister 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 the Summer Energy Program under the Home Energy Assistance Program (HEAP). Federal authorization for the program is provided by Public Law 97-35, Title XXVI.

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 this regulation 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, natural gas, or propane which is used to operate cooling equipment.

(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 living in non-subsidized housing which pays all energy costs directly to the energy provider or any household which rents non-subsidized housing whose energy costs are included in the rent payment.

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

(1) The household must contain at least one (1) member who is elderly (age sixty (60) or older) or is a recipient of benefits under Titles II, XVI, or XIX of the Social Security Act based on disability.

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

(3) 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.

(4) Gross income for the calendar month preceding the month of application must be at or below the applicable amount shown in 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	$ 539	$ 6,465
2	711	8,535
3	884	10,605
4 or more	1,056	12,675

(5) Applicants must attest financial need for assistance for cooling purposes.

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

(7) Households are eligibile to receive assistance only once under the Summer Energy Program.

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) Payment to eligible households will be made for the full benefit amount based on type of energy for cooling, monthly household income, and household size as specified in the following benefit scales.

Benefit Scales

Scale A.
Energy Sources: LP Gas (Propane), 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	$150	$175

Scale B.
Energy Source: Natural Gas

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	$100	$125

(2) 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.

Section 5. Payment Methods. Payments to eligible households will be made by two-party check made payable to the recipient and the energy provider (or landlord if home energy costs are included as an undesignated portion of the rent). A one-party check will be made payable to the recipient only when the provider/landlord refuses to accept the two-party check.

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 the Summer Energy Program.

(1) Applications shall be accepted beginning June 14, 1982, and must be postmarked no later than August 15, 1982.
(2) Applications shall be processed in the order received. The Summer Energy Program shall be terminated when applications postmarked no later than August 15, 1982, have been processed or by the secretary when actual and projected program expenditures have resulted in utilization of available funds, whichever is earlier.

Section 9. Availability of Funds. Up to $2,000,000 shall be allocated for the Summer Energy Program.

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.

Section 11. This regulation shall expire at the close of business on September 30, 1982.

Section 12. 904 KAR 2:100, Home energy assistance program; eligibility criteria, is hereby repealed.

JOHN CUBINE, Commissioner
ADOPTED: June 10, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 16, 1982 at 11 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-442
June 14, 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 regard to administration of the Food Stamp Program; and
WHEREAS, the Secretary has found that the current budgetary deficit facing the Commonwealth and the Department should be minimized to the extent possible by prompt action; and
WHEREAS, the Secretary has promulgated a regulation on Coupon Issuance Procedures to reduce the incidences of food stamp coupon loss; and
WHEREAS, the Secretary has found that an emergency exists with respect to said regulation, and that, therefore, said regulation should pursuant to the provisions of the 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 13.088(1), 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 on Coupon Issuance Procedures and hereby direct said regulation shall become effective upon filing with the Legislative Research Commission, as provided in KRS 13.088(1).

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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 3:045E. Coupon issuance procedures.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 16, 1982
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth coupon issuance procedures used by the department in the administration of the Food Stamp Program.

Section 1. Basic Issuance Requirements. The department is responsible for the timely and accurate issuance of coupons to eligible households. In issuing coupons the department must insure that:
(1) Only certified households receive benefits;
(2) Coupons are accepted, stored, and protected after delivery to receiving points within the state;
(3) Program benefits are distributed in the correct amounts; and
(4) Coupon issuance and reconciliation activities are properly conducted in accordance with 7 CFR Parts 274.5 and 274.6 and accurately reported to the Food and Nutrition Service.

Section 2. Issuance System. The department shall choose one (1) of the following systems to issue coupons to eligible households:
(1) Direct delivery is a system wherein eligible households pick up and redeem their ATP card at a specified issuance center. Regular mail issuance shall be available to those households which are unable to get to their assigned issuance centers, as determined by the department.
(2) Direct mail is a system wherein coupons are mailed using at least first class mail, directly to the eligible household.

[(a) After two (2) reports of non-delivery from the same household, the department shall mail the household's coupons to the county office for pickup for a period of six (6) monthly issuances. Any household reporting a loss after having been removed from direct mail in a previous period is placed on local office pickup for twelve (12) monthly issuances.]

[(b) In areas experiencing excessive mail loss, as identified by the department, any household reporting one (1) mail loss is immediately placed on local office pickup for the following six (6) monthly issuances. A household reporting a loss after having been removed from direct mail in a previous period is placed on local office pickup for twelve (12) monthly issuances. When portions of a county experience a high mail loss, all recipients in that portion of the county will either receive their coupons by certified mail or be required to pick up their coupons at a specified location in the county.]

(3) Alternate issuance is a system used, in accordance with 7 CFR 274.3(c)(3), when circumstances exist which indicate a household may not receive their benefits through the normal issuance system.

(a) Local office pickup is a system whereby a household's benefits are mailed to the local office for the household to pick up.

(b) Certified mail is a system whereby benefits are sent via the postal system and must be signed for before they are obtained.

(c) As determined by the department, other issuance systems may be utilized to ensure receipt of benefits by the eligible household.

Section 3. Issuance Cycles. (1) For ongoing cases the monthly coupon packet/ATP card is mailed to the household/issuance center over the first ten (10) to twenty (20) days of the issuance month, based on the last digit of the recipient's social security number.

(2) New approvals, reapprovals and current month recertifications shall have their coupon packet/ATP card mailed to their home/issuance center within thirty (30) days after the date of application.

(a) Households eligible for expedited service shall have their coupon packet/ATP card made available no later than three (3) days after the date of application.

(b) Residents of drug addiction/alcoholic treatment centers and group living arrangement facilities eligible for expedited service shall have their coupon packet/ATP card made available no later than seven (7) days after the date of application.

Section 4. Replacement Issuances. A total of only two (2) replacements of any kind shall be made during a six (6) month period, except as specified in subsection 4 of this section. Replacements will be issued in accordance with 7 CFR 273.11(g), 274.2(h) and 274.3(c) as follows:

(1) Non-receipt of coupons/ATP cards must be reported in the period of intended use. Replacements shall be issued no more than ten (10) days after report of non-delivery is received and shall be limited to two (2) times during a six (6) month period. If coupons/ATP cards were returned to central office, non-receipt did not occur and the limit stated above does not apply.

(2) Destruction, in an individual household disaster, of coupons/ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.

(3) Theft of ATP cards after receipt must be reported within ten (10) days of the incident or within the period of intended use, whichever is earlier. Replacements shall be issued within ten (10) days of receipt of request and shall be limited to one (1) time during a six (6) month period.

(4) Improperly manufactured or mutilated coupons shall be replaced with an amount equal to the affected coupons in accordance with 7 CFR 273.11(g)(5). There is no limit on the number of times this type of replacement may be made.

(5) Food purchased with food stamps which is subsequently destroyed in an individual disaster, as well as in a natural disaster affecting more than one (1) household, which affects the participating household, may be eligible for replacement of the actual value of loss, not to exceed one (1) month's food stamp allotment. The disaster must be reported within ten (10) days and verified. A replacement shall be issued or the opportunity to obtain a replacement given within ten (10) days of the reported loss and shall be limited to two (2) times during a six (6) month period. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits the household shall not receive both the disaster allotment and a replacement allotment under this provision.

Section 5. Authorization-to-Participate Card. The ATP card is used in areas participating in a direct delivery system.

(1) The ATP card shall be valid for the entire month of issuance unless it is issued after the twenty-fifth (25th) day of the month. Those issued after that date are valid through the last day of the following month.

(2) The household shall be provided with a means of designating an emergency authorized representative who can transact the ATP card in their stead.

(3) Households which report two (2) consecutive mail losses of an ATP card must be provided with an alternate means of delivery.

Section 6. Coupon Controls. Regardless of which issuance system is used, the department shall:

(1) Establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with 7 CFR Parts 274.4(a)1 and 2;

(2) Establish control and security procedures to safeguard coupons similar to those used to protect currency outlined in 7 CFR Part 274.4(b);

(3) Arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment in accordance with 7 CFR Part 274.4(c);

(4) Ensure that coupon issuers and bulk storage points promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control and storage of coupons pursuant to 7 CFR Part 274.5;

(5) Maintain issuance records for a period of three (3) years from the month of origin as outlined in 7 CFR Part 274.7;

(6) Control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency in accordance with 7 CFR Part 274.7(b); and

(7) Provide security and control for all issuance accountability documents pursuant to 7 CFR Part 274.7(c).

JOHN CUBINE, Commissioner
ADOPTED: June 11, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 16, 1982 at 11 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-443
June 14, 1982

EMERGENCY REGULATIONS
Department for Human Resources
Bureau for Social Services

WHEREAS, the Secretary of the Cabinet for Human Resources is responsible for promulgating by regulation the policies of the Cabinet for Human Resources relating to the implementation of the Title XX and the Community Services Block Grant programs; and

WHEREAS, the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, revised the requirements for technical eligibility for social services, limitations upon the use of block grant funds, and matching requirements for Title XX social services block grant funds; and

WHEREAS, the revisions in federal requirements have necessitated corrections in the regulations administered by the Cabinet for Human Resources implementing the Title XX and Community Services Block Grant programs for fiscal year 1982; and

WHEREAS, the time delays inherent in complying with procedural requirements of KRS Chapter 13 would preclude the effectiveness of these regulations prior to the first day of the fiscal year; and

WHEREAS, the Secretary has found that an emergency exists with respect to those regulations and that therefore said regulations should, in accordance with the provisions of KRS 13.088(1), 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 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulations of the Cabinet for Human Resources concerning technical eligibility requirements for social services, limitations upon the use of block grant funds, and matching requirements for Title XX social services block grant funds, and direct that said regulations shall become effective upon filing with the Legislative Research Commission, as provided in KRS 13.088(1) of the Kentucky Revised Statutes.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 3:010E. Limitations on use of grant funds.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 16, 1982
NECESSITY AND FUNCTION: This regulation specifies Kentucky's limitations on the use of Title XX —Social Services Block Grant funds in accordance with limitations specified in Section 2005(a) of the Social Security Act as set forth in the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 and 45 CFR 96.71.

Section 1. Limitations. Title XX—Social Services Block Grant funds are available for the provision of social services provided to eligible individuals pursuant to Kentucky's Title XX plan only if the requirements set forth in this regulation are met.

Section 2. Medical Care. Social Services Block Grant funds are not available for the provision of medical care unless it is an integral but subordinate part of a service authorized in Kentucky's Title XX plan. Medical care is deemed to be integral but subordinate if it is minor but essential to the social service of which it is a part and is necessary to achieve the objective of that service.

Section 3. Room and Board. Social Services Block Grant funds are not available for the provision of room and board unless it is an integral but subordinate part of a service authorized in Kentucky's Title XX plan. Room and board is deemed to be integral but subordinate if it is minor but essential to the social service of which it is a part and is necessary to achieve the objective of that service. However, in no instance shall room and board be provided for a period in excess of six (6) consecutive months for any one (1) placement.

Section 4. Emergency Shelter Care. Social Services Block Grant funds are available to provide emergency shelter care on a temporary basis for a period up to thirty (30) calendar days in any one (1) twelve (12) month period.

SUZANNE TURNER, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 16, 1982 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 3:020E. Technical eligibility.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 16, 1982
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapters 194, 199, 208, and 209 to ad-

minister the social services program in accordance with Title XX—Social Services Block Grant, P.L. 97-35. This regulation sets forth technical eligibility requirements for social services.

Section 1. Residence. Except as otherwise provided by law or regulations, to be eligible to apply for social services a person must be living in Kentucky or a juvenile classified as a runaway.

Section 2. Eligibility. (1) Need. To be eligible for social services a person must have a need identified by the cabinet's social service staff that could be addressed by the services available.

(2) Income limitations. Where income is a part of the eligibility criteria for social services, the maximum amount of gross income cannot exceed eighty percent (80%) of the 1982 median income for the Commonwealth of Kentucky adjusted by family size except for in-home services for the elderly. The percentage of the median income that constitutes eligibility may vary by service up to the maximum and is established and made public by the Department for Social Services. The percentage of the median income that constitutes eligibility may be increased or decreased by the same ratio as the increase or decrease in federal funds available to Kentucky under the Social Services Block Grant. The amount of gross income for in-home services for the elderly cannot exceed $10,000 annually for a one (1) person family and $13,000 annually for a two (2) person family.

(3) Special eligibility requirements.

(a) For child day care, in addition to meeting the need and income status, applicants will be served in the following priority order:

1. Children on whom there has been a documented report of abuse, neglect, or exploitation.
2. Working parents/caregivers.
3. Parents/caregivers seeking work not to exceed two (2) calendar months in any twelve (12) month period.
4. Overburdened parents.
5. AFDC parents in educational or training programs.

(b) For in-home services for the elderly, in addition to meeting the need and income status, the applicant must be sixty (60) years of age or older and have functional disabilities or chronic health and social problems as defined by program guidelines.

(c) For maternity home care, in addition to meeting the need and income status, pregnant females will be accepted according to the following priorities:

1. Females committed to the cabinet.
2. Females under eighteen (18) years of age desiring maternity home placement.
3. Females over eighteen (18) years of age who meet Title XX income requirements.

(4) Committed or court ordered. A child who is committed to the cabinet (or an agency recognized by the cabinet) by a court of competent jurisdiction, or voluntarily by the parents, or a child that a court of competent jurisdiction has ordered the cabinet to serve is eligible for services.

Section 3. Determination and Redetermination of Eligibility. Initial eligibility shall be determined within thirty (30) calendar days of application and redetermined any time thereafter when there is a change in circumstances but not less often than annually.

Section 4. Fees for Service. Providers of services under contract to serve eligible Title XX clients may require clients to pay a fee for certain services based on sliding fee scales related to the client's income. Allowable fees for services appear within Appendix V of the state's Title XX plan and are hereby incorporated by reference. Fees may vary by geographic area. A copy of the state's Title XX plan may be obtained by a request in writing made to the Commissioner of Social Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

SUZANNE TURNER, Commissioner
ADOPTED: June 9, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 16, 1982 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 3:030E. Matching requirements.

RELATES TO: KRS 199.420, 205.204, 209.030
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: June 16, 1982
NECESSITY AND FUNCTION: The Omnibus Budget Reconciliation Act of 1981 substantially reduced the amount of federal funds the Commonwealth receives through the Title XX "Social Services Block Grant" and the "Community Services Block Grant" established under said Reconciliation Act of 1981. Matching requirements are being established to encourage and assure local support and sharing in service provision; and to reduce, to the extent possible, the full impact of federal reductions in funds.

Section 1. Definitions. As used in this regulation, the following terms shall have the meanings as set forth below:

(1) "Certified expenditures" means any cash expenditure incurred by the local provider of services through the Social Services or Community Services Block Grant funds when such expenditures are determined to be allowable, reasonable, and necessary under applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants. Such certified expenditures may be incurred by the provider of service whether public or private non-profit, or may be certified on behalf of the provider by a third party which may also be a public or private non-profit organization.

(2) "In-kind contributions" means property or services which directly benefit the service purchased; which are contributed by the provider or a non-federal third party without expenditure by the local provider; and would have been an allowable, reasonable and necessary cost in accordance with applicable laws and procedures of the Commonwealth and federal laws and regulations for the Block Grants if purchased by the provider.

(3) "Local matching funds" means any cash received from a local organization or individual, local taxes, state funds received by local agencies, or federal general revenue sharing funds received for use by local governments. No other federal funds shall be allowed as matching and no other funds identified in this regulation for match shall satisfy this requirement if used to match other state or federal funds.

Section 2. All contractors who provide social services funded by Title XX—Social Services Block Grant, P.L. 97-35, shall be required to provide matching on a seventy-five (75) percent/twenty-five (25) percent ratio. Local match shall be cash in the form of certified expenditures except that in-kind contributions are authorized for in-home services for the elderly and the State Department of Health Services may provide state fund cash match for mental health/mental retardation services. The local match shall consist of one (1) dollar for every three (3) dollars in federal funds expended for in-kind in the same ratio.

Section 3. Community Services Block Grant. Contractors utilizing Community Services Block Grant funds, P.L. 97-35, shall meet the same requirements set forth in Section 2, except that the matching ratio shall be eighty (80) percent federal and twenty (20) percent local matching funds, and in-kind contributions may be used for all CSBG contracts.

Section 4. (1) Certified expenditures for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or a third party when certified by a third party. Third party entities shall enter a contractual agreement with the provider as to the type of expenses and methods of documentation to be used for all the certified expenditures. The contractual agreement shall include at least a requirement to make records available for audit by the provider, Cabinet for Human Resources, and/or entities authorized by the Cabinet for Human Resources to audit said records. The provider may be subject to disallowances and reimbursement to the Commonwealth if such expenditures are not documented by the provider or the third party.

(2) In-kind contributions for local match shall require documentation sufficient to determine that the requirements of this regulation are met by the provider and/or third party. Values placed on in-kind contributions shall be based on 45 CFR Part 74, Subpart G, Cost Sharing or Matching, as printed June 9, 1982 and as subsequently amended, except as otherwise authorized in this regulation.

(3) State fund cash match may be inter-accounted to the Cabinet for Human Resources' Department for Social Services for disbursement with the federal funds matched. Inter-accounted funds shall require documentation sufficient to determine that the requirements of this regulation are met.

SUZANNE TURNER, Commissioner
ADOPTED: June 10, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 16, 1982 at 11 a.m.

Amended Regulations Now In Effect

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
As Amended

704 KAR 4:020. Comprehensive school health.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 13.082, 156.070, 156.160[, 161.145]
EFFECTIVE: June 22, 1982
NECESSITY AND FUNCTION: KRS 156.160 requires the *State Board of Education* [Superintendent of Public Instruction] to *adopt* [prepare] regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. *This regulation implements the duty of the State Board relative to medical inspections and the physical welfare and safety of public school children.*

Section 1. School employee medical examinations shall be required for the protection of the physical welfare and safety of the public school children:

(1) All local boards of education shall require a medical examination of each teacher upon initial employment which shall include a tuberculin skin test. All positive reactors shall *be required to comply with the recommendations of the local board of health and the Department for Human Resources for further evaluation and treatment of the tuberculosis infection* [obtain an immediate chest x-ray for evidence of tuberculosis, followed by the currently accepted practice of the Preventive Services Section, Bureau of Health Services, Kentucky Department for Human Resources, for treatment of tuberculosis infection or disease. No further tuberculin skin test or x-rays for tuberculosis shall be required following completion of treatment, unless symptoms occur]. Following the required medical examinations *for initial employment* and *any* subsequent [medical] examinations *as may be required for positive tuberculin reactors*, each teacher shall submit to the local school superintendent a statement *indicating* [clarifying] his/her medical status.

[(a) A yearly chest x-ray shall be required if the above recommended preventive treatment for infection is not completed.]

[(b) Local school authorities shall require each year thereafter a repeat tuberculin skin test for all tuberculin nonreactors, with the above procedure followed when a teacher becomes a tuberculin reactor. Additional tests and examinations may be required as deemed necessary by the local boards of education.]

(2) All local boards of education shall require a medical examination of each school bus driver in accordance with the requirements of the State Board *of* [for Elementary and Secondary] Education's regulations pertaining to pupil transportation upon initial employment and each year thereafter. The medical examination shall include test for tuberculosis, hearing and vision disorders, emotional instability, and for serious medical *conditions* [diseases] including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. All medical examinations of the school bus drivers shall be reported on *a* [the special] form

furnished [approved] by the State Department of Education and submitted to the local school superintendent.

[(a)] All positive *tuberculin reactors shall be required to comply with the recommendations of the local board of health for further evaluation and treatment of the tuberculosis infection* [reactors to the tuberculin skin test shall obtain an immediate chest x-ray for evidence of tuberculosis, followed by the currently acceptable treatment for tuberculosis infection or disease. No further tuberculin skin test or x-rays for tuberculosis shall be required following completion of treatment, unless symptoms occur].

[(b) A yearly chest x-ray shall be required if the above recommended preventive treatment for infection is not completed.]

(3) All local boards of education shall require a medical examination of each custodian, cafeteria worker, and other *classified* school employees *not specifically covered by subsection (2) of this section* upon initial employment [which shall include a tuberculin skin test]. *The medical examination shall include tests for tuberculosis, hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician.* All positive *tuberculin reactors shall be required to comply with the recommendations of the local board of health and the Department for Human Resources for further evaluation and treatment of the tuberculosis infection* [reactors shall obtain an immediate chest x-ray for evidence of tuberculosis, followed by the currently acceptable treatment for tuberculosis infection or disease. No further tuberculin skin test or x-rays for tuberculosis shall be required following completion of treatment, unless symptoms occur]. Following the required *evaluation* [medical examinations and subsequent medical examinations], each employee shall submit to the local school superintendent a statement *indicating* [clarifying] his/her medical status. *Medical examinations shall be reported on forms furnished by the State Department of Education.*

[(a) A yearly chest x-ray shall be required if the above recommended preventive treatment for infection is not completed.]

[(b) Local school authorities shall require each year thereafter a repeat tuberculin skin test for all tuberculin nonreactors, with the above procedure followed when a custodian, cafeteria worker, and other school employee becomes a tuberculin reactor. Additional tests and examinations may be required as deemed necessary by the local boards of education.]

[(4) The physical examination required of classified personnel, excluding bus drivers, required by this section shall be conducted prior to August 1 of the employable year and shall be at no cost to the employee unless the employee elects to be examined by a private physician.]

(4) The local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to be examined for tuberculosis. The evaluation and any required treatment for tuberculosis infection shall be based upon the recommendations of the local board of health and the standards developed by the Department for Human Resources.

(a) Any personnel exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the recommendation of the local board of health.

(b) In counties with high incidence rates for tuberculosis infection defined as equal to or greater than one (1) percent, the local board of health may, with the approval of the Department for Human Resources, exercise its legal sanction to require more extensive testing for tuberculosis than outlined above.

Section 2. All local boards of education shall require a medical examination of each child within [a period of] six (6) months prior to, or one (1) month following his/her initial admission to school [regardless of grade]. *The medical examination shall be reported on forms furnished by the Department of Education and shall include a medical history; record of immunizations; assessment of growth and development and general appearance; physical assessment including hearing and vision screening; and recommendations to the school regarding health problems that may require special attention in classroom or physical education activities.* All boards of education shall adopt a program of continuous health supervision for all school enrollees; such supervision shall include scheduled screening tests for vision, hearing and *scoliosis* [dental problems]. The need for a tuberculin skin test will depend on the risk of exposure of the child and prevalence of tuberculosis in the community, *such need to be determined pursuant to KRS 158.036 and KRS 214.034.*

(1) An effective mechanism for referral and appropriate follow-up of any apparent abnormality noted by screening *assessment* [examination] or teacher observation shall be recorded on school health records within nine (9) weeks of screening program or detection of abnormality.

(2) Each school shall have emergency care procedures. The emergency care procedures shall include first aid facilities, personnel with first aid training, parents' telephone number, name of family physician, and means of transportation.

(3) Local boards of education shall require all vaccinations and immunizations as required by law or regulations:

(a) Except as otherwise provided by law, all children shall be required to present a valid immunization certificate upon enrollment in school, and a valid up-to-date immunization certificate shall be on file for all children at all times. The governing body of private and public schools shall enforce the provisions of this subsection in accordance with the established laws.

(b) Children transferring into any school district shall comply with the above requirements.

Section 3. (1) Each elementary and secondary school shall initiate a cumulative health record for each pupil entering school. Such record shall be maintained throughout the pupil's attendance. Such record shall be uniform and shall be on forms *furnished by the Department of Education* [prescribed by the Superintendent of Public Instruction]. Such record shall *include screening tests related to growth and development, vision and hearing; teacher observations of general appearance and behavior; and findings and recommendations of physician and dentist including immunization record.* [include health data of the pupil including screening test, teacher observation, and physician's and dentist's recommendations.] A follow-up by the proper health or school authorities shall be made on each defect noted and the result recorded.

(2) Local school authorities shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. All boards of education shall, in relation to each school under its jurisdiction, provide and maintain a physical environment that is conducive to the health and safety of school children. It shall be the responsibility of all local boards of education to comply with current laws and regulations applicable to all public buildings pertinent to

health, sanitation, and safety. In accordance with current regulations and standards by authorities having jurisdiction, it shall be the responsibility of all local boards of education to establish:

(1) An adequate supply of water of safe, potable, sanitary quality.

(2) A sanitary disposal of sewage, other water carried waste, and solid waste.

(3) Adequate toilet and lavatory facilities and other sanitary fixtures.

(4) Adequate heating, lighting, and ventilation in all school buildings.

(5) Adequate facilities and equipment for cafeterias and lunchrooms.

(6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment.

(7) Adequate first aid facilities.

(8) Adequate control of air pollutants.

Section 5. Each board of education shall designate a person to serve as school health coordinator. Such person shall meet the minimum qualifications required of this position. The school health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department of Education, and the local health department in planning, promoting, and implementing a school health services program that meets the regulations adopted by the State Board *of* [for Elementary and Secondary] Education.

Section 6. Each local board of education shall require *an annual* [a] medical examination of each child as a prerequisite for eligibility in inter-scholastic athletics. A local board of education may require such examination to be paid by the parent of the child.

[Section 7. Each local board of education shall require its curriculum to include health instruction, stressing timely and local health issues such as alcoholism, drug abuse, personal hygiene, accident prevention, family living, sex education, environmental health, nutrition, venereal disease, and consumer health.]

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: March 9, 1982
RECEIVED BY LRC: March 16, 1982 at 11:30 a.m.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
As Amended

704 KAR 15:090. Incentive loan program; mathematics and science.

RELATES TO: KRS 156.611
PURSUANT TO: KRS 13.082, 156.070, 156.611
EFFECTIVE: July 7, 1982
NECESSITY AND FUNCTION: KRS 156.611 sets up an incentive loan program and requires the Superintendent of Public Instruction to promulgate and administer regulations adopted by the State Board of Education which establishes requirements and procedures for awarding incentive loans to persons declaring an intention to serve and who actually render service in the critical shortage fields of mathematics and science. This regulation implements that function.

Section 1. (1) Applicants shall be enrolled at institutions of higher education which have been approved by the State Board of Education to offer teacher education programs.

(2) The applicant shall be admitted to a teacher education program leading to a teaching major or area of concentration in mathematics, biology, chemistry, earth science, physics, math-physical science, natural sciences, or geology.

Section 2. (1) Priorities for awarding the incentive loans shall be given to graduates of Kentucky high schools and Kentucky residents. During the initial year of the program priority will be given to applicants with the highest grade point average—American College Testing score combination and the college or university recommendation as outlined in Section 9. Thereafter, first priority will be given to recipients who have successfully completed one (1) or more years in the program.

(2) Eligible students across the state who apply for the loan will be rank ordered by a statewide selection committee based on the recommendation of the college or university as outlined in Section 9 and the grade point average for all college work completed at the time of application combined with the American College Testing score and the criterion outlined in Section 9. The top ranking students would then be granted loans in the amount requested up to the maximum.

Section 3. Certified teachers who do not possess one (1) of the majors or areas as set forth in Section 1 and who have been admitted to a teacher education program shall also qualify for a summer school loan equal to no more than one-third (⅓) the annual loan amount, not to exceed three (3) summer school terms.

Section 4. The maximum amount of a yearly loan shall not exceed the amount established annually by the State Board of Education based on the average cost of room, board, and tuition at the state four (4) year institutions of higher education. Each summer school loan shall not exceed one-third (⅓) of the maximum yearly loan.

(1) A student initially receiving a loan during his/her sophomore year shall be eligible for a maximum of three (3) annual loans.

(2) A student initially receiving a loan during his/her junior year shall be eligible for a maximum of two (2) loans.

(3) A student initially receiving a loan during his/her senior year shall be eligible for one (1) loan.

(4) Applicants must re-apply each year for the loan and shall be given priority consideration over new applicants.

Section 5. Service as a certified teacher in one (1) of the critical shortage areas shall be rendered within the Commonwealth in a public accredited middle, junior high, or secondary school and verification of services shall be submitted in writing to the Superintendent of Public Instruction from the local school district superintendent or building principal. A major portion of the teacher's school day shall be spent teaching in the fields of mathematics or science.

Section 6. Loans shall be converted based on the formula of:
(1) Two (2) semesters of teaching for each year the loan was received;
(2) One (1) semester of teaching for each summer school attendance; and
(3) Seventy (70) school days during each of six (6) school semesters immediately after obtaining an appropriate major or area of concentration shall be converted to interest-free scholarship.

Section 7. The recipient shall maintain at least a 2.5 grade point average within the institution of higher education and make normal progress toward receiving certification in one (1) of the areas listed in Section 1 in order to remain in the loan program.
(1) Any participant who fails to complete an appropriate program of studies shall be immediately liable to the Department of Education for the sum of all outstanding loans and interest for the entire period of the loan.
(2) Failure to repay the loan and interest or render service shall be cause for revocation of a person's teaching certificate, pursuant to KRS 161.120.
(3) The interest rate for all loans shall be established by the Superintendent of Public Instruction annually based on practices followed by Kentucky Higher Education Assistance Authority and shall be published prior to the awarding of the loans.

Section 8. Repayment of loans may be deferred by the Superintendent of Public Instruction when it is in the best interest of the program and it shall be the recipient's responsibility to request deferrals.

Section 9. The College or Department of Education at each eligible institution shall establish a screening committee to verify that a student is eligible for the loan. The committee will certify that eligible loan applicants have a reasonable chance for completing the Teacher Education Program for certification prior to verification of eligibility to the student financial aid officer. The institutional screening committee shall incorporate the following criteria:
(1) Grade point average and other evidence of scholastic achievement.
(2) College entrance scores.
(3) Performance tasks that promote critical thinking and reasoning skills.
(4) Registration in appropriate academic courses that are in the identified areas of science or mathematics.
(5) A priority listing of eligible applicants.
(6) Verification on a semester by semester basis that loan recipients are making significant progress toward a degree and/or certification.
(7) Evidence that the loan applicant possesses other characteristics which the institution deems to be related to success in teaching science or mathematics.
(8) Financial need of applicant.

Section 10. The screening committee shall forward the applications and names in rank order of the eligible applicants to the State Department of Education and to the institution's financial aid officer.

Section 11. This regulation shall be effective July 15, 1982.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: May 11, 1982
RECEIVED BY LRC: May 12, 1982 at 4:15 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
As Amended

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]
EFFECTIVE: June 25, 1982
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 inpatient 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] limit*s* or exclude*s* 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 inpatient reserve days;

(c) Upon exhaustion of all Medicare hospital inpatient 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 solely 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.

(g) Except as othewise provided in Section 4(2)(c) of this regulation, the terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy or certificate is issued in compliance with this regulation.

(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 inpatient 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, inpatient 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 *or* [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. *(1) When a Medicare Supplement policy is to replace another Medicare Supplement policy, there shall be presented to the applicant, not later than at the time of taking the application, a comparison statement which shall appear as shown in Appendix A to this regulation. Direct response insurers shall present the comparison statements to the applicant not later than at the time of delivery of the 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.]

(2) Insurers shall alter the amounts shown under the headings "Benefit," "Medicare Pays," and "You Pay" to agree with any changes in Medicare.

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 *thirty (30)* [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. *(1) Section 5 of this regulation shall be effective thirty (30) days from the date it is approved pursuant to KRS Chapter 13.* [This regulation shall be effective thirty (30) days from the date it is approved pursuant to KRS Chapter 13.]

(2) Sections 1, 2, 3, 4, 6, 7, and 8 of this regulation shall be effective upon approval pursuant to KRS Chapter 13.

DANIEL D. BRISCOE, Commissioner
ADOPTED: May 14, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: May 14, 1982 at 4 p.m.

See Appendix A on following page)

(COMPANY NAME)

MEDICARE—HOSPITAL INSURANCE BENEFITS (PART A)

SERVICE	FOR COVERED SERVICES—EACH BENEFIT PERIOD BENEFIT	MEDICARE PAYS	YOU PAY**
HOSPITALIZATION . . . Semiprivate 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 $260	$260
	61st to 90th day	All but $65 a day	$65 a day
	91st to 150th day*	All but $130 a day	$130 a day
	Beyond 150 days	Nothing	All costs
	A Benefit Period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital or skilled nursing facility for 60 days in a row.		
POSTHOSPITAL SKILLED NURSING FACILITY CARE . . . In a facility approved by Medicare. You must have been in a hospital for at least 3 days and enter the facility within 30 days after hospital discharge.	First 20 days	100% of approved amount	Nothing
	Additional 80 days	All but $32.50	$32.50
	Beyond 100 days	Nothing	All costs
	MEDICARE AND PRIVATE INSURANCE WILL NOT PAY FOR MOST NURSING HOME CARE. YOU PAY FOR CUSTODIAL CARE AND MOST CARE IN A NURSING HOME.		
HOME HEALTH CARE	Unlimited as medically necessary	Full cost	Nothing
BLOOD	Blood	All but first 3 pints	For first 3 pints

* 60 Reserve Days may be used only once; days used are not renewable.
** These figures are for 19 and are subject to change each year.

MEDICARE—MEDICAL INSURANCE BENEFITS (PART B)

SERVICE	FOR COVERED SERVICES—EACH CALENDAR YEAR BENEFIT	MEDICARE PAYS	YOU PAY
MEDICAL EXPENSE Physician's services, inpatient and outpatient medical services and supplies, physical and speech therapy, ambulance, etc.	Medicare pays for medical services in or out of the hospital. Some insurance policies pay less (or nothing) for hospital outpatient medical services or services in a doctor's office.	80% of approved amount (after $75 deductible)	$75 deductible* plus 20% of balance of approved amount (plus any charge above approved amount)**
HOME HEALTH CARE	Unlimited as medically necessary	Full cost	Nothing
OUTPATIENT HOSPITAL TREATMENT	Unlimited as medically necessary	80% of approved amount (after $75 deductible)	Subject to deductible plus 20% of balance of approved amount
BLOOD	Blood	80% of approved amount (after first 3 pints)	For first 3 pints plus 20% of balance of approved amount

*Once you have had $75 of expense for covered services in a calendar year, the Part B deductible does not apply to any further covered services you receive in that year.

**YOU PAY FOR charges higher than the amount approved by Medicare unless the doctor or supplier agrees to accept Medicare's approved amount as the total charge for services rendered.

PRIVATE INSURANCE CHECKLIST

CURRENT INSURANCE (Premium $ /yr) WILL PAY	PROPOSED INSURANCE (Premium $ /yr) WILL PAY

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

808 KAR 10:150. Registration exemptions.

RELATES TO: KRS 292.410(1)
PURSUANT TO: KRS 13.082, 292.500(3)
EFFECTIVE: July 7, 1982
NECESSITY AND FUNCTION: To declare that registration is not necessary in the public interest for certain types of business transactions with limited securities implications pursuant to KRS 292.410(1)(q).

Section 1. Pursuant to KRS 292.410(1)(q), the director having found that the enforcement of the Kentucky Securities Act is not necessary or appropriate in the public interest or for the protection of investors, and securities issued under the following classes of transactions shall be exempt from KRS 292.340 to 292.390 and need not file to claim the exemption. However, any persons receiving commissions or other remuneration in connection with sales made pursuant to these exemptions *are not relieved of compliance [must comply] with the registration requirements of KRS 292.330.*

(1) Small business organization. Where ten (10) or fewer persons organize a corporation, joint venture, or similar business organization other than a limited partnership, provided that:

(a) There are no more than twenty-five (25) offerees;

(b) The security acquired does not evidence an oil, gas or mineral interest;

(c) Each person purchases with investment intent;

(d) Each purchaser is an organizer on the date the issuer is formed;

(e) Each purchaser has access to information concerning the issuer;

(f) In connection with the organization, no commission or other remuneration is paid or given directly or indirectly to any person for soliciting any prospective buyer in this state;

(g) No public advertising through newspapers, television, radio, handbills, or other such solicitation will be employed in effectuating the proposed transaction.

(2) Professional service corporation. Any security issued by a professional service corporation organized under KRS Chapter 274, provided:

(a) The professional service corporation complies with the ownership and retransfer restrictions set forth in KRS Chapter 274;

(b) The securities are sold to a professional person;

(c) The seller must reasonably believe that each buyer is purchasing for investment; and

(d) Each professional is provided access to information concerning the professional service corporation.

(3) Limited offering of securities related to oil, gas and mineral interests to select persons under select conditions. Any offer or sale of a certificate of interest or participation in an oil, gas or mineral title, lease or assignment, or in payments out of production under such title, lease or assignment, provided each such sale complies with each of the following:

(a) The number of investors cannot exceed thirty-five (35);

(b) Offers and sales can only be made to the following types of investors:

1. A professional geologist, professional oil, gas or mineral landman, geophysicist, petroleum engineer or mining engineer;

2. A person who is regularly engaged in the business of production of or exploration for oil, gas or minerals as a full-time vocation or for his primary source of income;

3. A sophisticated investor who the issuer and any person acting on its behalf in the offer, offer to sell, offer for sale or sale of the securities shall have reasonable grounds to believe and shall believe:

a. Immediately prior to making any offer, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;

b. Immediately prior to making any sale, after reasonable inquiry, that the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating both the merits and risks of the prospective oil, gas or mineral investment;

c. That each investor has a minimum net worth of $100,000 exclusive of home, home furnishings and automobiles, and in addition, is able to bear the economic risk of the investment (for purposes of determining the ability to bear the economic risk, the relationship between the investor's net worth and the amount of the investment shall be a substantial factor); and

d. That each purchaser has access to information concerning the issuer.

(c) The offeror must reasonably believe that each purchaser is purchasing for investment and not with a view for resale and each investor must represent in writing that he understands he cannot resell his security without registration or other compliance with the state and federal securities laws; provided, however, solely for purposes of those investors described in paragraphs (b)1 and (b)2 of this subsection, sales may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection for purposes of assembling lease or other rights for oil, gas or mineral production or exploration, and resales of their whole interests may be made exclusively among those persons described in paragraphs (b)1 and (b)2 of this subsection without regard to a holding period requirement.

(d) Resales by persons described in paragraph (b)3 of this subsection within two (2) years of their purchase of any such security can only be made to persons described in paragraphs (b)1 and (b)2 of this subsection; such resales must be of their whole interests and not fractional interests in the securities.

(e) Sales by persons described in paragraph (b)3 of this subsection of their whole interests back to the issuer shall not be considered to be "resales" for purposes of this regulation.

(f) This exemption shall not be available to any issuer, if it, any officer, director, promoter, sponsor, operator, organizer or agent of such issuer or other authorized person participating in the process of offering or selling such securities shall have been the subject of:

1. Any administrative order issued under any state or federal securities law or regulation or a postal fraud order;

2. Any outstanding injunction, consent order or other legal directive for a securities violation of any state or federal securities law or regulation; or

3. Any court decision granting civil relief for a securities violation of any state or federal securities law or regulation; or shall have been convicted of any criminal violation of the federal securities or postal laws or regulation, the securities laws of any state, or criminal fraud or any felony.

(g) The entire exemption shall not be available upon the occurrence of any one of the following events:

1. Where a single sale is made to a person who is not qualified as an investor under paragraph (b) of this subsection;

2. Where a single offer is made to randomly selected of-

ferees who do not qualify as an offeree under paragraph (b) of this subsection; or

3. Where there has been a willful violation of KRS 292.320.

[(4)Private offering of securities under Rule 146 of the Federal Securities Act of 1933. Any offer or sale of securities pursuant to Rule 146 of the Federal Securities Act of 1933, provided each such offer or sale complies with all the requirements of said Rule, and provided further that any forms filed with the United States Securities and Exchange Commission pursuant to such an offering are filed concurrently with the Kentucky Division of Securities.]

Section 2. Pursuant to KRS 292.410(1)(q), the director having found that registration is not necessary or appropriate in the public interest or for the protection of investors, the following transaction is determined to be exempt from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501-230.503 and either 230.505 or 230.506 as made effective in Release No. 33-6389 and which satisfies the following further conditions and limitations:

(a) Persons receiving [No] commissions, finders fee, or other remuneration [shall be paid or given, directly or indirectly, for soliciting any prospective purchaser or] in connection with sales of securities in reliance on this regulation are not relieved of compliance with [, unless to a person appropriately registered in this state insofar as required under] KRS 292.330.

(b) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or interest described in Securities Act of 1933, Regulation A, Rule 230.252, Sections (c), (d), (e) or (f):

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's law within five (5) years prior to the commencement of the offering.

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption.

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

6. The prohibitions of subparagraphs 1 through 3 of this paragraph shall not apply if the party or interest subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party or interest.

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(c) The issuer shall file with the Division of Securities a notice on Form D (17CFR239.550):

1. No later than fifteen (15) days after the first sale of securities to an investor in this state which results from an offer being made in reliance upon this exemption.

2. No later than thirty (30) days after the completion date of the offering of the issue.

3. Every six (6) months after the first sale of securities from the issue made in reliance on this regulation unless the final notice required by subparagraph 2 of this paragraph has been filed.

4. Every notice on Form D shall be manually signed by a person duly authorized by the issuer.

5. Any information furnished by the issuer to offerees shall be filed with the notice required pursuant to subparagaph 1 of this paragraph and, if such information is altered in any way during the course of the offering, the Division of Securities should be notified of such amendment within fifteen (15) days after an offer using such amended information.

6. If more than one (1) notice is required to be filed pursuant to subparagaphs 1 through 3 of this paragraph, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.

(d) In all sales to nonaccredited investors the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both of the following conditions are satisfied:

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed twenty (20) percent of the investor's net worth (excluding principal residence, furnishings therein and personal automobiles) it is suitable.

2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risk of the prospective investment.

(2) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of this state's securities law.

(3) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason, the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(4) In any proceeding involving this rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

TRACY FARMER, Secretary
ADOPTED: May 10, 1982
RECEIVED BY LRC: May 14, 1982 at 11:25 a.m.

Amended After Hearing

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

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

401 KAR 2:050. Waste management definitions *and designation of regulatory responsibility.*

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 *Cabinet* 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 *and designates regulatory responsibility for coal mining solid waste to the Department for Surface Mining Reclamation and Enforcement.*

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 solid waste" means solid waste as defined by KRS 224.005 which is generated at, and is incidental to, a coal exploration operation or surface mining and reclamation operation regulated under KRS Chapter 350, and shall not include wastes generated by households, communities, cities, counties, or any person or business other than those regulated under KRS Chapter 350. ["Coal mining waste, refuse, overburden and coal mining by-products" as used in the waste management regulations:]

(13) [(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 and to the washing and crushing of coal. The term does not include used oil, [garbage,] paints or flammable liquids. The term includes the following:

(a) Refuse which is that waste material in the raw coal which it is the object of cleaning to remove;

[(b) "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;]

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

(c) [(d) "Coal mining by-products" means] Coal mining by-products which include any [a] material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later. [The term does not include used oil, garbage, paints, flammable liquids or utility wastes (fly ash, bottom ash, scrubber sludge).]

(14) [(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.

(15) [(14)] [(13)] "Constituent" or "hazardous waste constituent" means a constituent which caused the *cabinet* [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 8(5) 401 KAR 2:075.*

(16) [(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.

(17) [(16)] [(15)] "Container" means any portable enclosure in which a material is stored, transported, treated, disposed, or otherwise handled.

(18) [(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.

(19) [(18)] [(17)] "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(20) [(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.

(21) [(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.

(22) [(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.

(23) [(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.

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

(25) [(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.

(26) [(25)] [(23)] "Disease vector" means all insects, *birds* or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(27) [(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.

(28) [(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.

(29) [(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].

(30) [(29)] [(27)] "EPA identification number" means the number assigned by EPA or the department to each generator, transporter, and treatment, storage, or disposal facility.

(31) [(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.

(32) [(30)] "Existing hazardous waste management facility" means a hazardous waste facility which was in operation, or for which *continuous* 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)] [(29)] "Explosive gas" means *methane (CH_4)* in 401 KAR 2:055, Section 6(1)[, methane (CH_4)].

(34) [(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).

(35) [(34)] [(32)] "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(36) [(35)] [(33)] "Federal agency" means any depart-

ment, 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.

(37) [(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.

(38) [(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.

(39) [(38)] [(36)] "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless othewise specified in 401 KAR 2:095.

(40) [(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.

(41) [(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.

(42) [(41)] [(39)] "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(43) [(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.

(44) [(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."

(45) [(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 *defined in 401 KAR 2:075* or are wastes listed in 401 KAR 2:075 *only for this reason.*

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

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

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

(f) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste 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 or under 40 CFR Part 122 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, *beneath or on the sides of a hazardous waste surface impoundment, landfill, or landfill cell, or beneath or on the sides of a solid waste site or facility* 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 *where the cabinet determines that other changes in the permit are necessary as a result of the change in ownership or operational control*, area occupied, disposal method, or other significant change in the operation of a waste 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) [(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.

(69) [(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.

(70) "Part A of the application" or "Part A" means the standard forms or format for applying for a hazardous

waste site or facility permit as required in 401 KAR 2:060, Section 15. Specifically, Part A consists of Forms 1 and 3 of the federal consolidated permit application found in 40 CFR 122.24 or the Kentucky equivalent, registration of intent to apply for a permit.

(71) "Part B of the application" or "Part B" means the standard format for applying for a hazardous waste site or facility permit as required in 401 KAR 2:060, Section 16. Specifically, Part B consists of submitting all of the information required in 401 KAR 2:060, Section 16; there are no official forms for the submission.

(72) [(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].

(73) [(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.

(74) [(72)] "Permit" means the authorization or other control document issued by the cabinet [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 cabinet [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.

(75) [(73)] [(70)] "Permittee" means any person holding a valid permit issued by the department to manage, treat, store, and/or dispose of waste.

(76) [(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.

(77) [(75)] [(72)] "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(78) [(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.

(79) [(78)] [(75)] "Post closure care" means the manner in which a facility must be maintained when it no longer accepts hazardous waste for disposal.

(80) [(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.

(81) [(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.

(82) [(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.

(83) [(81)] [(78)] "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(84) [(82)] [(79)] "Regional Administrator" means the regional administrator for the EPA region in which the facility is located, or his designee.

(85) [(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.

(86) [(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.

(87) [(85)] [(82)] "Run-off" means any rainwater, *leachate,* or other liquid that drains overland from any part of a facility.

(88) [(86)] [(83)] "Run-on" means any rainwater, *leachate,* or other liquid that drains overland onto any part of a facility.

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

(90) [(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.

(91) [(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.

(92) [(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.

(93) [(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.

(94) [(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, com-

mercial 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.

(95) [(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.

(96) [(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.

(97) [(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.

(98) [(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.

(99) [(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.

(100) [(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.

(101) [(99)] [(96)] "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

(102) [(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.

(103) [(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.

(104) [(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.")

(105) [(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.

(106) [(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.

(107) [(105)] [(102)] "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on the water.

(108) [(106)] [(103)] "Washout" means the carrying away of waste by waters of the base flood.

(109) [(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.

(110) [(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.

(111) [(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.

(112) [(110)] [(107)] "Zone of incorporation" means the depth to which the soil on a landfarm is plowed, tilled, or otherwise designed to receive waste.

Section 2. Qualified Transfer of Regulatory Responsibility. (1) As provided in KRS 224.868(1)(c), coal mining wastes as defined in this regulation are to be regulated under KRS Chapter 350. Coal mining solid wastes as defined in Section 1(12) of this regulation are regulated under KRS Chapter 224, as provided by KRS 224.255.

(2) The cabinet is transferring the regulatory responsibility for coal mining solid waste disposal, which is sub-

ject to waste management regulations, to the Department for Surface Mining Reclamation and Enforcement at sites regulated under KRS Chapter 350. Coal mining solid waste may be disposed of in the areas regulated under KRS Chapter 350 and is exempt from the permit requirements in 401 KAR 2:090 provided that:

(a) No hazardous waste or special waste is placed, stored, treated, disposed or otherwise managed under the provisions of this section; and

(b) This transfer does not apply to those disposal areas which would require a liner in accordance with the waste management regulations in order to prevent adverse effects on groundwater; and

(c) The environmental performance standards as specified in Sections 6 and 7 of 401 KAR 2:055 and the design and operating standards of 401 KAR 2:095, Sections 1, 2, and 3, are maintained.

(3) This transfer of regulatory responsibility includes the regulatory authority in 401 KAR 2:095, Section 1, to request information from the applicant, and the regulatory authority to grant a variance pursuant to 401 KAR 2:055, Section 2. This transfer of regulatory responsibility may be terminated by the cabinet at an individual mining site when any of the provisions of subsection (2) are violated, and the Department for Environmental Protection will reassume full regulatory responsibility for the individual site at such time.

JACKIE SWIGART, Secretary
ADOPTED: July 12, 1982
RECEIVED BY LRC: July 14, 1982 at 12 noon.

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

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 *Cabinet. 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," the requirement to submit an application is satisfied by submitting only Part A of the permit application to the U.S. EPA and submitting either Part A of the application or its Kentucky equivalent (Registration of Intent to Apply for Permit) to the cabinet until the cabinet [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 or its equivalent 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 cabinet [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 cabinet [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 cabinet [department] determines on examination or re-examination of a Part A application as specified in Section 15 or its equivalent (Registration of Intent to Apply for a Permit) 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 or its equivalent (Registration of Intent to Apply for a Permit);

(b) Employ processes not specified in Part A of the permit application or its equivalent (Registration of Intent to Apply for a Permit); or

(c) Exceed the design capacities specified in Part A of the permit application or its equivalent (Registration of Intent to Apply for a Permit).

(3) Changes during interim status.

(a) New hazardous wastes not previously identified in Part A of the permit application or its equivalent (Registration of Intent to Apply for a Permit) may be treated, stored, [recycled,] or disposed of at a facility if the owner

or operator submits a revised Part A permit application or its equivalent 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 or its equivalent prior to such a change (along with a justification explaining the need for the change) and the cabinet [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 or its equivalent prior to such a change (along with a justification explaining the need for the change) and the cabinet [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 cabinet [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 or its equivalent 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 cabinet [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 cabinet [department] by the new owner or operator of compliance with that regulation, the cabinet [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 or its equivalent will be required to submit Part B of the application within six (6) months of the cabinet's [department's] decision to require such submittal, according to Section 14(1)(d) of this regulation. The cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [department] finds an imminent and substantial endangerment to human health or the environment, the cabinet [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 cabinet [department] at any time without process if the cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet's [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [department] so requests.

(g) All data collected during any trial burn must be submitted to the cabinet [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 cabinet [department] shall tentatively decide whether to prepare a draft permit or to deny the application. In making this determination the cabinet [department] shall consider the requirements specified in the waste management regulations and in KRS 224.866(1).

(b) If the cabinet [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 cabinet's [department's] final decision is that the tentative decision to deny the permit application was incorrect, the cabinet [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 cabinet [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 cabinet [department] under this section shall be accompanied by a fact sheet and shall be made available for public comment. The cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 why 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 cabinet [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 cabinet [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 cabinet [department] may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet [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 cabinet [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 cabinet's [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 cabinet [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 cabinet [department] tentatively decides to modify or revoke and reissue a permit under Section 6(2), the cabinet [department] shall prepare a draft permit under Section 5(1) incorporating the proposed changes. The cabinet [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 cabinet [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 cabinet [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 cabinet [department] receives any information (for example, if the cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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. When the cabinet receives notification of expected closure under 401 KAR 2:063, Section 6(4), and finds that any of the following previously granted permit conditions are no longer warranted: [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]

(i) Extension of the ninety (90) or 180 day periods under 401 KAR 2:063, Section 6(4);

(ii) Modification of an extended post-closure care period under 401 KAR 2:063, Section 6(7);

(iii) Continuation of security requirements under 401 KAR 2:063, Section 6(7)(b); or

(iv)Permission to disturb the integrity of the containment system under 401 KAR 2:063, Section 6(7)(c).

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 cabinet [department] determines that modification or revocation and reissuance is appropriate.

2. The cabinet [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 cabinet [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 cabinet [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 cabinet [department] within a reasonable time any information which the cabinet [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 cabinet [department] upon request copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the cabinet [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 cabinet [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 cabinet [department] shall be signed and certified (see Section 11).

(l) Reporting requirements.

1. Planned changes. The permittee shall give notice to the cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [department]. The cabinet [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 cabinet [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 cabinet [department] (see Section 5(3) of 401 KAR 2:063).

b. Unmanifested waste report: must be submitted to the cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 ad-

ditional 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 cabinet [department] may issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules shall contain an identical 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 cabinet [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 cabinet [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 cabinet [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) and any other provision of the waste management regulations relating to confidentiality of 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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 cabinet [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 imprisonment." [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 cabinet [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 cabinet [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 cabinet [department] shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the cabinet [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 cabinet [department], using the application form provided by the cabinet [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 cabinet [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 within one-fourth (¼) mile of the facility property boundary [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 cabinet [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 cabinet [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 cabinet [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.]

5. [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.

(c) Permit by rule. The following persons are deemed to have a permit by rule and are not required to obtain a hazardous waste site or facility permit:

1. Owners and operators of elementary neutralization units as defined in 401 KAR 2:050.

2. Owners and operators of wastewater treatment units as defined in 401 KAR 2:050.

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 or its equivalent (Registration of Intent to Apply for a Permit) to the cabinet [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 cabinet [department] by regulation will specify when those facilities must submit a permit application. The cabinet may require submission of Part A of the application with Part B, when Part B of the application is requested, if the facility only submitted the Registration of Intent to Apply for a Permit to the cabinet.

(b) The cabinet [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 cabinet [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 cabinet [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 or its equivalent.

(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 or its equivalant and Part 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 or its equivalent 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 or its equivalent; 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 cabinet [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 or its equivalent and has not yet filed Part B, the owner or operator shall file an amended Part A application or its equivalent with the cabinet [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 or its equivalent.

(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 cabinet [department]. (The cabinet [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 or its Equivalent. In addition to the information in Sections 12, 13, 14, and 17, Part A of the hazardous waste site or facility permit application or its equivalent (Registration of Intent to Apply for a Permit) 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 cabinet [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 cabinet [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 cabinet [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, Section 2(4)(c).

(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.

6. The owner or operator of a facility shall demonstrate compliance with Section 5 of 401 KAR 2:073 and with Sections 6 and 7 of 401 KAR 2:055. This compliance shall be demonstrated by submitting a groundwater monitoring plan to the cabinet including, but not limited to, data and reports required by Section 5 of 401 KAR 2:073.

(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) In addition to information required by the cabinet pursuant to this section, all applicants for construction permits must submit to the cabinet a plan in accordance with KRS 224.866(1). The plan must address each of the following issues specifically, must document the applicant's decisions with respect to the proposal, must make reasonable justification for actions taken and demonstrate that the proposed facility can be integrated into the surroundings in an environmentally compatible manner, including but not limited to insuring that hydrologic, seismologic, geologic and soil considerations have been adequately addressed in the application and operational plan. The plan must include:

1. An evaluation of alternatives including other site locations and treatment, storage and disposal approaches (see KRS 224.866(1)(a));

2. An evaluation of the public health, safety and environmental aspects of the proposal (see KRS 224.866(1)(b));

3. An evaluation of the social and economic impacts of the proposal on the affected community (see KRS 224.866(1)(c));

4. An evaluation of mitigation procedures to alleviate problems identified in subparagraphs 1, 2 and 3 of this paragraph (see KRS 224.866(1)(d)); and

5. An evaluation of the relationship of the proposal to local planning and existing development (see KRS 224.866(1)(e)).

(t) [(s)] Applicants may be required to submit such information as may be necessary to enable the cabinet [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. For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 401 KAR 2:063, Section 17(6), including: test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and a description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

3. [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.

4. [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 requirements of 401 KAR 2:063, Section 19(5)(a). For ex-

isting 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) or in paragraph (e) of this subsection.

1. A description of practice to control wind disperal (e.g., cover or frequent wetting) of hazardous waste in piles so that the cabinet [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 waste piles used to store or treat only hazardous wastes that do not contain free liquids under the special requirements of 401 KAR 2:063, Section 20(1), a demonstration of compliance with those special requirements including: test procedures and results or other documentation or information to show that the wastes do not contain free liquids and that the wastes will not generate leachate during the time the waste is managed in the pile by decomposition or other reactions; a description of how the pile of protected from precipitation by a structure so that neither run-off nor leachate is generated including a detailed description of the structure; a description of how the pile is protected from dispersal of the waste by wind, where necessary, and from surface water run-on; and a detailed engineering description of the facility design and a detailed description of the facility operating procedures which demonstrate compliance with 401 KAR 2:063, Section 20(7) (ignitable and reactive wastes), and 401 KAR 2:063, Section 20(8) (incompatible waste), including information required by paragraph (f)3 of this subsection and demonstrate that liquids or materials containing free liquids are not placed in the pile.

(f) [(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)(f)[(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 cabinet [department] finds necessary to achieve the purposes of this paragraph; waste analysis data, including that submitted in subsection (2)(f)[(e)]3 of this section, sufficient to allow the cabinet [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 cabinet [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 *cabinet* [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 *cabinet* [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 cabinet [department] as specified in KRS 224.866(1).

[(3) Registered as a recycling facility.]

JACKIE SWIGART, Secretary
ADOPTED: July 12, 1982
RECEIVED BY LRC: July 14, 1982 at 12 noon.

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

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 *Cabinet* [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 *cabinet* [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.

9. The addition of absorbent material to waste in a container or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Section 2(2), Section 17(2) and (3) are complied with.

(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 *cabinet* [department] for an *EPA* 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 *director* [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;

5. For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

6. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 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 *cabinet* [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 explosion;

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 (*approximately* 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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [department] who is duly designated by the secretary of the *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [department] by March 1 of each year. The report form designated by the *cabinet* [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 *cabinet* [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 *cabinet* [department]:

(a) Releases, fires, and explosions as specified in Section 4(7)(j); and

(b) Facility closure as specified in Section *6(6)* [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 *cabinet* [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 *cabinet's* [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 *cabinet* [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 *cabinet* [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 than the owner or operator will recommence operation of the site; and closure of the facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment.

(b) The owner or operator must complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. The *cabinet* [department] may approve a longer closure period if the owner or operator demonstrates that:

1. a. The closure activities will, of necessity, take longer than 180 days to complete; or

b. The facility has the capacity to receive additional wastes; there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and closure of the facility would be incompatible with continued operation of the site; and

2. He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility.

(5) Disposal or decontamination of equipment. When closure is completed, all facility equipment and structures must have been properly disposed of or decontaminated by removing all hazardous waste and residues.

(6) Certificate of closure. When closure is completed, the owner or operator must submit to the *cabinet* [department] certification both by the owner or operator and by an independent [registered] professional engineer *registered in Kentucky* that the facility has been closed in accordance with the specifications in the approved closure plan.

(7) Post-closure care and use of property.

(a) 1. Post-closure care must continue for thirty (30) years after the date of completing closure and must consist of at least the following:

a. Groundwater monitoring and reporting as applicable; and

b. Maintenance of monitoring and waste containment systems as applicable.

2. *a.* [b.] Prior to the time that the post-closure care period is due to expire, the *cabinet* [department] may extend the post-closure care period if *the cabinet* [he] finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment).

b. [a.] During the 180 day period preceding closure or any time thereafter (see subsection (3)(c) of this section), the secretary may reduce *an extended* [the] post-closure care period to *not* less than thirty (30) years if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the facility is secure). The

secretary shall not reduce the post-closure period to be less than *thirty (30)* [twenty (20)] years.

(b) The *cabinet* [department] may require, at closure, continuation of any of the security requirements of Section 2(5) during part or all of the post-closure period after the date of completing closure when:

1. Wastes may remain exposed after completion of closure; or

2. Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the *cabinet* [department] finds that the disturbance:

1. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2. Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in subsection (8) of this section.

(8) Post-closure plan *and* [;] amendment of *post-closure* plan .

(a) The owner or operator of a disposal facility must have a written post-closure plan. The plan must be submitted with the permit application, in accordance with Section 16 [(1)(c)] of 401 KAR 2:060 and approved by the *cabinet* [department] as part of the permit issuance proceeding under 401 KAR 2:060. In accordance with 401 KAR 2:060, Section 7*(3)* [(4)], the approved post-closure plan will become a condition of any permit issued. A copy of the approved plan and all revisions to the plan must be kept at the facility until the post-closure care period begins. This plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

1. A description of the planned groundwater monitoring activities and frequencies at which they will be performed;

2. A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

a. The integrity of the cap and final cover or other containment structures where applicable; and

b. The function of the facility monitoring equipment;

3. The name, address and phone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

(b) The owner or operator may amend his post-closure plan at any time during the active life of the disposal facility or during the post-closure care period. The owner or operator must amend his plan whenever changes in operating plans or facility design, or events which occur during the active life of the facility or during the post-closure period, affect his post-closure plan. He must also amend his plan whenever there is a change in the expected year of closure.

(c) When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. (See Section 6 [(1)(a)] of 401 KAR 2:060.) In all other cases, the request for modification of the post-closure plan must be made within sixty (60) days after the change in operating plans or facility design or the events which affect *the* [his] post-closure plan occur.

(9) Notice to local land authority. Within ninety (90) days after closure is completed, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the *cabinet* [department] a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in subsection (7)(c) of this section. In addition, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the *cabinet* [department] a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the *cabinet* [department].

(10) Notice in deed to property.

(a) The owner of the property on which a disposal facility is located must record, in accordance with state law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used to manage hazardous wastes;

2. Its use is restricted under Section 6(7)(c); and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility required in Section 7 of 401 KAR 2:073 have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the [Secretary of] the *cabinet* [department].

(b) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste site or facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may remove the notation on the deed to the facility property or other instrument normally examined during title search, or he may add a notation to the deed or instrument indicating the removal of the waste.

Section 7. Financial Requirements. (1) Sections 8 through 16 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.866(3) for hazardous waste sites or facilities. A reference to this section is a citation of Sections 8 through 16.

(2) Except as specifically provided in Sections 8 through 16, no variance (Section 2 of 401 KAR 2:055) or other waivers of these financial requirements shall be granted by the secretary or the director.

Section 8. Applicability. (1) The requirements of Sections 10, 11, and *14* [13] through 16 apply to owners and

operators of all hazardous waste *sites or* facilities, except as provided otherwise in this section or in Section 1(1) of this regulation.

(2) The requirements of Sections 12 and 13 apply only to owners and operators of disposal facilities.

(3) States and the federal government are exempt from the requirements of Section 7.

Section 9. Financial Requirement Definitions. (1) When used in Section 7 the following terms *shall* have the meanings given below:

(a) *"Closure plan" means the plan for closure prepared in accordance with the requirements of Section 6(3).* ["Compliance procedure" means any proceedings instituted pursuant to KRS Chapter 224 or hazardous waste regulations issued under authority of KRS Chapter 224 which seek to require compliance or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a compliance order or notice of intention to terminate a permit pursuant to KRS Chapter 224 or 401 KAR 2:060 or an application in the circuit court for appropriate relief pursuant to KRS Chapter 224. For the purposes of Section 7, a compliance procedure is considered to be pending from the time an order or notice of intent to terminate is issued or judicial proceedings are begun until the director notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.]

(b) *"Current closure cost estimate" means the most recent of the estimates prepared in accordance with Section 10(1), (2) and (3) of this section.* ["Standby trust fund" means a trust fund which must be established by an owner or operator who obtains a letter of credit or surety bond as specified in these regulations. The institution issuing the letter of credit or surety bond will desposit into the standby trust fund any drawings by the director on the credit or bond.]

(c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with Section 12(1), (2) and (3).

(d) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Section 6(7) through (10).

(2) *The following terms are used in the specifications for the financial tests for closure, post-closure care and liability self-insurance. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.* [The following terms are used in the liability requirements. The definitions suggest what the department believes are the common meanings of the terms as they are generally used in the insurance industry; the definitions are not intended to limit the meanings in a way that conflicts with general usage.]

(a) *"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.* ["Claims-made policy" means an insurance policy that provides coverage for an occurrence if a claim is filed during the term of the policy.]

(b) *"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.* ["Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.]

(c) *"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.* ["Nonsudden accident" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.]

(d) *"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.* ["Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.]

(e) *"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.* ["Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.]

(f) "Net working capital" means current assets minus current liabilities.

(g) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(h) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(3) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable Kentucky statutes. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The cabinet intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

(a) "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

(b) "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

(c) "Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

(d) "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

Section 10. Cost Estimate for Facility Closure. (1) The owner or operator must *prepare* [have] a written estimate, *in current dollars,* of the cost of closing the facility in accordance with the [requirements in Section 6, subsections (2) through (6) and applicable] closure *plan as specified in Section 6(3)* [requirements in Sections 17(9), 18(5), 19(7), 20(9), and 23(9)]. *The closure cost estimate must equal the*

cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. [The owner or operator must keep this estimate, and all subsequent estimates required in this section, at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (Section 6(3)(a)).]

(2) *The owner or operator must adjust the closure cost estimate for inflation within thirty (30) days after each anniversary of the date on which the first closure cost estimate was prepared. The adjustment must be made as specified in subsection (2)(a) and (b) of this section, using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.* [The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.]

(a) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(b) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) *The owner or operator must revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (2) of this section.* [On each anniversary of the date on which the first estimate was prepared as specified in subsection (1) of this section, the owner or operator must adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor must be calculated by dividing the latest published annual Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted closure cost estimate must equal the latest closure cost estimate (see subsection (2) of this section) times the inflation factor.]

(4) The owner or operator must keep the following at the facility during the operating life of the facility:

(a) The latest closure cost estimate prepared in accordance with subsections (1) and (3) of this section; and

(b) When this estimate has been adjusted in accordance with subsection (2) of this section, the latest adjusted closure cost estimate.

Section 11. Financial Assurance for Facility Closure. An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from *the options as specified in subsections (1) through (6) of this section.* [among the following options:]

(1) *Closure* [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 *submitting* [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 *cabinet* [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 *an entity* [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)). *Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current closure cost estimate covered by the agreement.*

(c) Payments to the trust fund must be made annually by the owner or operator over the term of the intitial permit *or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period."* [(Note: subsections (2), (3) and (4) specify an alternate payment into this fund.)] The payments *into* the closure trust fund must be made as follows:

1. For a new facility, as defined in 401 KAR *2:050* [2:055], the first payment must be made *before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the director before this initial receipt of hazardous waste* [when the trust fund is established]. The first payment must be at least equal to the *current* closure cost estimate (see Section 10), except as provided in subsection (6) of this section, divided by the number of years in the *pay-in period* [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 *this formula* [performing the following calculation]:

$$\text{NEXT payment} = \frac{CE\,[\text{ACE}] - \text{CV}}{\text{Y}}$$

Where *CE* [ACE] is the *current* [adjusted] closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the *pay-in period* [term of the permit].

2. If an owner or operator established a trust fund as specified in *Section 7(4) of* 401 KAR 2:073, and the value of *that* [the] trust fund *is less than the current* [does not equal the adjusted] closure cost estimate when a permit is awarded for the facility, the amount of the *current* [adjusted] closure cost estimate still to be paid into the trust fund must be paid in over the *pay-in period as defined in paragraph (c) of this subsection* [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 *this formula* [performing the following calculation]:

$$\text{NEXT payment} = \frac{CE\,[\text{ACE}] - \text{CV}}{\text{Y}}$$

Where *CE* [ACE] is the *current* [adjusted] closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the *pay-in period* [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 *been* if annual payments were made as specified in subsection[s (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 *or in 401 KAR 2:073*, his first payment must be at least the amount that the fund would have contained if the trust fund were established *initially* and annual payments made *according to specifications of this subsection and Section 7(4) of 401 KAR 2:073, as applicable* [as specified in subsections (1)(a) and (1)(c) of this section].

(f) After the *pay-in period* [term of the initial permit] is completed, whenever the *current* [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, *must either* deposit *an* [a sufficient] amount into the fund so that its value after *this deposit* [payment] at least equals the amount of the *current closure cost* [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 *current* [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 *current* [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 *excess of the current closure cost estimate covered by* 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 *perform* [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 *determine whether* [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, *and if so, the director will instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with subsection (9) of this section, that the owner or operator is no longer required to maintain financial assurance for closure.*

(k) The director will agree to termination of the trust when:

1. *An* [The] owner or operator substitutes alternate financial assurance for closure as specified in this section; or

2. The director *releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section* [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 *submitting* [by having] the bond [delivered] to the director [by certified mail]. An owner or operator of a new facility must *submit the* [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 *by the surety* directly into the standby trust fund *in accordance with instructions from the director.* This *standby* 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 *submitted* [delivered] to the director with the surety bond; and

2. *Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:* [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.]

a. Payments into the trust fund as specified in subsection (1) of this section;

b. Updating of Schedule A of the trust agreement (see Section 16(1)) to show current closure cost estimates;

c. Annual valuations as required by the trust agreement; and

d. Notices of nonpayment as required by the trust agreement.

(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 *before* [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 *or other court of competent jurisdiction* 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 *and obtain the director's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety* [within thirty (30) days after receipt by the director of a notice of cancellation of the bond from the surety].

(e) *Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.* [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 *current* [adjusted] closure cost estimate, [(see Section 10)] except as provided in subsection (7) of this section.

(g) Whenever the *current* [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, *must either* cause the penal sum of the bond to be increased to an amount at least equal to the *current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section to cover the increase* [new estimate or obtain other financial assurance, as specified in this section, to cover the increase]. Whenever the *current* [adjusted] closure cost estimate decreases, the penal sum may be reduced to the amount of the *current closure cost* [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) *Under the terms of the bond, the surety may cancel the bond by sending a* [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 *120* [ninety (90)] days beginning on the date of receipt of the notice of cancellation by *both the owner or operator and* the director, as *evidenced by* [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.]

(i) [(j)] The owner or operator may cancel the bond if the director has given prior written consent based on *the director's* 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 submitting the bond to the director* [by having the bond delivered to the director by certified mail]. An owner or operator of a new facility must *submit the* [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 *by the surety* directly into the standby trust fund *in accordance with the instructions of the director.* This *standby* 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 *submitted* [delivered] to the director with the surety bond; and

2. *Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:* [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.]

a. Payments into the trust fund as specified in subsection (1) of this section;

b. Updating on Schedule A of the trust agreement (see Section 16(1)) to show current closure cost estimates;

c. Annual valuations as required by the trust agreement; and

d. Notices of nonpayment as required by the trust agreement.

(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 *whenever required to do so*; 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]

2. [3.] Provide alternate financial assurance as specified in this section *and obtain the director's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and* [within thirty (30) days after receipt by] the director of a notice of cancellation of the bond from the surety.

(e) *Under the terms of the bond,* the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. *Following a determination pursuant to KRS 224.866 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 as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.*

(f) The penal sum of the bond must be in an amount at least equal to the amount of the *current* [adjusted] closure cost estimate [(see Section 10)].

(g) Whenever the *current* [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, *must either* cause the penal sum of the bond to be increased to an amount at least equal to the *current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in ths section* [new estimate or obtain other financial assurance, as specified in this sec-

tion, to cover the increase]. Whenever the *current* [adjusted] closure cost estimate decreases, the penal sum may be reduced to the amount of the *current* [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) *Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.* [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 owner or operator may cancel the bond if the director has given prior written consent. The director will provide such written consent when:* [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.]

1. An owner or operator substitutes alternate financial assurance as specified in this section; or

2. The director releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section.

[(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.]

(j) [(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 *releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section* [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 *submitting the letter* [having it delivered] to the director [by certified mail]. An owner or operator of a new facility must have *submitted* 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 *an entity* [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 *directly* into the standby trust fund *in accordance with instructions from the director.* 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 *submitted* [delivered] to the *director* [Secretary] with the letter of credit; and

2. *Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:* [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.]

a. Payments into the trust fund as specified in subsection (1) of this section;

b. Updating the Schedule A of the trust agreement (see Section 16(1)) to show current closure cost estimates;

c. Annual valuations as required by the trust agreement; and

d. Notices of nonpayment as required by the trust agreement.

(d) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and providing the following information: the EPA identification number, name, and address of the facility, and the amounts of funds assured for closure of the facility by the letter of credit.

(e) [(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 *unless, at least 120 days before the current expiration date, the issuing institution notifies* [. 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 *a* [that] decision *not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.* [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.]

(f) [(e)] The letter of credit must be issued for at least the amount of the *current* [adjusted] closure cost estimate

except as provided in subsection (7) of this section [(see Section 10 except as provided in subsection (6))].

(g) [(f)] Whenever the *current* [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, *must either* cause the amount of the credit to be increased *so that it* [to an amount] at least equals [to] the *current closure cost estimate and submit evidence of such increase to the director,* [new estimate] or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted closure cost estimate decreases, the *amount* [letter] of *the* credit may be reduced to the amount of the *current closure cost* [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.]

(h) [(g)] Following a determination pursuant to KRS 224.866(3) that the owner or operator has failed [, when required to do so,] to perform *final* closure in accordance with the closure plan *and* [or] other permit requirements *when required to do so,* the director may draw on the letter of credit.

(i) [(h)] *If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the director within ninety (90) days after receipt by both the owner or operator and the director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of credit. During the last thirty (30) days of any such extension, the director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the director.* [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.]

(j) [(i)] The director will return the [original] letter of credit to the issuing institution for termination when:

1. *An* [The] owner or operator substitutes alternate financial assurance [for closure] as specified in this section; or

2. The director *releases* [notifies] the owner or operator *from the requirements* in accordance with subsection *(9)* [(8)] of this section [, that he is no longer required by this section to maintain financial assurance for closure of the facility].

(5) Closure insurance; and financial test with corporate guarantee for closure. Either closure insurance or financial test with corporate guarantee may be used to satisfy the requirements of this section.

(a) Closure insurance.

1. An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this subsection and by submitting a certificate of such insurance to the director. An owner or operator of a new facility must submit the certificate of insurance to the director 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. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, the Commonwealth of Kentucky.

2. The wording of the certificate of insurance must be identical to the wording specified in Section 16(5).

3. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (7) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount. Although the insurer's future liability will be lowered by the amount of the payments.

4. The closure insurance policy must guarantee that funds will be available to close a facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the director to such party or parties as the director specifies.

5. After beginning final closure, an owner or operator or any other person authorized to perform 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 determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the cost of closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with subsection (9) of this section, that the owner or operator is no longer required to maintain financial assurance for closure of the facility.

6. The owner or operator must maintain the policy in full force and effect until the director consents to termination of the policy by the owner or operator as specified in subparagraph 10 of this paragraph. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the director deems necessary. Such violation will be deemed to begin upon receipt by the director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days begin-

ning with the date of receipt of the notice by both the director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

a. The director deems the facility abandoned; or

b. The permit is terminated or revoked or a new permit is denied; or

c. Closure is ordered by the director or a circuit court or other court of competent jurisdiction; or

d. The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

e. The premium due is paid.

9. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days of the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the director.

10. The director will give written consent to the owner or operator that he may terminate the insurance policy when:

a. An owner or operator substitutes alternate financial assurance as specified in this section; or

b. The director releases the owner or operator from the requirements in accordance with subsection (9) of this section.

(b) Financial test and corporate guarantee for closure.

1. 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 of the following:

a. The owner or operator must have:

(i) 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 of 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

(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates; and

(iii) Tangible net worth of at least $10 million; and

(iv) Assets in the Commonwealth of Kentucky amounting to either at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and post-closure cost estimates.

b. The owner or operator must have:

(i) 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

(ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates; and

(iii) Tangible net worth of at least $10 million; and

(iv) Assets located in the Commonwealth of Kentucky amounting to either at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in subparagraph 1 of this paragraph refers to the cost estimates required to be shown in paragraphs 1 through 5 of the letter from the owner's or operator's chief financial officer (see Section 16(9) of this regulation).

3. To demonstrate that he meets this test, the owner or operator must submit the following three (3) items to the director:

a. A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 16(9); and

b. 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

c. A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(i) He has compared the data which the letter from the chief financial officer specifies as having been derived from independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(ii) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in subparagraph 3 of this paragraph to the director at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in subparagraph 3 of this paragraph, 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 subparagraph 3 of this paragraph.

6. If the owner or operator no longer meets the requirements of subparagraph 1 of this paragraph, he must send notice to the director of intent to establish alternate financial assurance as specified in 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 alternate financial assurance within 120 days after the end of such fiscal year.

7. The director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 1 of this paragraph, require reports of financial condition at any time from the owner or operator in addition to those specified in subparagraph 3 of this paragraph. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph 1 of this paragraph, the owner or operator must provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

8. The director may disallow use of this test on the basis on 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 subparagraph 3c of this paragraph). 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 alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

9. The owner or operator is no longer required to sub-

mit the items specified in subparagraph 3 of this paragraph when:

a. An owner or operator substitutes alternate financial assurance as specified in this section;

b. The director releases the owner or operator from the requirements of this section by terminating the financial requirements in accordance with subsection (9) of this section.

10. An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as the "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subparagraphs 1 through 8 of this paragraph and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in Section 16(10) of this regulation. The corporate guarantee must accompany the items sent to the director as specified in subparagraph 3 of this paragraph. The terms of the corporate guarantee must provide that:

a. If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plans and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (1) of this section in the name of the owner or operator.

b. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

c. If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the director within ninety (90) days after receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(6) [(5)] Cash *account* and certificates of deposits.

(a) An owner or operator may satisfy the requirements of this section by *submitting evidence of a* [having the] cash *account* or certificates of deposits *which conforms to the requirements of this section* [delivered] to the director by certified mail. *An owner or operator of a new facility must submit the bond to the director at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage or disposal.*

[(b)] The bank or financial institution holding the cash *account* [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.]

(b) [(c)] The *cabinet* [department] must be the beneficiary of the cash *account* [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 *closure plan and other permit* [applicable plans or interim status] requirements.

(c) [(d)] *The sum of the cash account or certificate of deposit must be in an amount at least equal to the amount of the current closure cost estimate, except as provided in subsection (7) of this section.* [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.]

(d) [(e)] *Whenever the current closure cost estimate increases to an amount greater than the amount of the sum of the cash account or certificate of deposit, the owner or operator, within sixty (60) days after the increase, must either cause the sum of the cash account or certificate of deposit to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the sum may be reduced to the amount of the current closure cost estimate following written approval by the director.* [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.]

(e) [(f)] *Under the terms of the cash account or certificate of deposit, the bank or financial institution may cancel the cash account or certificate of deposit by sending a notice of cancellation by certified mail to the owner or operator and to the director. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by return receipt.* [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.]

(f) The owner or operator may terminate the cash account or certificate of deposit if the director has given prior written consent based on the director's receipt of evidence of alternate financial assurance as specified in this section.

(7) [(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 *per facility.* These mechanisms are limited to *trust funds,* surety bonds guaranteeing payment into a [closure] trust fund, letters of credit, *insurance, certificate of deposit* and cash. The mechanisms must be as specified in subsections *(1),* (2), (4), [and] (5) *and (6)* 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 *current* [adjusted] closure cost estimate. *If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms.* [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.

(8) [(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. *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. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under 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.]

(9) [(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 *and KRS 224.866(3) and (4)*), 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 *prepare* [have] a written estimate, *in current dollars,* 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 post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section 6 of this regulation.* [The owner or operator must keep this estimate, and all subsequent estimates required in this section, at the facility.]

(2) *During the operating life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within thirty (30) days after each anniversary of the date on which the first post-closure cost estimate was prepared. The adjustment must be made as specified in paragraphs (a) and (b) of this subsection, using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.* [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.]

(a) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(b) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(3) *The owner or operator must revise the post-closure cost estimate during the operating life of the facility whenever a change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subsection (2) of this section.* [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.]

(4) The owner or operator must keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with subsections (1) and (3) of this section and, when this estimate has been adjusted in accordance with subsection (2) of this section, the latest adjusted post-closure cost estimate.

Section 13. Financial Assurance for Post-closure Monitoring and Maintenance. *The* [An] owner or operator of each disposal facility must establish financial assurance for post-closure care *of* [in accordance with the approved post-closure plan for] the facility [and prior to issuance of the permit]. Financial assurance must be established *as specified in subsections (1) through (6) of this section.* [by a:]

(1) Post-closure trust fund.

(a) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund which conforms to the requirements of this subsection and by submitting an originally signed duplicate of the trust agreement to the director. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the director at least sixty (60) days before the date on which hazardous waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(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)). Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(c) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit

or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as follows:

1. For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the director before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (7) of this section, divided by the number of years in the pay-in period. 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 this formula:

$$NEXT\ payment = \frac{CE - CV}{Y}$$

Where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

2. If an owner or operator establishes a trust fund as specified in subsection (1) of this section, and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the fund must be paid in over the pay-in period as defined in subsection (1)(c) of this section. 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 this formula:

$$NEXT\ payment = \frac{CE - CV}{Y}$$

Where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(d) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current 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 that the fund would have been if annual payments were made as specified in subsection (1)(c) of this section.

(e) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this section or in Section 7(6) of 401 KAR 2:073, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and Section 7(6) of 401 KAR 2:073, as applicable.

(f) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(g) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current 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 current post-closure cost estimate.

(h) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the director for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(i) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in paragraphs (g) and (h) of this subsection, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(j) During the period of post-closure care, the director may approve a release of funds if the owner or operator demonstrates to the director that the value of the trust fund exceeds the remaining cost of post-closure care.

(k) An owner or operator or any other person authorized to perform post-closure care 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 will determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the director specifies in writing.

(l) The director will agree to termination of the trust when:

1. An owner or operator substitutes alternate financial assurance as specified in this section; or

2. The director releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section.

(2) Surety bond guaranteeing payment into a post-closure trust fund.

(a) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the director. An owner or operator of a new facility must submit the bond to the director at least sixty (60) days before the date on which hazardous waste is first received for disposal. The 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. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby 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 submitted to the director with the surety bond; and

2. Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

a. Payments into the trust fund as specified in subsec-

tion (1) of this section;

b. Updating of Schedule A of the trust agreement (see Section 16(1) to show current post-closure cost estimates;

c. Annual valuations as required by the trust agreement; and

d. Notices of nonpayment as required by the trust agreement.

(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 before 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 is issued by the director or circuit court or other court of competent jurisdiction; or

3. Provide alternate financial assurance as specified in this section, and obtain the director's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, 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 current post-closure cost estimate, except as provided in subsection (7) of this section.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the director.

(h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to both the owner or operator and to the director. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by return receipt.

(i) The owner or operator may cancel the bond if the director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(3) Surety bond guaranteeing performance of post-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 submitting the bond to the director. An owner or operator of a new facility must submit the bond to the director at least sixty (60) days before the date on which hazardous waste is first received for disposal. The 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) of this regulation.

(c) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with the instructions of the director. This standby 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 submitted to the director with the surety bond; and

2. Unless the standby trust fund is funded pursuant to the requirements of this seciton, the following are not required by these regulations:

a. Payments into the trust fund as specified in subsection (1) of this section;

b. Updating of Schedule A of the trust agreement (see Section 16(1)) to show current post-closure cost estimates;

c. Annual valuations as required by the trust agreement; and

d. Notices of nonpayment as required by the trust agreement.

(d) The bond must guarantee that the owner or operator will:

1. Perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

2. Provide alternate financial assurance as specified in this section and obtain the director's written approval of the assurance provided, within ninety (90) days of receipt by both the owner or operator and the director of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination pursuant to KRS 224.866 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

(f) The penal sum of the bond must be in an amount at least equal to the amount of the current post-closure cost estimate.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the director.

(h) During the period of post-closure care, the director may approve a decrease in the penal sum if the owner or operator demonstrates to the director that the amount exceeds the remaining cost of post-closure care.

(i) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

(j) The owner or operator may cancel the bond if the director has given prior written consent. The director will provide such written consent when:

1. An owner or operator substitutes alternate financial

assurance as specified in this section; or

2. The director releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section.

(k) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the director releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section.

(4) Post-closure letter of credit.

(a) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and by submitting the letter to the director. An owner or operator of a new facility must submit the letter of credit to the director at least sixty (60) days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity 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. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director. 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 submitted to the director with the letter of credit; and

2. Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

a. Payments into the trust fund as specified in subsection (1) of this section;

b. Updating the Schedule A of the trust agreement (see Section 16(1)) to show current post-closure cost estimates;

c. Annual valuations as required by the trust agreement; and

d. Notices of nonpayment as required by the trust agreement.

(d) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

(e) 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 unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit the 120 days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.

(f) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (7) of this section.

(g) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the director.

(h) During the period of post-closure care, the director may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the director that the amount exceeds the remaining cost of post-closure care.

(i) Following a determination pursuant to KRS 224.866 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, the director may draw on the letter of credit.

(j) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the director within ninety (90) days after receipt by both the owner or operator and the director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such financial assurance from the director.

(k) The director will return the letter of credit to the issuing institution for termination when:

1. An owner or operator substitutes alternate financial assurance as specified in this section; or

2. The director releases the owner or operator from the requirements of this section in accordance with subsection (9) of this section.

(5) Post-closure insurance; and financial test with corporate guarantee. Either post-closure insurance or the financial test with corporate guarantee may be used to satisfy the requirements of this section.

(a) Post-closure insurance.

1. An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the director. An owner or operator of a new facility must submit a certificate of insurance to the director at least sixty (60) days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Kentucky.

2. The wording of the certificate of insurance must be identical to the wording specified in Section 16(5).

3. The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in subsection (7) of this section. The term "face amount" means the total amount the

insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

4. The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure care period begins. The policy must also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the director to such party or parties as the director specifies.

5. An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting intemized bills to the director. Within sixty (60) days after receiving bills for post-closure activities, the director will determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the director specifies in writing.

6. The owner or operator must maintain the policy in full force and effect until the director consents to termination of the policy by the owner or operator as specified in subparagraph 11 of this paragraph. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the director deems necessary. Such violation will be deemed to begin upon receipt by the director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

7. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer provided such consent is not unreasonably refused.

8. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by the director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the ,date of expiration:

a. The director deems the facility abandoned; or

b. The permit is terminated or revoked or a new permit is denied; or

c. Closure is ordered by the director or a circuit court or other court of competent jurisdiction; or

d. The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

e. The premium due is paid.

9. Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within sixty (60) days after the increase, must either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the director.

10. Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five (85) percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six (26) week Treasury securities.

11. The director will give written consent to the owner or operator that he may terminate the insurance policy when:

a. An owner or operator substitutes alternate financial assurance as specified in this section; or

b. The director releases the owner or operator from the requirements in accordance with subsection (9) of this section.

(b) Financial test with corporate guarantee for post-closure care.

1. 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 1a or 1b of this paragraph:

a. The owner or operator must have:

(i) Two (2) of the three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of 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

(ii) Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates; and

(iii) Tangible net worth of at least $10 million; and

(iv) Assets in the Commonwealth of Kentucky amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and post-closure cost estimates.

b. The owner or operator must have:

(i) 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

(ii) Tangible net worth at least six (6) times the sum of the current closure and post-closure cost estimates;

(iii) Tangible net worth of at least $10 million; and

(iv) Assets located in the Commonwealth of Kentucky amounting to either at least ninety (90) percent of his total assets or at least six (6) times the sum of the current closure and post-closure cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in subparagraph 1 of this paragraph refers to the cost estimates required to be shown in paragraphs 1 through 5 of the letter from the owner's or operator's chief financial officer (see Section 16(9) of this regulation).

3. To demonstrate that he meets this test, the owner or operator must submit the following three (3) items to the director:

a. A letter signed by the owner's or operator's chief financial officer and worded as specified in Section 16(9); and

b. 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

c. A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(i) 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

(ii) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

4. An owner or operator of a new facility must submit the items specified in subparagraph 3 of this paragraph to the director at least sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

5. After the initial submission of items specified in subparagraph 3 of this paragraph 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 subparagraph 3 of this paragraph.

6. If the owner or operator no longer meets the requirements of subparagraph 1 of this paragraph, he must send notice to the director of intent to establish alternate financial assurance as specified in 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 alternate financial assurance within 120 days after the end of such fiscal year.

7. The director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 1 of this paragraph, require reports of financial condition at any time from the owner or operator in addition to those specified in subparagraph 3 of this paragraph. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph 1 of this paragraph, the owner or operator must provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

8. 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 subparagraph 3 of this paragraph). 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 alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

9. During the period of post-closure care, the director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the director that the amount of the cost estimate exceeds the remaining cost of post-closure care.

10. The owner or operator is no longer required to submit the items specified in subparagraph 3 of this paragraph when:

a. An owner or operator substitutes alternate financial assurance as specified in this section;

b. The director releases the owner or operator from the requirements of this section by terminating the financial requirements in accordance with subsection (9) of this section.

11. An owner or operator may meet the requirements of this section by obtaining a written guarantee hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subparagraphs 1 through 9 of this paragraph and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in Section 16(10) of this regulation. The corporate guarantee must accompany the items sent to the director as specified in subparagraph 3 of this paragraph. The terms of the corporate guarantee must provide that:

a. If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (1) of this section in the name of the owner or operator.

b. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

c. If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the director within ninety (90) days after receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(6) [(1)] *Cash and certificates of deposit.* [Post-closure escrow fund.]

(a) An owner or operator must satisfy the requirements of this section by *submitting evidence of a cash account or a certificate of deposit to the director* [establishing a post-closure escrow fund] which conforms to the requirements of this section. *An owner or operator of a new facility must submit the cash account or certificate of deposit to the director at least sixty (60) days before the date on which hazardous waste is first received for disposal.* The [escrow agent must be a] bank or other financial institution *holding the cash account or certificate of deposit must be* [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) *The cabinet must be the beneficiary of the cash account or certificate of deposit. The director must be empowered to draw upon the funds if the owner or operator fails to perform post-closure care in accordance with the post-closure care plan and other permit requirements.* [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 provided 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 sum of the cash account or certificate of deposit must be in an amount at least equal to the amount of the current post-closure cost estimate, except as provided in subsection (7) of this section.* [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) *Whenever the current post-closure cost estimate increases to an amount greater than the sum of the cash account or certificate of deposit, the owner or operator, within sixty (60) days after the increase, must either cause the sum of the deposit to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the director or obtain other financial assurance as specified in this section to cover the increase. Whenever the current post-closure cost estimate decreases, the sum of the deposit may be reduced to the amount of the current post-closure cost estimate following written approval by the director.* [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) *Under the terms of the cash account or certificate of deposit, the bank or financial institution may cancel the cash account or certificate of deposit by sending notice of cancellation by certified mail to the owner or operator and to the director. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by return receipt.* [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) *The owner or operator may terminate the cash account or certificate of deposit if the director has given prior written consent on his receipt of evidence of alternate financial assurance as specified in this section.* [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 *bank or financial institution* [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.]

(7) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance and cash. The mechanisms must be as specified in subsections (1), (2), (4), (5) and (6), of this section, respectively, except that it is the combination of mechanisms rather than the single mechanism which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The director may use any or all of the mechanisms to provide for post-closure care of the facility.

(8) [(2)] Use of a financial mechanism for multiple facilities. An owner or operator may use a [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 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. *In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.*

(9) Release of the owner or operator from the requirements of this section. When an owner or operator has completed to the satisfaction of the director all post-closure care requirements in accordance with the post-closure plan, the director will, at the request of the owner or operator, notify him in writing that he is no longer required by this section to maintain financial assurance for post-closure care of the particular facility.

(10) Use of a mechanism for financial assurance of both closure and post-closure care. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter of credit, insurance, or cash or certificate of deposit that meets the specifications for the mechanism in both Sections 11 and 13. The amount of funds available through this mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

Section 14. Liability Requirements. The liability requirements of this section apply to both new facilities and existing facilities. (1) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for *bodily injury and property damage to third parties caused by* [claims arising from the operations of each such facility or group of facilities from] sudden [and] accidental occurrences *arising from operations of the facility or group of facilities* [that cause injury to persons or property]. *The* [An] owner or operator must have and maintain liability *coverage* [insurance (see subsection (3)) or liability self-insurance (see subsection (4))] for sudden *or accidental* 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. *This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in paragraphs (a), (b) and (c) of this subsection.*

(a) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

1. Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 16(7). The wording of the certificate of insurance must be identical to the wording specified in Section 16(8). The owner or operator must submit an originally signed duplicate of the endorsement or the certificate of insurance to the director. If requested by the director, the owner or operator must provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility must submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the director 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.

2. Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the Commonwealth of Kentucky.

(b) An owner or operator may meet the requirements of this section by passing a financial test for liability self-insurance coverage as specified in subsection (6) of this section.

(c) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection.

(2) *Coverage for non-sudden accidental occurrences.* 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 *bodily injury and property damage to third parties caused by* [claims arising from the operation of each such facility or group of facilities from] non-sudden [and] accidental occurrences *arising from operations of the facility or group of facilities* [that cause injury to persons or property]. *The* [An] owner or operator must have and maintain *additional* liability *coverage* [insurance or self-insurance] for non-sudden occurrences in the amount of at least *$5,000,000* [$3,000,000] per occurrence with an annual aggregate of at least *$10,000,000* [$6,000,000], exclusive of legal defense costs. *This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in paragraphs (a), (b) and (c) of this subsection:* [However, such insurance (see subsection (3)) or self-insurance (see subsection (4)) will not be required of an existing facility before the following date:]

(a) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

1. Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in Section 16(7). The wording of the certificate of insurance must be identical to the wording specified in Section 16(8). The owner or operator must submit an originally signed duplicate of the endorsement or the certificate of insurance to the director. If requested by the director, the owner or operator must provide an originally signed duplicate of the insurance policy. An owner or operator of a new facility must submit the originally signed duplicate of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the director 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.

2. Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the Commonwealth of Kentucky.

(b) An owner or operator may meet the requirements of this section by passing a financial test for liability self-insurance coverage as specified in subsection (6) of this section.

(c) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section.

The amounts of coverage demonstrated must total at least the minimum amounts required by this subsection.

(d) For existing facilities, the required liability coverage for non-sudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these regulations, will determine which of the date applies. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:

1. [(a)] For an owner or operator with [annual] sales *or revenues* [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.

2. [(b)] For an owner or operator with [annual] sales *or revenues* [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.

3. [(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) [(8)] *Adjustments by the director.* 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 *increase* [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. [,] *This* [such] adjusted level *will* [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 a [such] facility [or group of facilities] *that is not a surface impoundment, landfill, or land treatment facility, the director may require that the owner or operator of the facility comply with subsection (2) of this section. An owner or operator must furnish to the director, within a reasonable time, any information which the director requests to determine whether cause exists for such adjustments of the level or type of coverage.* 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.

[(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) [(7)] *Request for a variance.* If an owner or operator can demonstrate to the satisfaction of the director that the *increased* level[s] of financial responsibility required by subsection[s] *(3)* [(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 director shall not grant any requests for a variance which seeks to decrease the level of financial responsibility below the minimums required by KRS 224.866(3)(c).* [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.] *If granted,* 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.

(5) Period of coverage. An owner or operator must continuously provide liability coverage for a facility as required by this section until certification of termination pursuant to the requirements of KRS 224.866.

(6) [(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 *subsection* [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;]

a. [b.] Net working capital and tangible net worth each at least six (6) times the *amount* [sum] of [the current appropriate] liability *coverage to be demonstrated by this test* [requirement (see subsection (1) or (2) of this section)];

b. [c.] Tangible net worth of at least $10 million; and

c. [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 ap-

propriate liability *coverage to be demonstrated by this test* [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. [c.] Tangible net worth of at least $10 million; and

c. [b.] Tangible net worth at least six (6) times the *amount* [sum] of the [appropriate] liability *coverage to be demonstrated by this test* [requirement]; *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 *amount* [sum] of the [appropriate] liability *coverage to be demonstrated by this test* [requirement (see subsection (1) or (2) of this section)].

(b) The phrase "amount of liability coverage" as used in subsection (6)(a) of this section refers to the annual aggregate amounts for which coverage is required under subsections (1) and (2) of this section.

(c) [(b)] To demonstrate that he meets this test, the owner or operator must submit the following *three (3)* 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.

(d) [(c)] An owner or operator of a new facility must submit the items specified in paragraph *(c)* [(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.

(e) [(d)] After the initial submission of items specified in paragraph *(c)* [(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 *(c)* [(b)] of this subsection.

(f) [(e)] If the owner or operator no longer meets the requirements of paragraph (a) of this subsection, he must *obtain insurance for the entire amount of required liability coverage as specified in this section. Evidence of insurance must be submitted to the director 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 test requirements* [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].

(g) [(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 *(c)* [(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.

(h) [(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 *(c)3* [(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 *for the entire amount of liability coverage* 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).]

Section 15. Incapacity of institutions issuing letters of credit, surety bonds, or insurance policies. *(1) An owner or operator must notify the director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if he is named as debtor.*

(2) An owner or operator who fulfills the requirements of Sections 11, *13,* or 14 by obtaining a *trust fund,* 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 Sections 11(1) *and 13(1) of this regulation or in Section 7(4) or (6) of 401 KAR 2:073* must be worded as follows, except that instructions in *parentheses* [brackets] are to be replaced with the relevant information and the *parentheses* [brackets] deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (*name of* state) (corporation, partnership, association, *or* proprietorship), the "Grantor," and (name of corporate trustee), *(insert "incorporated in the state of _____" or* [a (state corporation) (]national bank), the "Trustee."

Whereas, the Kentucky [Department for] Natural Resources and Environmental Protection *Cabinet*, "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 *site or* [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 *all or part of* 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.]

(a) [(b)] The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) [(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 *the facilities and cost estimates identified on attached Schedule A (on Schedule A,* for each facility *list* [insert] the EPA Identification Number, name, [and] address, and the *current* [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 *B* [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 profits 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 *shall not be responsible nor shall it undertake any* [undertakes no] responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments *necessary* to discharge any liabilities of the Grantor established by the Department.

Article 4. Payment for Closure *and Post-Closure* Care. The Trustee *shall* [will] make such payments from the Fund as the Director of the Division of Waste Management *in the Kentucky Natural Resources and Environmental Protection Cabinet, hereinafter the Director of the Division, shall* [will] direct, in writing, to provide for the payment of the costs of closure *and/or post-closure* care of the facilities covered by this Agreement. The Trustee *shall* [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 *shall* [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 remains in the Fund, and will not make further reimbursements for closure expenditures unless the Director of the Division identifies reimbursements that may be made out of the remaining twenty (20) percent.] In addition, th, Trustee *shall* [will] refund to the Grantor such amounts as the Director of the Division specifies in writing. Upon refund, such funds *shall* [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 *shall* [will] consist of cash or securities acceptable to the Trustee.

Article 6. Trustee Management. The Trustee *shall* [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 *general* investment *policies and* guidelines *which the Grantor may communicate* [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 *shall* [or any other fiduciary will] discharge his duties with respect to the Trust[ee] fund solely in the interest of the *beneficiary* [participants and beneficiaries] and with the care, skill, prudence, *and diligence under the circumstances then prevailing which persons of 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] ; *and*

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC Section 80a-1 et seq., *including* [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 *public or private sale* [private contract or at public auction]. No person dealing with the Trustee *shall* [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 *shall* [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 *shall* [will] be paid from the Fund. All *other* [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 *shall* [will] be paid from the Fund.

Article 10. Annual Valuation. The Trustee *shall* [will] annually, at *least thirty (30) days prior to* [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 *shall* [will] be valued at market value as of no more than *sixty (60)* [thirty (30)] days prior to the *anniversary date of establishment of the Fund* [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 *shall* [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, [.] *but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund.* [In either event, the Grantor will appoint a successor Trustee who will then 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 *shall specify* [and] the date on which *it* [he] assumes administration of the Trust [will be specified] in *a* 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 *shall* [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 *shall* [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 *shall* [will] be in writing, signed by the Secretary of the Department or the Director of the Division and the Trustee *shall* [will] act and *shall* [will] be fully protected in acting [without inquiry] in accordance with *such* [the Grantor's] orders, requests and instructions. The Trustee *shall* [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 *shall* [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 *shall* [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 *shall* [is] not *be* 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 *Article* [Section] 16, this Trust *shall* [will] be irrevocable and *shall* [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 *shall* [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 *shall* [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 *shall* [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 *shall* [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 this regulation [401 KAR 2:063] *as such regulation was constituted on the date first above written.*

(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 accompany the trust[,] agreement for a trust fund as specified in Section 11(1) *or 13(1) of this regulation and Section 7(4) or (6) of 401 KAR 2:073*:

Commonwealth [State] of *Kentucky*
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)
(Date Notary Public Commission expires)
(Seal of Notary Public)

(2) A surety bond guaranteeing payment into a [closure] trust fund, as specified in Section 11(2) *or Section 13(2) of this regulation or Section 7(4) or (6) of 401 KAR 2:073* must be worded as follows, except that instructions in *parentheses* [brackets] are to be replaced with the relevant information and the *parentheses* [brackets] deleted:

Financial Guarantee Bond for Closure

Date bond executed: _____
Effective date: _____
Principal: (legal name and business address *of owner or operator*)
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")
Commonwealth/State of incorporation: _____
Surety(ies): (Name(s) and business address(es))
EPA Identification Number, name, [and] address, *and closure and/or post-closure amount(s) for* [of] each facility *guaranteed by this bond (indicate closure and post-closure amounts separately)* [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: _____
Surety's Bond Number: _____

Know all *persons* [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 *Cabinet* (hereinafter called *Cabinet* [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 *under KRS Chapter 224* to have a permit or permits, or interim status, in order to own or operate *each* [the] hazardous waste *site or* [management] facility(ies) identified above, and

Whereas, said Principal is required to provide financial assurance for closure *or closure and post-closure care* [of the facility(ies)] as a condition of the permit [(s)] or interim status, and

Whereas, said Principal shall establish a standby trust fund as *is required when a surety bond is used to provide such financial assurance;* [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 *of each facility identified above*, fund the standby trust fund in *the* [an] amount*(s) identified above for the facility,* [equal to the penal sum.]

Or, if the Principal shall fund the standby trust fund in such [an] amount*(s)* 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 *Cabinet* [Department] or by a circuit court *or other court of competent jurisdiction* [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 *7 of this regulation* [11 of 401 KAR 2:063] or Section 7 of 401 KAR 2:073, *as applicable, and obtain the Director's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the Director of the Division of Waste Management in the Kentucky Natural Resources and Environmental Cabinet, hereinafter the Director of the Division, from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect* [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 *guaranteed for the facility(ies)* [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 *by certified mail* to the *Principal* [owner or operator] and to the Director of the Division [in which the facility(ies) is (are) located], provided, however, that cancellation *shall not* [cannot] occur *during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and Director of the Division, as evidenced by the return receipts* [: (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 *guarantees a new closure and/or post-closure amount* [equals the adjusted closure cost estimate(s)], provided that the *penal sum* [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 *Director of the Division* [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 *this regulation* [401 KAR 2:063] *as such regulation was constituted on the date this bond was executed.*

Principal

(Signature(s): _____

Name(s) and title(s) (typed) _____

Corporate seal:

Corporate Surety(ies)

Name and address: _____

Commonwealth/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, *and/or post-closure care,* as specified in Section 11(3) *or Section 13(3) of this regulation,* must be worded as follows, except that the instructions in *parentheses* [brackets] are to be replaced with the relevant information and the *parentheses* [brackets] deleted:

Performance Bond [for Closure]

Date bond executed: _____

Effective Date: _____

Principal: (Legal name and business address *of owner or operator*)

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 *and/or post-closure amount(s)* [cost estimate] for each facility *guaranteed by this bond (indicate closure and post-closure amounts separately):* _____

Total penal sum of bond: $_____

Surety's bond number: _____

Know all *persons* [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 *Cabinet, hereinafter called the Cabinet,* 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, *under KRS Chapter 224,* to have a permit [or permits from the Secretary of the Department] in order to own or operate *each* [the] hazardous waste *site or* [management] facility(ies), identified above, and

Whereas, said Principal is required to provide financial assurance for closure *or closure and post-closure care* [of

the facility(ies)] as a condition of the permit(s), and

Whereas, said Principal shall establish a standby trust fund as *is required when a surety bond is used to provide such financial assurance;* [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, *whenever required to do so,* of *each* [the] facility [(ies)] *for which this bond guarantees closure,* [identified above] in accordance with the closure plan [(s) submitted, the receipt of said permit(s)] and other requirements of *the* [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, [.]

And [Or], if the Principal shall faithfully perform *post-closure care of each facility for which this bond guarantees post-closure care,* [closure] in accordance with *the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended.* [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 Section 7 [11] of this regulation, *and obtain from the Director of the Division written approval of such assurance,* within *ninety (90)* [thirty (30)] days *after* [of] the date notice of cancellation is received by *both the Principal and* the Director of the Division *of Waste Management in the Kentucky Natural Resources and Environmental Protection Cabinet, from the Surety(ies),* then this obligation *shall* [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 *the closure requirements of this regulation for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility* [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 *post-*closure requirements of *this regulation for a facility for which this bond guarantees performance of post-closure care* [401 KAR 2:063], the Surety(ies) *shall* [must] either perform *post-*closure *care* in accordance with the *post-*closure plan [(s)] and other permit requirements or place the *post-closure* amount [of the] *guaranteed for the facility into* [adjusted closure cost estimate(s) in] the standby trust fund *as directed by the Director of the Division.* Upon notification by the Director of the Division that the Principal has *failed to provide alternate financial assurance as specified in Section 7 of this regulation, and obtain written approval of such assurance from the Director of the Division during the ninety (90) days following receipt by both the Principal and the Director of the Division of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director* [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 waive(s) 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 *by certified mail* to the owner or operator and to the Director of the Division [in which the facility(ies) is (are) located], provided, however, that cancellation *shall not* [cannot] occur[:]

[(1)] during the *120* [ninety (90)] days beginning on the date of receipt of the notice of cancellation by *both the Principal and* the Director of the Division as *evidenced by the* [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 *guarantees a new closure and/or post-closure amount* [equals the adjusted closure cost estimate(s)], provided that the *penal sum* [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 *this regulation* [401 KAR 2:063] *as such regulation was constituted on the date this bond was executed.*

Principal

Signature(s): _____

Name(s): _____

[and] Title(s) (Typed): _____

Corporate seal: _____

Corporate Surety(ies)

Name and address: _____

*Commonwealth/*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) *or Section 13(4)of this regulation or Section 7(4) or (6) of 401 KAR 2:073* must be worded as follows, except that instructions in *parentheses* [brackets] are to be replaced with the relevant information and the *parentheses* [brackets] deleted:

Irrevocable Standby Letter of Credit
(Director of the Division of Waste Management)
[(Secretary of the Department)]
Department for Environmental Protection
Frankfort, Kentucky

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 *Cabinet, hereinafter the Director,* at the request and for the account of (owner's *or operator's* name and address) up to the aggregate amount of (in words) U.S. dollars $_____, available upon presentation of:

(a) [(1)] Your sight draft, bearing reference to this Letter of Credit No. _____ , *and* [together with]

(b) [(2)] Your signed statement *reading as follows: "I certify* [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 *shall* [will] expire on (date at least one (1) year later), *but* such expiration 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 *120* [ninety (90)] days before the current expiration date, we notify *both* you and (owner's or operator's name) by certified mail that we *have* decided 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 *shall* [will] be available upon presentation of your sight draft for *120* [ninety (90)] days after the date of receipt by *both* you *and (owner's or operator's name),* 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 *shall* [will] deposit the amount of the draft [promptly and] directly into the standby trust fund of (owner's or operator's name) *in accordance with your instructions* [held in trust by (name and address of corporate trustee)].

We [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 *this regulation as such regulations were constituted on the date shown immediately below* [401 KAR 2:063].

[Attest:] (Signature*(s)* and title*(s)* of official*(s)* 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 certificate of insurance, as specified in Section 11(5)(a) or Section 13(5)(a) of this regulation or in Section 7(4) or (6) of 401 KAR 2:073, must be worded as follows, except the instructions in parentheses are to be replaced with relevant information and the parentheses deleted:

Certificate of Insurance of Closure or Post-Closure Care
Name and Address of Insurer (herein called the "Insurer"): _____
Name and Address of Insured (herein called the "Insured"): _____
Facilities Covered: (List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below)).
Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure" or "closure and post-closure care" or "post-closure care") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Section 11(5) and Section 13(5) of this regulation, and Section 7 of 401 KAR 2:073, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provisions of the policy inconsistent with such regulations are hereby amended to eliminate such inconsistency.

Whenever requested by the Director of the Division of Waste Management in the Natural Resources and Environmental Protection Cabinet, hereinafter the Director of the Division, the Insurer agrees to furnish to the Director of the Division a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Section 16(5) of this regulation as such regulations were constituted on the date shown immediately below.
(Authorized signature for Insurer)
(Name of Person signing, Typed)
(Title of person signing, Typed)
Signature of witness or notary public: _____
(Date Notary Public Commission Expires)
(Seal of Notary Public)
(Date)

(6) A letter from the chief financial officer, as specified in Section 14*(6)* [(4)] of this regulation must be worded as follows, except that instructions in *parentheses* [brackets] are to be replaced with the relevant information and the *parentheses* [brackets] deleted:

Letter from Chief Financial Officer
(to Demonstrate Liability Coverage or to Demonstrate Both Liability Coverage and Assurance of Closure or Post-Closure Care
(Address to the Director of the Division of Waste Management)

I am the chief financial officer of (*owner's or operator's* name and address [of firm]). This letter is in support of *the* [this firm's] use of the financial test to demonstrate financial responsibility *for liability coverage, (insert "and closure and/or post-closure care" if applicable)* as specified in Section *7 of this regulation* [14 of 401 KAR 2:063] and Section 7 [6] of 401 KAR 2:073.

(Fill out the following *five* [four] paragraphs regarding facilities and *liability coverage* [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, *and* address [, and current liability requirement. Identify each liability requirement as to whether it is for sudden or non-sudden liability].)

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test as specified in Section 14 of this regulation and Section 7(8) of 401 KAR 2:073:

(If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure estimates. If there are 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 closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.)

1. The owner or operator identified above owns or operates the following facilities in Kentucky for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073. The current closure and/or post-closure cost estimates covered by this test are shown for each facility:

_____

2. The owner or operator identified above guarantees, through the corporate guarantee specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

_____

3. In states other than Kentucky where EPA is not administering the federal financial requirements which are substantially equivalent to Section 7 of this regulation and Section 7 of 401 KAR 2:073, this owner or operator is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073. The current closure and/or post-closure cost estimates covered by such a test as shown for each facility:

_____

4. In states other than Kentucky where EPA is administering the federal financial requirements which are substantially equivalent to Section 7 of this regulation and Section 7 of 401 KAR 2:073, this owner or operator is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

_____

5. The owner or operator identified above owns or operates the following hazardous waste sites or facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or any state through the financial test or any other financial assurance mechanism specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

_____

[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 *owner or operator* [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 *owner or operator* [firm] ends on (month, day). The figures for the following items marked with an asterisk are derived from this *owner's or operator's* [firm's] independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.)

Part A. Liability Coverage for Accidental Occurrences

(Fill in Alternative I if the criteria of Section *14(6)(a)1 of this regulation* [14(4)(a)1 of 401 KAR 2:063] are used. Fill in Alternative II if the criteria of Section *14(6)(a)2 of this regulation* [14(4)(a)2 of 401 KAR 2:063] are used.)

Alternative I

1. *Amount of annual aggregate liability coverage to be demonstrated: $*_____

[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). _____]

[*4. Net worth _____]

**2.* [5.] Current assets _____

**3.* [6.] Current liabilities _____

**4.* [7.] Net working capital (line *2* [5] minus line *3* [6]) _____

*5. [3.] Tangible net worth _____
[*8. The sum of net income plus depreciation, depletion, and amortization _____]
*6. [9. Total assets in Kentucky (required only] If less than 90 percent of [firm's] assets are located in Kentucky, *give total Kentucky assets* []] $_____
*7. *Ten (10) percent of equity: $*_____
(Answer yes or no to [the following] questions *8 through 12.*)
8. [10.] Is line *5* [3] at least $10 million? _____
9. [11.] Is line *4* [3] at least six times line 1? _____
10. [12.] Is line *5* [7] at least six times line 1? _____
**11.* [13.] Are at least 90 percent of [firm's] assets located in Kentucky? If not, complete line *12* [14]. _____
12. [14.] Is line *6* [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. *Amount of annual aggregate liability coverage to be demonstrated: $*_____
[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) $_____
**7. Ten (10) percent of equity: $*_____
(Answer yes or no to the [following] questions *8 through 11.*)
8. [7.] Is line 5 at least $10 million? _____
9. [8.] Is line 5 at least six times line 1? _____
**10.* [9.] Are at least 90 percent of [firm's] assets located in Kentucky? If not, complete line *11* [10]. _____
11. [10.] Is line 6 at least six times line 1? _____
(Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.)
Part B. Closure or Post-Closure Care and Liability Coverage
(Fill in Alternative I if the criteria of Section 11(5)(b)1a or Section 13(5)(b)1a and Section 14(6)(a)1 of this regulation are used or if the criteria of Section 7(4) or Section 7(6) of 401 KAR 2:073 which incorporate 40 CFR 265.143(e)(1)(i) and 265.145(e)(1)(i) respectively and Section 14(6)(a)1 of this regulation are used. Fill in Alternative II if the criteria of Section 11(5)(b)1b or Section 13(5)(b)1b and Section 14(6)(a)2 of this regulation or if the criteria of Section 7(4) or Section 7(6) of 401 KAR 2:073 which incorporate 265.143(e)(1)(ii) and 265.145(e)(1)(ii) respectively and Section 14(6)(a)2 of this regulation.

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $ _____
2. Amount of annual aggregate liability coverage to be demonstrated $ _____
*3. Sum of lines 1 and 2 $*_____
**4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $* _____
**5. Tangible net worth $* _____
**6. Net worth $* _____
**7. Current assets $* _____
**8. Current liabilities $* _____
9. Net working capital (line 7 minus line 8) $ _____
**10. The sum of net income plus depreciation, depletion, and amortization $* _____
**11. Total assets in Kentucky (required only if less than 90 percent of assets are located in Kentucky.) $* _____
**12. Ten (10) percent of equity $* _____
(Answer yes or no to questions 13 through 20.)
13. Is line 5 at least $10 million? _____
14. Is line 5 at least six (6) times line 3? _____
15. Is line 9 at least six (6) times line 3? _____
**16. Are at least 90 percent of assets located in Kentucky? If not, complete line 16.* _____
17. Is line 11 at least six (6) times line 3? _____
18. Is line 4 divided by line 6 less than 2.0? _____
*19. Is line 10 divided by line 4 greater than 0.1?*_____
*20. Is line 7 divided by line 8 greater than 1.5?*_____

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $ _____
2. Amount of annual aggregate liability coverage to be demonstrated $ _____
3. Sum of lines 1 and 2 $ _____
4. Current bond rating of most recent issuance and name of rating service _____
5. Date of issuance of bond _____
6. Date of maturity of bond _____
**7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $* _____
**8. Total assets in Kentucky (required only if less than 90 percent of assets are located in Kentucky.) $*_____
**9. Ten (10) percent of equity $* _____
(Answer yes or no to questions 10 through 13.)
10. Is line 7 at least $10 million? _____
11. Is line 7 at least six (6) times line 3? _____
12. Are at least 90 percent of assets located in Kentucky? If not, complete line 13. _____
13. Is line 8 at least six (6) times line 3? _____

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 *constituted* [promulgated] on the date shown immediately below.
Signature: _____
Name: _____
Title: _____
Date: _____

(7) [(5)] A hazardous waste facility liability endorsement as required by Section 14 must be worded as follows, except that instructions in *parentheses* [brackets] are to be replaced with the relevant information and the *parentheses* [brackets] deleted.

Hazardous Waste Facility Liability Endorsement
[It is agreed that:]
1. *This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under Section 14 of this regulation. The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "sudden ac-*

cidental occurrences," "non-sudden accidental occurrences," or "sudden and non-sudden accidental occurrences;" if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for non-sudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. [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 judgment, 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. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subparagraphs (a) through (e) of this paragraph are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endoresement is attached.

(b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Section 14(6) of this regulation.

(c) [2.] Whenever requested by the Director of the Division of Waste Management *in the Natural Resources and Environmental Protection Cabinet, hereinafter the Director of the Division,* the *Insurer* [Company] agrees to furnish to the Director of the Division [of Waste Management],a *signed* duplicate original of *the* [said] policy and all endorsements [thereon].

(d) Cancellation of this endorsement, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Director of the Division.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director of the Division.

[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 *Insurer* [Company]), herein called the *Insurer* [Company], of (address of *Insurer* [Company]), to (name of insured) of (address) [. Dated at _____] this _____ day of _____, 19 _____. *The effective date of said policy is _____ day of _____, 19____.*

I hereby certify that the wording of this endorsement is identical to the wording specified in Section 16(7) of this regulation as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the Commonwealth of Kentucky.

(Signature of Authorized Representative of Insurer)

(Name, typed)

(Title, typed), Authorized Representative of (name of insurer)

(Address of Representative, typed)

[Countersigned by _____, authorized Company representative.]

(8) A certificate of liability insurance as required in Section 14 of this regulation must be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Hazardous Waste Facility
Certificate of Liability Insurance

1. (Name of Insurer), the "Insurer," of (address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (name of Insured), the "Insured," of (address of Insured) in connection with the Insured's obligation to demonstrate financial responsibility under Section 14 of this regulation or Section 7 of 401 KAR 2:073. The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "sudden accidental occurrences," "non-sudden accidental occurrences," or "sudden and non-sudden accidental occurrences"); if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for non-sudden accidental occurrences, and which are insured for both. The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. The coverage is provided under policy number _____, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of the amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which

coverage is demonstrated as specified in Section 14(6) of this regulation.

(c) Whenever requested by the Director of the Division of Waste Management in the Natural Resources and Environmental Protection Cabinet, hereinafter the Director of the Division, the Insurer agrees to furnish to the Director of the Division an originally signed duplicate of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Director of the Division.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director of the Division.

I hereby certify that the wording of this instrument is identical to the wording specified in Section 16(8) of this regulation as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the Commonwealth of Kentucky.

(Signature of authorized representative of Insurer)

(Name, typed)

(Title, typed) Authorized Representative of (name of Insurer)

(Address of Representative, typed)

(9) A letter from the chief financial officer, as specified in Section 11(5)(b) or Section 13(5)(b) of 401 KAR 2:073, which incorporates 40 CFR 265.143(e) and 265.145(e) respectively, must be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses 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 assurance, as specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073:

(Fill out the following five paragraphs regarding facilities and associated cost estimates. 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 closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.)

1. This firm is the owner or operator of the following facilities in Kentucky for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073. The current closure and/or post-closure cost estimates covered by this test are shown for each facility:

_____

2. This firm guarantees, through the corporate guarantee specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073, the closure or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:

_____

3. In states other than Kentucky where EPA is not administering the financial requirements which are substantially equivalent to Section 7 of this regulation and Section 7 of 401 KAR 2:073, this form, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

_____

4. In states other than Kentucky where EPA is administering the financial requirements which are substantially equivalent to Section 7 of this regulation and Section 7 of 401 KAR 2:073, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Section 7 of this regulation and Section 7 of 401 KAR 2:073. The current closure and/or post-closure cost estimate covered by such a test are shown for each facility:

_____

5. This firm is the owner or operator of the following hazardous waste sites or facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or Kentucky through the financial test or any other financial assurance mechanism specified in Section 7 of this regulation or Section 7 of 401 KAR 2:073 or equivalent or substantially equivalent state or EPA mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance 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 11(5)(b)1a or Section 13(5)(b)1a of this regulation or Section 7(4) or 7(6) of 401 KAR 2:073 which incorporate 40 CFR 265.143(e)(1)(i) and 265.145(e)(1)(i) respectively are used. Fill in Alternative II if the criteria of Section 11(5)(b)1b or Section 13(5)(b)1b of this regulation or Section 7(4) or Section 7(6) of 401 KAR 2:073 which in corporate 40 CFR 265.143(e)(1)(ii) and 265.145(e)(1)(ii) are used.)

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown in the five paragraphs above) $ _____

*2. Total liabilities (if any portion of the closure or post-closure cost estimates is included in your 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 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 (6) times line 1? _____
12. Is line 7 at least six (6) times line 1? _____
*13. Are at least 90 percent of assets located in Kentucky? If not, complete line 14. _____
14. Is line 9 at least six (6) 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 or current closure and post-closure cost estimates (total of all cost estimates shown in the five 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 (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $ _____
*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 (6) times line 1? _____
*9. Are at least ninety (90) percent of firm's assets located in Kentucky? If not, complete line 10. _____
10. Is line 6 at least six (6) times line 1? _____

I hereby certify that the wording of this letter is identical to the wording specified in Section 16(9) of this regulation as such regulations were constituted on the date shown immediately below.
(Signature)
(Name, typed)
(Title, typed)
(Date)

(10) A corporate guarantee, as specified in Section 11(5)(b) or Section 13(5)(b) of this regulation or Section 7(4) or Section 7(6) of 401 KAR 2:073 which incorporate 40 CFR 265.143(e) and 265.145(e) respectively, must be worded as follows, except that instructions in parantheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for
Closure or Post-Closure Care

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor, to the Division of Waste Management in the Kentucky Natural Resources and Environmental Protection Cabinet, obligee, on behalf of our subsidiary (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Section 11(5)(b) or Section 13(5)(b) of this regulation or Section 7(4) or Section 7(6) of 401 KAR 2:073.

2. (Owner or operator) owns or operates the following hazardous waste site(s) or facility(ies) covered by this guarantee: (List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.)

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Section 6 of this regulation and Section 6 of 401 KAR 2:073 for the closure and post-closure care of facilities as identified above.

4. For value received from (owner or operator), guarantor guarantees to the Division of Waste Management that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care" or "closure and post-closure care") of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Section 7 of this regulation or Section 7 of 401 KAR 2:073, as applicable, in the name of (owner or operator) in the amount of the current closure or post-closure cost estimates as specified in Section 7 of this regulation or Section 7 of 401 KAR 2:073.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the Director of the Division of Waste Management and to (owner or operator) that he intends to provide alternate financial assurance as specified in Section 7 of this regulation or Section 7 of 401 KAR 2:073, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director of the Division of Waste Management by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the Director of the Division of the Waste Management of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in Section 7 of this regulation or Section 7 of 401 KAR 2:073, as applicable, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to this regulation or 401 KAR 2:073.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial assurance requirements of Section 7 of this regulation and Section 7 of 401 KAR 2:073 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the Director of the Division of Waste Management and to (owner or operator), such cancellation to become effective no earlier than 120 days after receipt of such notice by both the Director of the Division of Waste Management and (owner or operator), as evidenced by the return receipts.

10. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Section 7 of this regulation or Section 7 of 401 KAR 2:073, as applicable, and obtain written approval of such assurance from the Director of the Division of Waste Management

within ninety (90) days after a notice of cancellation by the guarantor is received by the Director of the Division of Waste Management from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

11. Guarantor expressly waives notice of acceptance of this guarantee by the Director of the Division of Waste Management or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Section 16(10) of this regulation as such regulations were constituted on the date first above written.

Effective date: _____
(Name of guarantor, typed) _____
(Authorized signature for guarantor) _____
(Name of person signing, typed) _____
(Title of person signing, typed) _____
(Signature of Witness or Notary Public) _____
(Date Notary Public's Commission Expires) _____
(Seal of Notary Public) _____

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 (*approximately* 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 *cabinet* [department] will review the design of the tanks, including the foundation, structural support, seams and pressure controls. The *cabinet* [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 *cabinet* [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 *cabinet* [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 non-sudden drop in liquid level in the impoundment, liquid detected in the leachate detection system, evidence of leakage or the potential for leakage in the dike, erosion of the dike, apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials, any mishandling of wastes placed in the impoundment, and foreign objects in the impoundment.

(b) Whenever there is a positive indication of a failure of the containment system, the impoundment must be removed from service. Indications of positive failure of the containment system include an unplanned sudden drop in liquid level in the impoundment, waste detected in the leachate detection system, active leakage through the dike, or a 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 *cabinet* [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:

(a) [1.] Liner systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials); and

(b) [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 instructions. 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
		S04	Surface impoundment
S02	Tank	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: July 12, 1982
RECEIVED BY LRC: July 14, 1982 at 12 noon.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Waste Management
Amended After Hearing

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 *Cabinet* 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 cabinet [Department] and received an EPA [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 cabinet [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 EPA identification number may obtain one by registering with the cabinet [Department] as described above, using forms provided by the cabinet [Department]. Upon receiving the request and reviewing the information the cabinet [Department] will assign an EPA [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 an EPA [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 *Cabinet.*"

(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 *cabinet's* [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 *authority* [, 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 transporting 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 cabinet [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 cabinet [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 section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

(2) [(5)] *Annual reporting.*

(a) A generator who ships his hazardous waste off-site must submit annual reports:

1. [(a)] On a form approved by the *cabinet* [department] according to the instructions on the form;

2. [(b)] To the *cabinet* [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 *cabinet* [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 *cabinet* [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 Cabinet, 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: July 12, 1982
RECEIVED BY LRC: July 14, 1982 at 12 noon.

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

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 *cabinet* [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 *waste sites or* facilities qualifying for interim status.

Section 1. General. *In the federal regulations incorporated by reference in this regulation, read director when Regional Administrator appears; read cabinet when EPA or Agency appears; read KRS Chapter 224 when RCRA appears; read Kentucky when United States appears; and read circuit court when U.S. district court appears.* The general provisions concerning interim status standards for hazardous waste treatment, storage and disposal facilities *contained in* 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) *Applicability. The provisions of 40 CFR 265.140 are adopted and herein filed by reference.* [Closure.]

(2) Financial requirements definition. The definitions contained in 40 CFR 265.141 are adopted and filed herein by reference.

(3) Cost estimate for facility closure.

(a) The provisions *of 40 CFR 265.142 are adopted and herein filed by reference.* [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.

(4) Financial assurance for closure.

(a) The provisions of 40 CFR 265.143 are adopted and herein filed by reference. The cash account or certificate of deposit provisions as found in Section 11(6) of 401 KAR 2:063 may also be used to satisfy the requirements of the section.

(b) [(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.

(5) [(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.

(6) [(3)] Financial assurance for post-closure monitoring and maintenance. *The provisions of 40 CFR 265.145 are adopted and herein filed by reference. The cash account or certificate of deposit provisions as found in Section 13(6) of 401 KAR 2:063 may also be used to satisfy the requirements of this section.* [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.]

(7) Use of a mechanism for financial assurance for both closure and post-closure care. The provisions of 40 CFR 265.146 are adopted and herein filed by reference.

(8) [(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.

(9) Incapacity of owners or operators, guarantors, or financial institutions. The provisions of 40 CFR 265.148 are adopted and herein filed by reference.

(10) The wording of the instruments required by this section shall be identical to the wording specified in Section 16 of 401 KAR 2:063.

(11) Owners and operators of interim status facilities shall submit the financial assurance mechanism within forty-five (45) days of the effective date of this regulation unless otherwise specified in this section.

Section 8. Use and Management of Containers. The provisions concerning containers in 40 CFR 265, Subpart

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 *Volatile Organic Compounds* [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 nonattainment 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 associated with the vapor balance system of a bulk gasoline plant 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: July 12, 1982

RECEIVED BY LRC: July 15, 1982 at 9 a.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Pollution
Amended After Hearing

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 *Cabinet* 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 KAR 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 *Volatile Organic Compounds* [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 *volatile organic compound* [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].]
(5) [(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.
(6) [(7)] No owner or operator of a bulk gasoline terminal in an urban county subject to this regulation [an affected facility] shall allow loading on or after December 1, 1982, 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 collection [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 associated with the vapor collection system of a bulk gasoline terminal as detected by a combustible gas detector using the test procedure referenced in Section 5; and
(d) The tank truck has a valid Kentucky pressure-vacuum test sticker as required by 401 KAR 63:031 attached and visibly displayed. [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) *The test procedure as defined in Appendix A to "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," EPA-450/2-77-026, (OAOPS No. 1.2-082, U.S. EPA, Office of Air Quality Planning and Standards),* [Kentucky Method 95,] filed by reference in 401 KAR 50:015, shall be used to determine compliance

with the standard in Section 3. *Each bulk gasoline terminal subject to this regulation shall use leaktight tank trucks for the compliance test. For purposes of testing using Appendix A to "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" (EPA-450/2-77-026), a leaktight tank truck is one (1) that during loading has 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 associated with the gasoline tank truck and its vapor collection system as detected by a combustible gas detector using the test procedure referenced in subsection (3) of this section.*

(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(6) [(7)] (c) during inspections conducted pursuant to KRS 224.033(10) and with the requirements of subsection (2) of this section.

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: July 12, 1982
RECEIVED BY LRC: July 15, 1982 at 9 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Pollution
Amended After Hearing

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 *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of *volatile organic compound* [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 *Volatile Organic Compounds* [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; and

(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 associated with the vapor balance system of a bulk gasoline plant 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: July 12, 1982
RECEIVED BY LRC: July 15, 1982 at 9 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Division of Air Pollution
Amended After Hearing

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 *Cabinet* 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 *December* [November] 1, 1982 *in urban counties designated non-attainment for ozone under 401 KAR 51:010.*

(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, *and* 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 *or* [,] 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.]

(2) [(3)] "LEL" means lower explosive limit, measured as propane.

(3) [(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) *and* [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 *associated with the gasoline tank truck or its vapor collection system* 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. *Drops of liquid resulting from the disconnection of dry breaks in well-maintained liquid lines shall be allowed.*

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 *alternate* [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 *meet* [pass] the pressure and vacuum *standard* [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. *The completed application shall include a copy of the test results demonstrating compliance with Section 3(1).* 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 *ten dollars ($10)* [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: July 12, 1982
RECEIVED BY LRC: July 15, 1982 at 9 a.m.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Education for Exceptional Children
Amended After Hearing

707 KAR 1:100. Kentucky School for the Deaf; admission policy.

RELATES TO: KRS 167.150
PURSUANT TO: KRS 13.082, 156.070, 167.150
NECESSITY AND FUNCTION: KRS 167.150 authorizes the State Board of Education, upon recommendation of the Superintendent of Public Instruction, to prescribe admission policies for pupils to attend the Kentucky School for the Deaf. This regulation implements that function.

Section 1. Statement of Purpose. The educational programs at the Kentucky School for the Deaf (KSD) are designed to provide a variety of educational placements for hearing impaired children. KSD's goal is to provide a comprehensive educational program that includes college preparatory courses and vocational instruction that meets the State Board of Education Program of Studies requirements. Additionally, a developmental program, educational program and a pre-vocational work experience program are available for lower functioning deaf students to prepare them for independent or semi-independent living and to qualify them for employment, vocational training or placement in a sheltered workshop.

Section 2. Referral Procedures. An application form for admission should be requested from KSD. Prospective students may be referred *for evaluation* [to the school] by parents or legal guardians or by local school districts or other agencies in cooperation with the student's parents. [Subsequent to the initial referral,] (Determinations regarding placement of the child shall be made in accordance with procedures outlined in 707 KAR 1:003 and 707 KAR 1:051.) Available written reports on prospective students are requested for review by KSD's Child Study Center prior to scheduling of the preadmission evaluation of the child. These reports may include, but are not limited to, the following areas and are a part of the Intake History:

(1) Educational history to include reports from programs attended previously.
(2) Detailed family history to include medical, developmental, social and behavioral history of the child.
(3) Audiological evaluation.
(4) Psychological evaluation.
(5) Communication evaluation to include formal and informal data relative to expressive and receptive language (gestures, sign language, reading, writing), speech evaluation and any other pertinent information relating to the child's communication functioning level.
(6) Complete physical examination to include:
(a) Physical development;
(b) Digestive and/or intestinal difficulties, as indicated;
(c) Neurological information;
(d) Seizure history and expectation;
(e) Medications;
(f) Bowel and bladder;
(g) Cardiac information and history;
(h) Hereditary problems;
(i) Visual screening; and
(j) Mobility.

Section 3. Initial Evaluation Procedures. (1) Upon receipt of the completed application form which includes parental permission to evaluate the child, KSD personnel will review the application form and existing information and begin scheduling for the necessary assessments. Each child who comes to KSD for evaluation must be accompanied by a parent or guardian or a social worker or local school district representative. Depending upon the extent of the available assessment information, the assessment period at the school may range from one (1) day to several weeks.

(2) The individual assessment, to include but not be limited to educational and psychological testing, will be administered in the child's native language or other nondiscriminatory mode.

(3) Informal and formal observation techniques will play a major role in the assessment procedure. The evaluation may include participation in leisure time activities, meals, and adaptation to a residence in the appropriate dormitory.

(4) At the conclusion of the evaluation period, [a KSD admissions meeting will be conducted by] a multidisciplinary *review of* [team and] all the assessment information will be *conducted by KSD to determine eligibility of the child according to Section 4.* [reviewed. A representative from the prospective student's local education agency may be invited to attend the admissions meeting.]

Section 4. Eligibility Criteria for Admissions. (1) The primary sensory handicap of the student must be deafness. Admission to KSD shall be provided tuition-free to Kentucky residents, and Kentucky residents shall be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission after qualified Kentucky residents are accepted, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.

(2) The student must fall in the age range between five (5) and twenty (20) years inclusive.

(3) The prospective student must possess a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and which adversely affects educational performance. A concomitant handicapping condition will not exclude the individual; however, hearing impairment must be the primary handicapping condition.

(4) The prospective student must meet the following criteria as related to intellectual functioning and adaptive behavior:

(a) Be able to adjust socially and psychologically to the

school environment, presenting no deficits in adaptive behavior which would interfere with either the student's or other student's educational endeavors.

(b) On a standardized instrument for the evaluation of intellectual functioning, achieve at the educable mentally handicapped (as defined in 707 KAR 1:057) level or above. In the event it is not possible to determine a child's level of intellectual functioning and level of adaptive behavior due to his inability to carry out the tasks presented during psychological testing and educational evaluation, the student may be accepted *for* [on] a trial *placement* [evaluation upon the recommendation of the KSD Admissions Committee if he/she appears to be a potential candidate].

(c) Exhibit the following prerequisites: Be schedule-trained in toileting; accept solid foods; be able to spoon feed and drink from a cup; need minimal assistance in bathing, dressing, and grooming; express his/her needs through natural gestures/signs/vocalizations; show a differential reaction to a familiar adult and accept stimulation; and walk or move independently about the school in a wheelchair.

(d) Process sufficient visual acuity to enable him/her to utilize visual stimuli found in classrooms for the deaf.

(5) Children with significant medical problems cannot be considered for admission to the residential program. Significant health problems may include, but are not limited to, planned hospitalization for twenty (20) days or more during an academic year, chronic moderate to severe respiratory difficulties, semiconsciousness and/or the requirements of sustained medical support services beyond the capability of the school's infirmary. Prospective students, also, must not require skilled nursing care.

Section 5. Placement. If a student is determined eligible for admission to KSD, educational placement within the school will be determined by each child's Individualized Education Plan as developed by KSD, local school districts and the parents or guardians pursuant to 707 KAR 1:051.

Section 6. Change of Placement. A placement review may be initiated to determine if continued placement in KSD in appropriate. Review procedures shall be in accordance with the admission and release committee process as set forth in 707 KAR 1:051. Situations which lead to a review of placement may include, but *are* not [be] limited to, the following:

(1) A change of circumstances which makes local school district placement appropriate.

(2) [(1)] Destructive or physically aggressive or other unacceptable behavior that threatens the safety or well-being of the child or others and that cannot be brought under control through the use of behavior modification or medication.

(3) [(2)] Inability to respond to developmental training as prescribed by the child's Individualized Education Plan (self-care, including feeding, dressing, personal hygiene).

(4) [(3)] Failure after a reasonable period to make minimum progress toward behavioral or educational (i.e., self-help, language, gross and fine motor, cognitive, social/emotional) objectives that have been established for the child in his/her Individualized Education Plan.

(5) [(4)] Development of significant medical problems as described in Section 4(4) of this regulation.

(6) [(5)] Deviant sexual behavior that has an adverse influence on the sexual behavior of other children.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 22, 1982
RECEIVED BY LRC: July 7, 1982 at 3 p.m.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Education for Exceptional Children
Amended After Hearing

707 KAR 1:110. Kentucky School for the Blind; admission policies.

RELATES TO: KRS 167.150
PURSUANT TO: KRS 13.082, 156.070, 167.150
NECESSITY AND FUNCTION: KRS 167.150 authorizes the State Board of Education, upon recommendation of the Superintendent of Public Instruction, to prescribe admission policies for pupils to attend the Kentucky School for the Blind. This regulation implements that function.

Section 1. Statement of Purpose. The educational programs at the Kentucky School for the Blind (KSB) are designed to meet the educational needs of severely visually handicapped and blind students. Special emphasis is placed on meeting the needs of students in relation to their visual impairments. Specialized materials, techniques, and aids are used to teach academic subjects, as well as courses needed for well-rounded development, including career-vocational education, music, physical education, orientation and mobility, and daily living and recreation and leisure skills. The over-all program is planned to develop each child's potential for living independently. (Counseling, off-campus programs, athletic programs, student organizations, etc., give experiences which help develop the confidence and skills needed to deal with a variety of social situations.)

Section 2. Referral Procedures. Inquiries concerning services of KSB for prospective students may come to the school from parents, legal guardians, agency personnel and other interested people; referrals are made through local school districts. Subsequent to the initial referral, determinations regarding placement of the child shall be made in accordance with procedures outlined in 707 KAR 1:003 and 707 KAR 1:051. Available written reports on prospective students are requested for review by KSB's Educational Evaluation Team prior to scheduling of the initial evaluation of the child. These reports are a part of the intake procedure and may include but are not limited to the following areas:

(1) Educational history to include reports from programs attended previously.

(2) Family history to include medical, developmental, social and behavioral history of the child.

(3) Ophthamological or optometric evaluation.

(4) Psychological evaluation.

(5) Audiological, speech, language evaluation.

(6) Complete physical examination to include:
(a) Physical development;
(b) Digestive and/or intestinal difficulties, as indicated;
(c) Neurological information;
(d) Seizure history and prognosis;
(e) Medications;
(f) Bowel and bladder difficulties;
(g) Cardiac history and prognosis;
(h) Hereditary problems; and
(i) Orthopedic evaluation as indicated.

Section 3. Initial Evaluation Procedures. The procedures are as follows:

(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.

(2) The initial evaluation may include but not be limited to the following assessments, all to be administered in the child's native language or other nondiscriminatory mode:

(a) Educational assessments which may include achievement tests, diagnostic tests, and developmental scales;
(b) Orientation and mobility skills;
(c) Speech, hearing and language development;
(d) Daily living skills;
(e) Visual functioning;
(f) Gross and fine motor skills;
(g) Psychological assessment; and
(h) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities.

(3) A summary conference will be held at the conclusion of the evaluation at which time the preliminary results will be explained to the appropriate individual who accompanies the child for evaluation. A written report will follow within fifteen (15) working days of the evaluation.

(4) Following the completion of a written report, a meeting of KSB's *Evaluation Team* [Admissions/Placement Committee] will be held *to review* [and all of] the assessment information [reviewed by it to determine the appropriateness of the child's placement at KSB. The parents and local school district will be informed in writing of the outcome of this meeting within thirty (30) days of the initial evaluation date].

(5) The findings of the Evaluation Team will be sent to the parent(s) and local school district for use in the admissions and release committee process.

Section 4. Eligibility and Criteria for Admission. Admission is determined by the following eligibility criteria:

(1) The primary handicap of the student will be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.

(2) The student must be between five (5) and twenty (20) years of age inclusive.

(3) A child's visual impairment after correction must be such that he or she needs specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program.

(4) The prospective student must meet the following criteria as related to intellectual functioning and adaptive behavior:

(a) Be able to adjust socially and psychologically to the school environment, presenting no deficits in adaptive behavior which would interfere with either the student's or other students' educational endeavors.

(b) On a standardized instrument for the evaluation of intellectual functioning, achieve at least at the trainable mentally handicapped level as defined in 707 KAR 1:057, and benefit from the educational offerings of this school. When it is not possible to determine a child's level of intellectual functioning and level of adaptive behavior during the initial evaluation, the student may be accepted for an extended evaluation time upon the recommendation of KSB *Evaluation Team* [Admissions/Placement Committee] if he or she appears to have the potential to function at an acceptable level or demonstrates the ability to develop basic skills.

(c) Exhibit the following basic prerequisite skills or demonstrate the ability to develop these skills: Be schedule trained in toileting, accept solid foods, be able to spoon feed and drink from a cup, need minimal assistance in bathing, dressing, and grooming, express his or her needs through speech or other vocalizations, natural gestures or signs.

(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to the residential program. Prospective students also must not require skilled nursing care.

(6) Children with orthopedic involvement must require no more than minimum assistance in moving about using orthopedic aids, including wheelchairs and walkers. These children will be evaluated individually to determine their ability to function adequately within the residential program. A request for extended trial placement may be made if it is not possible to determine a child's ability to function based on existing information.

Section 5. Placement. If a student is determined eligible for admission to KSB, educational placement within the school will be determined by each child's Individualized Education Program as developed by KSB, local school districts, and parents or guardians pursuant to 707 KAR 1:051.

Section 6. Change of Placement. A placement review may be initiated at any time by KSB, local school districts, and parents or guardians to determine if continued placement at KSB is appropriate. Review procedures shall be in accordance with the admission and release committee process as set forth in 707 KAR 1:051. Situations which lead to a review of placement may include but are not limited to the following:

(1) A change of circumstances which makes local school district placement appropriate.

(2) Destructive, physically aggressive, sexually aggressive, or other unacceptable behavior that threatens the safety or well being of the child or others and that cannot be brought under control through the use of behavior modification, personal counseling, or medication.

(3) Failure after a reasonable period to make minimum progress towards behavioral or educational objectives (i.e., self-help, language, gross and fine motor, cognitive, social/emotional) that have been established for the child in his or her Individualized Education Program.

(4) Development of significant medical problems as described in Section 4.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 22, 1982
RECEIVED BY LRC: July 7, 1982 at 3 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Amended After Hearing

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by any utility. This regulation establishes general rules which apply to electric, gas, water, sewage and telephone utilities.

Section 1. General Provisions. (1) The adoption of regulations by the commission shall not preclude the commission from altering or amending the same in whole or in part, or from requiring any other or additional service, equipment, facility, or standards, either upon request, or upon its own motion, or upon the application of the utility. No regulation of the commission shall in any way relieve a utility from any of its duties under the laws of this state.

(2) Whenever standards or codes are referred to in the commission's regulations it is understood that utilities employing competent corps of engineers are not to be prohibited thereby from continuing or initiating experimental work and installations which tend to improve, decrease the cost of, or increase the safety of their service.

Section 2. Definitions. In addition to the definitions as set out in KRS 278.010, the following definitions shall be used in interpreting the commission's regulations:

(1) "Commission" means the Public Service Commission.

(2) "Utility" means an energy utility as defined in KRS 278.010(4) or a combined energy-non-energy utility as provided in KRS 278.040(2).

(3) "Combined energy-non-energy utility" means a utility which is an energy utility that also renders service as a non-energy utility as provided in KRS 278.040(2).

(4) "Customer" means any person, firm, corporation or body politic supplied service by any electric, gas or combined energy-non-energy utility.

Section 3. Reports. (1) Financial and statistical reports. Every utility shall file annually a financial and statistical report upon forms to be furnished by the commission. Said report shall be based upon the accounts set up in conformity with the commission's order adopting uniform classification of accounts for utilities. This report shall be filed on or before March 31, each year. For good cause shown, the commission may, upon application in writing, allow a reasonable extension of time for such filing.

(2) Report of meters, customers and refunds. Every utility shall make periodical reports on such forms as may be prescribed, of meter tests, number of customers and amount of refunds.

(3) Other reports. Every utility shall make such other reports as the commission may at its discretion from time to time require.

(4) All records and reports shall be retained in accordance with the uniform system of accounts unless otherwise specified herein.

Section 4. Service Information. (1) The utility shall, on request, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service. The utility shall inform its customers of any change made or proposed in the character of its service which might affect the efficiency, safety, or continuity of operation.

(2) Prior to making any substantial change in the character of the service furnished, which would affect the efficiency, adjustment, speed or operation of the equipment or appliances of any customer, the utility shall obtain the approval of the commission. The application shall show the nature of the change to be made, the number of customers affected, and the manner in which they will be affected.

(3) The utility shall inform each applicant for service of the type, class and character of service that is available to him at his location.

Section 5. Special Rules or Requirements. (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.

(2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

Section 6. Meter Readings and Information. (1) Information on bills. Each bill rendered periodically by utilities shall show the class of service, the present and last preceding meter readings, the date of the present reading, the number of units consumed, the meter constant, if any, the net amount for service rendered, all taxes, the adjustments, if any, and the gross amount of the bill. The date after which a penalty may apply to the gross amount must be indicated. Estimated or calculated bills shall be distinctly marked as such. The rate schedule under which the bill is computed shall be furnished under one (1) of the following methods:

(a) By printing rate schedule on the bill.

(b) By publishing in a newspaper of general circulation once each year or when rate is changed.

(c) By mailing to each customer once each year or when rate is changed.

(d) By providing a place on each bill where a customer may indicate his desire for a copy of the applicable rates and furnishing same by return first class mail.

(2) Meter readings. The registration of each meter shall read in the same units as used for billing unless a conversion factor be shown on the billing forms and if the meter does not read direct, the constant shall be plainly marked on the face of the meter dial.

(3) Flat rates. Flat rates for unmetered service shall approximate as close as possible the utility's rates for metered service and the rate schedule shall clearly set out the basis upon which consumption is estimated.

(4) Utilities now using or desiring to adopt mechanical

billing or other billing systems of such a nature as to render compliance with all of the terms of subsection (1) of this section impracticable may make application to the commission for relief from part of these terms. For good cause shown, the commission may allow the omission of part of these requirements. Each utility shall submit the form of bill to be used by it to the commission for its approval.

Section 7. Deposits. (1) A utility may require from any customer or applicant for service a minimum cash deposit or other guaranty to secure payment of bills of an amount not to exceed two-twelfths (2/12) of the estimated annual bill of such customer or applicant, where bills are rendered monthly or an amount not to exceed three-twelfths (3/12) of the estimated annual bill of such customer or applicant, where bills are rendered bimonthly or an amount not to exceed four-twelfths (4/12) of the estimated bill of such customer or applicant where bills are rendered quarterly.

(2) The utility shall issue to every customer from whom a deposit is received a certificate of deposit, showing the name of the customer, location of initial premises occupied, date and amount of the deposit.

Section 8. Complaints. Upon complaint to the utility by a customer either at its office or in writing, the utility shall make a prompt and complete investigation and advise the complainant thereof. It shall keep a record of all such complaints concerning its utility service which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof.

Section 9. Bill Adjustment. (1) Whenever a meter in service is found upon periodic request or complaint test to be more than two percent (2%) fast, additional tests shall be made at once to determine the average error of the meter. Said tests shall be made in accordance with the commission's regulation applicable to the type of meter involved.

(2) If the result of tests on a customer's meter shows an average error greater than two percent (2%) fast, then the customer's bills, for the period during which the meter error is known to have existed, shall be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill shall be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months. (See exception in subsection (5) of this section.)

(3) If the result of tests on a customer's meter shows an average error greater than two percent (2%) slow, then the customer's bill, for the period during which the meter error is known to have existed, may be recomputed and the account adjusted on the basis of the test. In the event the period during which the meter error existed is unknown, then the customer's bill may be recomputed for one-half (½) of the elapsed time since the last previous test but in no case to exceed twelve (12) months.

(4) It shall be understood that when a meter is found to have an error in excess of two percent (2%) fast or slow the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test; i.e., it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100 percent as is commercially practicable. Therefore, percent error shall be that amount of error as is indicated by the test.

(5) The burden of maintaining measuring equipment so that it will register accurately is upon the utility; therefore, if meters are found upon test to register fast and if time for periodic test has overrun to the extent that one-half (½) of the time elapsed since the last previous test exceeds twelve (12) months, the refund shall be for the twelve (12) months as specified in subsection (2) of this section and in addition thereto, a like refund for those months exceeding the periodic test period; provided, however, that the commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control.

(6) Each utility shall make a reasonable attempt to determine if the amount of consumption for the current billing period for each customer is unduly excessive. If a comparison of consumption indicates a necessity therefor, a test of the customer's meter shall be made, and if the meter is found to register incorrectly to the customer's prejudice more than two percent (2%), the utility shall recalculate the customer's bills in accordance with the foregoing provisions.

(7) When a meter is tested and it is found necessary to make a refund or back bill a customer, the customer shall be notified in substantially the following form:

On_____, 19____, the meter bearing identification No._____installed in your building located at_____
(Street and Number)
in_____was tested
(City)
at_____and found to
(On premises or elsewhere)
register_____.
(Percent fast or slow)
The meter was tested on_____
(Periodic, Request, Complaint)
test.

Based upon this we herewith_____
(Charge or Credit)
you with the sum of $_____, which amount has been noted on your regular bill.

Section 10. Customer's Discontinuance of Service. (1) Any customer desiring service discontinued or changed from one address to another shall give the utility three (3) days' notice in person or in writing, provided such notice does not violate contractual obligations.

(2) Upon request that service be reconnected at any premises subsequent to the initial installation or connection to its service lines, the utility may, subject to subsection (3) of this section, charge the applicant an amount not to exceed the actual average cost as approved by this commission of making such reconnection.

(3) Any utility desiring to establish a reconnection charge under the provisions of subsection (2) above, shall submit for commission approval a formal application setting out:

(a) The actual average cost of making such reconnections; and

(b) The effect of such charges on the utility's revenues.

Section 11. Discontinuance of Service. (1) The utility may refuse or discontinue to serve an applicant or customer under the following conditions:

(a) For noncompliance with its rules and regulations. However, no utility shall discontinue or refuse service to any customer or applicant for violation of its rules or regulations without first having made a reasonable effort to induce the customer or applicant to comply with its rules and regulations as filed with the commission. After such effort on the part of the utility, service may be discontinued or refused only after the customer shall have been given at least ten (10) days written notice of such intention, mailed to his last known address.

(b) When a dangerous condition is found to exist on the customer's or applicant's premises, the service shall be cut off without notice or refused, provided that the utility notify the customer or applicant immediately of the reasons for the discontinuance or refusal and the corrective action to be taken by the applicant or customer before service can be restored.

(c) When a customer or applicant refuses or neglects to provide reasonable access to the premises for the purpose of installation, operation, meter reading, maintenance or removal of utility property the utility may discontinue or refuse service only after the customer or applicant shall have been given at least fifteen (15) days' written notice of such intention.

(d) *Except as provided in subsection (2) of this section,* a utility shall not be required to furnish service to any applicant when such applicant is indebted to the utility for service furnished until such applicant shall have paid such indebtedness.

(e) A utility may refuse or discontinue service to a customer or applicant if the customer or applicant does not comply with state, municipal or other codes, rules and regulations applying to such service.

(2) A gas or electric utility may discontinue service under the following conditions:

(a) For nonpayment of bills—*ten (10) day notice.* However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least ten (10) days' written notice, but the cut-off shall not be effected before twenty-seven (27) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office, payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until thirty (30) days elapse from the time of the utility's notification to the customer in writing of the existence of local, state and federal programs, providing for the payment of utility bills under certain conditions and of the offices to contact for such possible assistance. Service shall not be discontinued *when* [where] the customer and the utility have reached agreement on a partial payment plan pursuant to paragraph (b) herein *and the customer is meeting the requirements of the plan.* The written notice for any discontinuance of service shall advise the customer of his *or her* rights under paragraphs (a) and (b) herein and of his *or her* right to dispute the reasons for such discontinuance.

(b) *Employee available to answer consumer questions and negotiate partial payment plan.* Every gas and electric utility subject to the jurisdiction of the commission shall have an employee available during regular working hours to answer questions regarding a customer's bill and to resolve disputes over the amount of such bill. Such employee shall be authorized to negotiate partial payment plans of an outstanding bill and accept payments where the customer has shown good faith in attempting to meet his *or her* financial obligations to the utility. Said employee shall be authorized by the utility to consider and shall consider proposals by the customer for a partial payment plan and retention of service.

(c) Certificate of need from Department for Social Insurance. Federal and statewide energy assistance programs are administered by the Kentucky Department for Human Resources, Bureau for Social Insurance. Upon written certification from one (1) of its offices [or verification supplied by the customer,] a customer who is eligible for energy assistance under the Department's [Bureau's] guidelines or is certified as being in genuine financial need, defined as any household [current recipient of Aid to Families with Dependent Children, Medicaid, Food Stamps, or] with gross income at or below 130 percent of the poverty level, and who has been given a ten (10) day notice for nonpayment of a gas or electric bill rendered [for service billed or received] between December 1 and March 1, and who presents such notice to the Department for Social Insurance, shall be allowed thirty (30) days in addition to such ten (10) day period in which to negotiate a partial payment plan with the utility provided such certification is delivered to the utility during the initial ten (10) day notice period by the applicant in person, by his or her agent, by mail, or by a telephone call from an employee of the Department for Social Insurance. The thirty (30) day period shall begin to run at the end of the tenth day of the ten (10) day period. When [Where] the customer exhibits good faith by offering to make a present payment commensurate with his or her ability to do so and by agreeing to a repayment schedule which would permit the customer to become current in the payment of his or her gas or electric bill[s] as soon as possible but no later than October 15, the utility shall accept such partial payment plan. In addition to advising the customer of his or her rights under paragraphs (a) and (b) of this subsection, as required by paragraph (a) above, the ten (10) day notice or a bill insert sent with the ten (10) day notice [another notice] shall inform the customer of the telephone number and address of the nearest office of the Kentucky Cabinet [Department] for Human Resources, Department [Bureau] for Social Insurance, and of the income limits by household size which determine eligibility for a certificate. Information as to such limits may be obtained from the Department for Social Insurance. Referral of such customer to such office of the Department [for Human Resources] may be made by a church, by a charitable or social organization, by a unit of state or local government, or by any other person.

(d) Budget payment plan. Each jurisdictional gas and electric utility shall develop a budget payment plan whereby a customer may elect to pay a fixed amount each month on a yearly basis in lieu of monthly billings based on actual usage. The provisions of this section relating to partial payments and budget plans shall apply only to a utility's residential customers. It shall be the responsibility of the utility to disseminate information to its customers regarding the availability of such budget payment plan. If the commission finds, upon application a budget plan for residential customers would materially impair or damage the utility's credit or operations, then it may grant the utility an exemption from the requirements of the budget plan.

No exemption may extend beyond one (1) year without another application by the utility and a finding by the commission that said exemption should be allowed.

(e) [(c)] For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(3) A water, sewage or telephone utility may discontinue service under the following conditions:

(a) For nonpayment of bills. However, no utility shall discontinue service to any customer for nonpayment of bills (including delayed charges) without first having made a reasonable effort to induce the customer to pay same. The customer shall be given at least forty-eight (48) hours written notice, but the cut-off shall not be effected before twenty (20) days after the mailing date of the original bill. Such termination notice shall be exclusive of and separate from the original bill. If prior to discontinuance of service, there is delivered to the utility office payment of the amount in arrears, then discontinuance of service shall not be made, or where a written certificate is filed signed by a physician, a registered nurse or a public health officer stating that, in the opinion of the person making the certification discontinuance of service will aggravate an existing illness or infirmity on the affected premises, service shall not be discontinued until the affected resident can make other living arrangements or until ten (10) days elapse from the time of the utility's notification.

(b) For fraudulent or illegal use of service. When the utility has discovered evidence that by fraudulent or illegal means a customer has obtained unauthorized service or has diverted the service for unauthorized use or has obtained service without same being properly measured, the service to the customer may be discontinued without notice. The utility shall not be required to restore service until the customer has complied with all rules of the utility and regulations of the commission and the utility has been reimbursed for the estimated amount of the service rendered and the cost to the utility incurred by reason of the fraudulent use.

(4) It shall be the duty of the utility before making service connections to a new customer to ascertain the condition of the meter and service facilities for such customer in order that prior fraudulent use of the facilities, if any, will not be attributed to the new customer, and the new customer shall be afforded the opportunity to be present at such inspections. The utility shall not be required to render service to such customer until all defects in the customer-owned portion of the service, if any, shall have been corrected.

(5) Reconnection. For all cases of refusal or discontinuance of service as herein defined, where the cause for refusal or discontinuance has been corrected and all rules and regulations of the utility and the commission have been complied with, the utility shall promptly render service to the customer or applicant.

(6) When advance notice is required, such notice may be given by the utility by mailing by United States mail, postage prepaid, to the last known address of the applicant or customer.

Section 12. Special Charges. (1) A utility may make a reasonable charge for each of the following trips:

(a) To read a meter when the customer has failed to read the meter for three (3) consecutive billing periods. This pertains only to those utilities whose customers ordinarily read their own meters.

(b) To collect a delinquent bill. This trip may be made only after written notice has been sent to the customer stating that if the bill is not paid by a certain date, the service will be disconnected.

(c) To reconnect a service that has been disconnected for nonpayment of bills or for violation of the utility's rules and regulations. This charge may include the cost of disconnecting the service.

(2) The charges, however, shall be applied uniformly *within reasonable classifications* throughout the entire area served by the utility, shall be incorporated in the utility's rules and regulations, shall be subject to the approval of the commission, and shall yield only enough revenue to pay the expenses incurred in rendering these services.

Section 13. Meter Testing. (1) All electric, gas and water utilities furnishing metered service shall provide meter standards and test facilities, as more specifically set out under 807 KAR 5:021, 807 KAR 5:041 and 807 KAR 5:066.

(2) A utility may have all or part of its testing of meters performed by another utility or agency approved by the commission for such purpose. Each utility having tests made by another agency or utility shall notify the commission of said arrangements in detail to include make, type and serial number of standards used to make said checks or tests.

(3) No utility shall place in service any basic measurement standard required by these rules unless it has been calibrated by the commission's Meter Standards Laboratory. All utilities or agencies making tests or checks for utility purposes shall notify the commission promptly of the adoption or deletion of any basic standards requiring calibration by the commission.

(4) Each electric, gas and water utility or agency doing meter testing for a utility shall have in its employ metermen certified by this commission. These certified metermen shall perform such tests as may be necessary to determine the accuracy of the utility's meters and to adjust the utility's meters to the degree of accuracy required by the regulations of the commission.

(5) A utility or agency desiring to have its employees certified as metermen shall submit the names on the commission's form entitled "Application for Appointment of Metermen" and after compliance with the requirements as noted in this form, the applicant may be certified as a meterman and furnished with a card authorizing him to perform meter tests.

Section 14. Access to Property. The utility shall at all reasonable hours have access to meters, service connections and other property owned by it and located on customer's premises for purposes of installation, maintenance, meter reading, operation or removal of its property at the time service is to be terminated. Any employee of the utility whose duties require him *or her* to enter the customer's premises shall wear a distinguishing uniform or other insignia, identifying him *or her* as an employee of the utility, or carry [on his person] a badge or other identification which will identify him *or her* as an employee of the utility, the same to be shown by him *or her* upon request.

Section 15. Meter Test Records. (1)(a) Test cards. A complete record of all meter tests and adjustments and data sufficient to allow checking of test calculations shall be recorded by the meterman. Such record shall include: Information to identify the unit and its location; the date of tests; the reason for such tests; readings before and after the test; a statement of "as found" and "as left" accuracies sufficiently complete to permit checking of the calculations employed; indications showing that all required checks have been made; a statement of repairs made, if any; the identifying number of the meter; the type and capacity of the meter; and the constant of the meter.

(b) The complete record of tests of each meter shall be continuous at least two (2) periodic tests and in no case less than two (2) years.

(2) (a) History cards. Each utility shall keep numerically arranged and properly classified card records giving for each meter owned and used by the utility for any purpose the identification number, date of purchase, name of manufacturer, serial number, type, rating, and the name and address of each customer on whose premises the meter has been in service with date of installation and removal. These card records shall also give condensed information concerning all tests and adjustments including dates and general results of such adjustments. The card records shall be of such character that a system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by the applicable regulation of the commission.

(b) When the records required above are kept in a readily available form posting to the history card is not necessary.

(3) Sealing of meters. Upon completion of adjustment and test of any meter under the provisions of the regulations of the commission, the utility shall affix thereto a suitable seal in such a manner that adjustments or registration of the meter cannot be tampered with without breaking the seal. The seal shall be of a type acceptable to the commission.

Section 16. Pole Identification. (1) Each utility owning poles or other structures supporting the company's wires, shall mark every pole or structure located within a built-up community with the initials or other distinguishing mark by which the owner of every such structure may be readily determined. For the purpose of this rule the term "built-up community" shall mean urban areas and those areas immediately adjacent thereto.

(2) Identification marks may be of any type but must be of a permanent material and shall be of such size and so spaced and hereafter maintained so as to be easily read from the surface of the ground at a distance of six (6) feet from the structure.

(3) When utilities' structures are located outside of a built-up community only every tenth structure need be so marked.

(4) All junction structures shall bear the identification mark and structure number of the owner.

(5) Poles need not be marked if they are clearly and unmistakably identifiable as the property of the utility.

(6) Each utility shall either number their structures and maintain a numbering system or use some other method of identification so that each structure in the system may be easily identified.

(7) The requirements herein shall apply to all existing structures and those hereafter erected and to all changes in ownership.

Section 17. System Maps and Records. (1) Each utility shall have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve showing the following:

(a) Operating districts.

(b) Rate districts.

(c) Communities served.

(d) Location and size of transmission lines, distribution lines and service connections.

(e) Location and layout of all principal items of plant.

(f) The date of construction of all items of plant by year and month.

(2) In each division or district office there shall be available such information relative to the utility's system as will enable the local representative to furnish necessary information regarding the rendering of service to existing and prospective customers.

(3) In lieu of showing the above information on maps a card record or suitable means may be used. For all construction the records shall also show the date of construction by month and year.

Section 18. Location of Records. All records required by the regulations of the commission shall be kept in the principal office of the utility or other acceptable safe storage place, and shall be made available to representatives, agents or employees of the commission upon reasonable notice and at all reasonable hours.

Section 19. Request Tests. Each utility shall make a test of any meter upon written request of any customer provided such request is not made more frequently than once each twelve (12) months. The customer shall be given the opportunity of being present at such request tests. If such tests show that the meter was not more than two percent (2%) fast, the utility may make a reasonable charge for the test, the amount of such charge to be set out in the utility's rules and regulations filed with the commission, and subject to the approval of the commission.

Section 20. Complaint Tests. (1) Any customer of the utility may request a meter test by written application to the commission accompanied by payment of such fee for the test as prescribed below. Such request may not be made more frequently than once each twelve (12) months. Upon receipt of such request, the commission will notify the utility to leave the customer's meter in place until completion of such test.

(2) If a meter tested upon complaint of a customer is found to register not more than two percent (2%) fast, the cost of such test shall be borne by the customer. However, if the meter shall be found to register more than two percent (2%) fast, the cost of such test shall be borne by the utility and the amount of the deposit made by the customer shall be refunded.

(3) The charges fixed by the commission for making such tests are as follows:

(a) Electric. Direct current and single phase alternating current watt hour meters operating on circuits of not more than 250 volts:

Amperes Rated Capacity	Fee
30 and under	$ 2
Over 30 to 100	4
Each additional 50 amperes or factor thereof	1

Polyphase a.c. watt hour meters and single phase or direct current watt hour meters operating on circuits of over 250 volts with or without instrument transformers:

Kilowatts Rated Capacity	Fee
5 KW and under	$ 2
Over 5 to 25	4
Over 25 to 100	8
Over 100 to 500	16

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(b) Gas. Displacement type meters operating on distribution system pressures:

Capacity in Cu. Ft. Per Hour	Fee
1,000 cu. ft. per hour and under	$ 4
Over 1,000 to 10,000	8
Over 10,000 to 100,000	12

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(c) Water:

Size	Fee
Outlet 1 inch or less	$ 4
Outlet over 1 inch to 2 inches	6
Outlet over 2 inch to 3 inches	8
Outlet over 3 inch to 4 inches	10

Plus one-half (½) of the cost of transportation of the commission representative between the office of the commission and the point of test.

(d) For meters of a size or capacity not shown herein, the commission will fix a suitable fee upon application.

Section 21. Safety Program. Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

(1) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

Section 22. Inspection of Systems. (1) Each utility shall adopt procedures for inspection to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission.

(2) Each electric utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

(a) At intervals not to exceed six (6) months:

1. Production facilities regularly operated and manned; continuous surveillance, monitoring and inspection as a part of operating procedure.

2. Unmanned production facilities including peaking units not on standby status; units shall be operated and inspected and all monitoring devices shall be checked to determine that there is no evidence of abnormality.

3. Substations where the primary voltage is sixty-nine (69) KV or greater; examination for the purpose of discovering damage to or deterioration of components including structures and fences; checking of all gauges and monitoring devices.

4. Underground network transformers and network protectors in vaults located in buildings or under sidewalks, examination for leaks, condition of case, connections, temperature and overloading.

5. Electric lines operating at sixty-nine (69) KV or greater (including insulators, conductors, and supporting facilities).

(b) At intervals not to exceed one (1) year:

1. Production facilities maintained on a standby status; also inspection and examination prior to any start up, except remotely controlled facilities.

2. Substations where the primary voltage is less than sixty-nine (69) KV but is fifteen (15) KV or greater.

(c) At intervals not to exceed two (2) years: Electric lines operating at voltages of less than sixty-nine (69) KV (including insulators, conductors and supporting facilities).

(d) Other facilities:

1. Utility buildings inspected for compliance with safety codes at intervals not greater than one (1) year.

2. Construction equipment inspected for defects, wear and operational hazards at intervals not greater than quarterly.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.

2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(3) Each gas utility shall make systematic inspections of its system for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is prescribed or recommended by the Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, for the various classes of facilities as defined in said standards, in accordance with the inspection procedures described therein.

(4) The following maximum time intervals are prescribed for: certain inspections provided for in Department of Transportation, Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, with respect to which intervals are not specified; and certain additional inspections not provided for in such code.

(a) At intervals not to exceed one (1) year:

1. Production wells, storage wells and well equipment; visual inspection and examination of all exterior components.

2. Pressure limiting stations, relief devices and pressure regulating stations, including vaults.

3. The curb box on service shall be inspected for accessibility.

(b) Other facilities:

1. Utility buildings inspected for compliance with safety codes at least annually.

2. Construction equipment inspected for defects, wear and operational hazards at least quarterly.

(c) At intervals not to exceed the periodic meter test intervals: individual residential customer service regulators, vents and relief valve vents shall be checked for satisfactory operation.

(d) At intervals of meter change: the curb box on service shall be inspected for operable condition.

(e) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(5) (a) Each water utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Source of supply:
a. Dams, physical and structural, annually.
b. Intake structures, physical and structural, annually.
c. Traveling screens, physical and structural and safety of operation, annually.
2. Purification:
a. Sedimentation basins filters and clear wells, physical and structural and safety of operation, annually.
b. Chemical feed equipment, for proper and safe operation, annually.
c. Pumping equipment including electric power wiring and controls, for proper and safe operation, annually.
d. Hydrants, for proper and safe operation, annually.
e. Utility buildings, inspection for compliance with safety codes, annually.
f. Construction equipment, inspection for defects, wear and operational hazards, quarterly.
g. Mains and valves, leaks, annually.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

(6) (a) Each telephone utility shall make systematic inspections of its system in the manner set out below for the purpose of insuring that the commission's safety requirements are being met. Such inspections shall be made as often as necessary but in no event less frequently than is set forth below for various classes of facilities and types of inspection.

1. Aerial plant: Inspection for electrical hazards, proper clearance for electric facilities and climbing safety—Every two (2) years.
2. Underground plant: Inspection for presence of gas, proper clearance from electric facilities and safe working conditions—At least annually.
3. Station equipment and connections: Inspection for external electrical hazards, damaged instruments or wiring, appropriate protection from lightning and safe location of equipment and wiring—When on customer's premises.
4. Utility buildings: Inspection for compliance with safety codes—At least annually.
5. Construction equipment: Inspection for defects, wear and operational hazards—At least quarterly.

(b) On the receipt of a report of a potentially hazardous condition made by a qualified employee or public official or by a customer:

1. All portions of the system (including those listed above) which are the subject of the report.
2. Appropriate records shall be kept by each utility to identify the inspections made, deficiencies found and action taken to correct such deficiencies.

Section 23. Reporting of Accidents. Each utility shall notify the commission of any accident which results in death or serious injury to any person or substantial property damage. Prompt notice of fatal accidents shall be given to the commission by telephone or telegraph.

Section 24. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

[Section 25. The effective date of this regulation is April 16, 1982.]

MARLIN M. VOLZ, Chairman
ADOPTED: July 13, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: July 14, 1982 at 4:15 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Amended After Hearing

904 KAR 1:012. Inpatient hospital services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [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 *cabinet* [department], by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission. *A recepient may transfer from one (1) hospital to another hospital when such transfer is necessary for the patient to receive medical care which is not available in the first hospital. In addition, for neonatal care related to any of the diagnoses specified in Section 4, an infant recipient may transfer from a hospital with a level III neonatal unit to a different hospital with a level II or level I neonatal unit. [A recipient may transfer from a "lesser" hospital to a "greater" hospital when such is essential for the patient to receive necessary care. In addition, for neonatal care related to any of the diagnoses specified in Section 4 of this regulation, an infant recipient may transfer from a "greater" hospital to a "lesser" hospital.] Such transfers and admissions shall begin anew the fourteen (14) day per admission limitation; in such situations, the maximum covered inpatient hospital stay that may result is a total of twenty-eight (28) days for the two (2) admissions.* Each admission shall be reviewed by the Kentucky Peer Review Organization and assigned a length of stay date in order to qualify for reimbursement.

The admission shall again be reviewed on or before the assigned length of stay date if further admission necessitates. Weekend stays associated with a Friday or Saturday admission will not be reimbursed unless an emergency exists.

Section 2. Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes or for elective cosmetic, plastic or reconstructive surgeries shall not be covered.

Section 3. Inpatient Hospital Services Not Covered by the Medical Assistance Program: (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.

(2) Private duty nursing.

(3) Those supplies, drugs, appliances, and equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient.

(4) Those laboratory tests not specifically ordered by a physician and not done on a pre-admission basis unless an emergency exists.

(5) Private accommodations unless medically necessary and so ordered by the attending physician.

(6) The following listed surgical procedures, except when a life-threatening situation exists [or] there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision, etc), and muscle.

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts/condylomas, anterior nose bleeds, and cervix.

(c) Circumcision.

(d) Dilation: dilation and curettage (diagnostic and/or therapeutic non-obstetrical); dilation/probing of lacrimal duct.

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, and joint.

(f) Exam under anesthesia (pelvic).

(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, and subcutaneous fistulas.

(h) Extraction: foreign body, and teeth (per existing policy).

(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (¾) inch diameter).

(j) Hymenotomy.

(k) Manipulation and/or reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, and fractures.

(l) Meatotomy/urethral dilation, removal calculus and drainage of bladder without incision.

(m) Myringotomy with or without tubes, otoplasty.

(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy.

(o) Removal; IUD, and fingernail or toenails.

(p) Tenotomy hand or foot.

(q) Vasectomy.

(r) Z-plasty for relaxation or scar/contractune.

Section 4. Neonatal Diagnosis Appropriate for Additional Stay in A ["Lesser"] Different Hospital with a Level II or Level I Neonatal Unit. (1) Fetus or newborn affected by maternal conditions which may be unrelated to present pregnancy.

(2) Fetus or newborn affected by maternal complications of pregnancy.

(3) Fetus or newborn affected by complications or placenta, cord, and membranes.

(4) Fetus or newborn affected by other complications of labor and delivery.

(5) Slow fetal growth and fetal malnutrition.

(6) Disorders relating to short gestation and unspecified low birthweight.

(7) Disorders relating to long gestation and high birthweight.

(8) Birth trauma.

(9) Intrauterine hypoxia and birth asphyxia.

(10) Respiratory distress syndrome.

(11) Other respiratory conditions of fetus and newborn.

(12) Infections specific to the perinatal period.

(13) Fetal and neonatal hemorrhage.

(14) Hemolytic disease of fetus or newborn, due to isoimmunization.

(15) Other perinatal jaundice.

(16) Endocrine and metabolic disturbances specific to the fetus and newborn.

(17) Hematological disorders of fetus and newborn.

(18) Perinatal disorders of digestive system.

(19) Conditions involving the integument and temperature regulation of fetus and newborn.

(20) Congenital anomalies and related surgical procedures.

(21) Other and ill-defined conditions originating in the perinatal period.

Section 5. Definitions Relating to Neonatal Care and Admissions. (1) "Infant" means a child not more than twelve (12) months of age.

(2) "Level II neonatal unit" means a unit able to provide the full range of resources and expertise required for the management of any complication of the newborn. A nurse/patient ratio of 1:2 is required. ["Greater" hospital means a hospital capable of providing a higher or more intensive level of care than the hospital with which it is being compared.]

(3) "Level II neonatal unit" means a unit able to provide care to the moderately ill infant who requires various support services. A nurse/patient ratio of 1:4 is required. ["Lesser" hospital means a hospital which normally provides a lower or less intensive level of care than the hospital with which it is being compared.]

(4) "Level I neonatal unit" means a unit providing care to infants with uncomplicated conditions. Normal nursery staffing is required.

Section 6. The provisions of Sections 1 through 5 of this regulation, as amended, shall be effective May 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: June 23, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 25, 1982 at 1 p.m.

Proposed Amendments

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:030. Personnel board procedures.

RELATES TO: KRS *18A.045, 18A.070* [18.160]
PURSUANT TO: KRS 13.082, *18A.045,* [18.160,] *18A.070, 18A.075* [18.170]
NECESSITY AND FUNCTION: KRS *18A.045* [18.160] establishes the State Personnel Board and *KRS 18A.070* sets forth the procedures for operation of the board. KRS *18A.075* [18.170] further expands the duties of the board. This rule is to assure compliance with these statutes and to define specific methods of compliance.

Section 1. Regular Meetings. Regular meetings of the board shall be held on the second Friday of each month. The chairman or the *executive director* [commissioner] may provide the time, date, and place of any meeting when deemed necessary and give due notice in writing of the change to the board members, the commissioner, and the several appointing authorities. *Notice shall be given in writing to each member of the board by the executive director at least seven (7) days in advance of the meeting.*

Section 2. Chairman. At the regular meeting in January of each year, the board shall elect one (1) member to act as chairman *and one (1) member to act as vice-chairman* for [a] term*s* of one (1) year, or until [a] successor*s are* [is] duly elected. If the office of chairman *or vice-chairman* is vacated because of death or resignation, or in any other manner, before the expiration of his term [as chairman], the board shall elect his successor at the next meeting who shall serve for the unexpired term.

Section 3. Rules of Order. Meetings of the board may be informal, subject to such rules of order as may be promulgated by the chairman.

Section 4. Minutes. The *executive director* [commissioner] shall attend all meetings of the board, act as its secretary, and record its official actions in the minutes. The time and place of each meeting of the board, names of the board members present, all official acts of the board, the votes of each board member except when the acts are unanimous, and when requested a board member's dissent with his reasons shall be recorded in the minutes. The *executive director* [commissioner] shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The minutes or a true copy thereof certified by a majority of the board shall be open to public inspection.

Section 5. Reports of Commissioner. The commissioner shall report in writing to the board:
(1) Any new or revised job specification or grade change for each administrative, professional, or supervisory position;
(2) Monthly, the name, classification, grade, salary and department of each disciplined employee and of each employee granted a qualification waiver or exceptional salary increase;
(3) Educational background, and prior experience of each new administrative, professional or supervisory employee in the Department of Personnel, or in agency personnel offices;
(4) Within thirty (30) days, any information concerning personnel or related matters requested in writing by the board;
(5) Semi-annually (April and October), the name, classification, grade, salary, and department of each provisional, seasonal, temporary, or emergency employee.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Personnel, Room 373, New Capitol Annex Building, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:055. Compensation plan, pay for performance.

RELATES TO: KRS *18A.030, 18A.075, 18A.110, 18A.165* [18.170, 18.190, 18.210, 18.240]
PURSUANT TO: KRS 13.082, *18A.075, 18A.110* [18.170, 18.210]
NECESSITY AND FUNCTION: KRS *18A.110* [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 *a class having* the same [pay grade] or lower *pay grade that is currently assigned to the employee's former class*:

(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 *or reinstated or former employees probationarily appointed to a salary below the mid-point of the grade* [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 *in accordance with Section 5(1) below* [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, *reinstated, or former employees probationarily appointed to a salary which equals or exceeds the mid-point of the grade at the time of completion of the probationary period may* [in the same class series at a lower rate of pay than that earned at the time of separation shall] be considered for a *performance* [probationary] increase in accordance with Section 5(1) below. *If such employee is not considered for a performance increase in accordance with Section 5(1), he shall be considered for a performance increase at the beginning of the month following completion of twelve (12) months service from the date of re-employment, reinstatement or appointment.* [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 *may* [shall] receive a salary increase of five percent (5%) *upon promotion, or after successful completion of the probationary period following promotion, or both,* 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 *upon promotion* 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. *In those cases where the full amount of promotional increase cannot be granted due to the proximity of the grade maximum, only the portion needed to bring the employee's salary to that maximum rate shall be granted. A promotional increase shall not change the employee's regular performance increase date.*

(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. *In those cases where the full amount of increase cannot be granted due to the proximity of the grade maximum, only the portion needed to raise the employee's salary to that maximum rate shall be granted.* 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 *on or*

after *June 16, 1983* [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. *In those cases where the full amount of increase cannot be granted due to the proximity of the grade maximum, only the portion needed to raise the employee's salary to that maximum shall be granted.* An employee whose current salary exceeds the grade maximum assigned to his class due to the *June 16, 1982* [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 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 reallocated to a lower [or higher] pay grade *on or* after *June 16, 1983* [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. *In cases where the full amount of such increase cannot be granted due to the proximity of the grade maximum, only the portion needed to raise the employee's salary to that maximum rate shall be granted.* 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 *even if these advancements place his salary above the maximum of the grade applicable to the class to which the employee is returning.*

(b) *An employee* [Employees] who *is* [are] returned to *a position* [their former class] in the classified service following transfer or promotion to the unclassified service shall have *his* [their] salary reduced to the rate received prior to the promotion or transfer and *is* [are] entitled to all salary advancements and adjustments *he* [they] would have received had *he* [they] not left the class *even if these advancements place his salary above the maximum of the grade applicable to the class to which the employee is returning.*

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 a probationary period following promotion shall not be eligible for a probationary performance increase under this section.* [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 *permanent* 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 *not* 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 maximum[s] *rates* pursuant to Sections *3(3), 4(1), 4(3),* 4(4), *4*(5), *4(7), 5(2)(b), 5(7) and 9(2)* [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 *whose combined annual increment payment, required under Section 5(7), and* [receiving a] performance increase [which] would place his salary above the maximum of the *grade* [range] shall *receive the full amount of increase due* [have his salary adjusted to the maximum of the range with the excess of the performance increase amount awarded as a lump sum payment]. *Thereafter,* 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 *satisfactory* [standard or unsatisfactory] performance levels shall be considered for annual performance increases in accordance with *Section 5(2)(c)* [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 *shall be considered for such increase twelve (12) months following his regularly scheduled 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, *except probation following promotion,* with at least a satisfactory performance level, *or following completion of twelve (12) months service from the date of appointment, reinstatement, or re-employment, pursuant to Section 3(3)* [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 *increase* [salary advancement] under Section 6.

(g) Returns from military leave.

(h) *Has his salary advanced above the maximum of the grade or has his salary returned to the grade pursuant to Section 8 or Section 9.* [Returns from leave with pay involving less than six (6) months absence in the performance cycle.]

(i) Is promoted or receives a promotional increase after completion of probation following promotion.

(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 *except as provided in Sections 3(3), 4(1), 4(7), 5(2)(b) and 5(7).* An employee may retain a rate of pay above the maximum of the range as provided in Section *4(3),*4(4) [and (5)] *4(5), 4(7)* and Section *9(2)* [9(3)] of these rules.

(7) Annual increment. All employees shall receive statutory annual increment of five (5) percent on the employee's regularly scheduled performance increase date. The commissioner shall assign increase dates to employees not having performance increase dates.

(8) [(7)] Transition provisions.

(a) All provisions in Section 5*(8)* [(7)] shall be superseded by provisions described in Section 5(1) through *(7)* [(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 prior to *July 16, 1982* [July 1, 1982], *to a salary that is below the mid-point salary of the grade shall receive an increment limited to a five (5) percent salary advancement at the beginning of the month following successful completion of the probationary period. Full-time employees and part-time employees who were probationarily appointed, or former employees probationarily appointed or re-employed or reinstated prior to June 16, 1982, to a salary that equals or exceeds the mid-point salary of the grade at the time of completion of probation may receive an increase limited to a five (5) percent salary increment following completion of the probationary period or twelve (12) months service from the date of appointment, reinstatement, or re-employment* [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]. *This five (5) percent limitation is in effect until December 31, 1982. Service may be provisional or probationary.*

(c) Annual increments. *Permanent full-time and part-time employees who have assigned annual increment dates which occur prior to December 31, 1982, shall receive an increase limited to the statutory five (5) percent salary increment on that date.* [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 eligibility, 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 in-

crease places their salary above the range maximum.]

(d) Outstanding merit increment. *Unless otherwise noted,* 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.

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. *(1) Leave with pay. The appointing authority shall grant an employee on leave with pay or returning to duty from leave with pay a performance increase on the employee's regularly scheduled increase date if such increase is warranted and the employee's performance level can be properly documented.* [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 *be considered for a performance increase when they have completed twelve (12) months service since the date they last received an annual 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 prior to the leave period* [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.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, 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 *18A.005, 18A.030, 18A.095, 18A.110, 18A.115* [18.110, 18.190, 18.210, 18.220, 18.270]
PURSUANT TO: KRS 13.082, *18A.030, 18A.075, 18A.110, 18A.210* [18.170, 18.190, 18.210]
NECESSITY AND FUNCTION: KRS *18A.075* [18.190] requires the personnel board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS *18A.030* [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 *18A.110* [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 class which he had status in the agency from which he was terminated if a vacancy in that class exists. 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 reemployment procedures and KRS *18A.130 and 18A.135* [18.217].

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.]

(6) [(7)] If the transfer is on an involuntary basis, the employee shall be notified of his transfer in writing *at least thirty (30) calendar days* prior to the effective date of such transfer. *Following notification of a transfer, an employee must report for work at his new work station on the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) calendar days following the effective date of the transfer and shall pay the employee's moving expenses, if any.* The notice shall include the reason for the transfer, the employee's obligation to report to *his new work station* [one of his work stations in accordance with subsection (6) of this section], *the appointing authority's obligation to pay travel and moving expenses,* and the employees right of appeal under 101 KAR 1:130. *Agencies shall establish a reasonable basis for selecting an employee for transfer.*

(7) Nothing in this section shall preclude the temporary assignment of an employee to a different work station for a period of up to sixty (60) calendar days, provided that such employees are reimbursed for their travel expenses in accordance with regulatory provisions.

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.

DEE MAYNARD, Commissioner

ADOPTED: June 11, 1982

RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
(Proposed Amendment)

101 KAR 1:130. Appeals.

RELATES TO: KRS *18A.075, 18A.095, 18A.100* [18.170, 18.270, 18.272]

PURSUANT TO: KRS 13.082, *18A.075, 18A.095, 18A.110* [18.170, 18.210, 18.270]

NECESSITY AND FUNCTION: KRS *18A.075* [18.170] requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS *18A.095* [18.270] provides that any classified employee who is dismissed, demoted, suspended or otherwise penalized after completing his probationary period may appeal to the Personnel Board within thirty (30) days of the action taken against him. This rule is necessary to assure a uniform and effective procedure for scheduling, hearing, and acting upon such appeals.

Section 1. General Provisions. Any employee, applicant for employment, or eligible on a register, who believes that he has been unjustly discriminated against, may appeal to the board for a hearing subject to the procedural rules of the board.

Section 2. Appeal From Examination Rejection. (1) Any applicant whose application for admission to an open-competitive examination has been rejected and who has been notified of such rejection and the reasons therefor may appeal to the board for reconsideration of his qualifications and for admission to the examination.

(2) Applicants may be conditionally admitted to an examination by the commissioner pending a consideration of an appeal. Admission to a written examination under such circumstances, however, shall not constitute the assurance of a passing grade in training and experience.

Section 3. Appeal From Examination Rating. (1) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of such examination to assure that uniform rating procedures have been applied equally and fairly.

(2) Except for correction of clerical errors, a rating in any part of an examination shall not be changed unless it has been found by the board that a mistake has been made, except as provided in 101 KAR 1:070, Section 3. A correction in the rating shall not affect a certification or appointment that may already have been made from the register.

Section 4. Appeal From Removal From Register. An eligible whose name has been removed from a register for any of the reasons specified in 101 KAR 1:070, Section 6(1) and (2), may appeal to the board for reconsideration.

Section 5. Appeal Procedure for Applicants or Eligibles. The appeal to the board by applicants or eligibles under Sections 1, 2, 3, 4, must be filed in writing with the *executive director* [commissioner] not later than fifteen (15) calendar days after the notification of the action in question was mailed. The applicant or eligible shall have the right to appear before the board and to be heard.

Section 6. Appeal From Dismissals, Demotion, Suspension, or Penalization. (1) Any employee with status who is dismissed, demoted, suspended, or otherwise penalized may appeal to the board.

(2) An employee may appeal a transfer which he considers to be a penalization *in accordance with 101 KAR 1:110, Section 2.* [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.]

Section 7. Appeal Procedure for Employees. (1) Any employee with status who is dismissed, demoted, suspended, or otherwise penalized may, within thirty (30) days after the effective date of such dismissal, demotion, suspension, or penalization, appeal to the board through the *executive director* [commissioner]. Such appeal shall be in writing and shall set forth the basis for the appeal. The appeal must be filed in the office of the *executive director* [Commissioner of Personnel] within the aforementioned thirty-day (30) period. When the thirtieth [(30th)] day of the filing period falls on a day when the *executive director's* [commissioner's] office is closed during normal working hours, the appeal may be filed on the next regular working day. The *executive director* [commissioner] shall promptly transmit copies of the appeal to the board and to the appointing authority.

(2) The board shall designate an appropriate time and place to conduct the hearing. Such hearing shall be held within *sixty (60)* [thirty (30)] calendar days after receipt of the appeal [unless circumstances intervene which, in the opinion of the board, would cause undue hardship on either party to the hearing or unless, due to the number of appeals, it is impractical to schedule such hearing within said thirty (30) day period]. The appellant and the appointing authority shall be notified in writing at least five (5) working days in advance of the time and place designated for the hearing. *The board shall, within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.*

(3) At the hearing, both the appellant and the appointing authority whose action is reviewed shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts. At the hearing of such appeals, technical rules of evidence shall not apply.

(4) If the board finds that the action complained of was taken by the appointing authority for any political, religious, or ethnic reason, or due to sex, race, age (between forty (40) and seventy (70)), or handicap, the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his penalization, and without penalization, or shall otherwise be made whole.

(5) If the board finds that the action complained of was taken by the appointing authority without just cause, the board shall order the employee reinstated to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole. In all other cases, if the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify or rescind the disciplinary action.

(6) When any employee is dismissed and not ordered reinstated after such appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.

Section 8. Hearing of Appeals. (1) Evidentiary hearings in appeals filed pursuant to KRS *18A.095* [18.270] and this regulation *may* [shall] be conducted by the full board or quorum thereof, *or by individual members of the board, by its executive director or by a hearing examiner of the board* [except as otherwise provided in this rule. The board may adopt a rotating schedule for the attendance of members at evidentiary hearings to be conducted by the board in order to assure the presence of a quorum, but notwithstanding any such schedule any member of the board may attend and participate in any such hearing].

(2) The board may designate one (1) or more hearing examiners to assist the board in appeal proceedings. All such hearing examiners shall be attorneys authorized to practice law in Kentucky and shall be selected solely on their knowledge, ability and experience in the trial of administrative and/or judicial proceedings.

(3) [(2)] The chairman of the board or a majority of the board [, by written order,] may designate a [single] member of the board, *the executive director or a hearing examiner* to conduct any evidentiary hearing *as hearing officer* [on behalf of the board] or may request the *executive director* [commissioner] to establish a calendar designating [single] members of the board, *the executive director and/or hearing examiners* to conduct evidentiary hearings *as hearing officers* [on behalf of the board]. A stenographic record shall be made of the evidence presented at such hearing. In all such cases, upon the conclusion of the hearing, the *hearing officer* [presiding member-hearing examiner] shall submit to the board a transcript of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the *executive director* [commissioner] shall transmit by certified mail *unless such transmission is waived in writing,* to both parties a copy of the findings of fact and dispositive recommendations. The board upon review of the findings of fact, the transcript of the evidence presented, and dispositive recommendations of the *hearing officer* [presiding member-hearing examiner], who shall be present during such review, and after consideration of such written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall make a final determination of the appeal by either:

(a) Adopting as submitted the findings and recommendations of the *hearing officer* [presiding member-hearing examiner];

(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the *hearing officer* [presiding member-hearing examiner];

(c) If felt necessary by a majority of the board, remanding the case or any part thereof for rehearing by the same *hearing officer* [presiding member-hearing examiner], with such hearing *officer* [examiner] to prepare and submit to the parties and the board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic record shall be taken of this additional testimony and the *hearing officer* [presiding member-hearing examiner] shall submit to the board a transcript of the evidence presented. The board shall then consider the findings of fact, transcript of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the board, instruct the *executive director* [commissioner] to prepare a complete or partial record. The board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall render its final decision in the case.

[(3) The board may designate one or more hearing examiners to assist the board in appeal proceedings. All such hearing examiners shall be attorneys authorized to practice law in Kentucky and shall be selected solely on their knowledge, ability and experience in the trial of administrative and/or judicial proceedings.]

(4) *Any appeal heard by less than the full board shall be subject to review by the full board upon petition for such review by either party to the appeal. Petition for review by the full board shall be filed with the board within thirty (30) days of the recommended order issued by a member, the executive director, or a hearing examiner.* [Hearing examiners selected by the board, but who are not themselves members of the board, shall conduct evidentiary hearings in the same manner as board member hearing examiners. In all cases, upon the conclusion of the hearing, the hearing examiner shall submit to the board a transcript of the evidence presented, his findings of fact, and dispositive recommendations in the case before him, and the commissioner shall transmit by certified mail to both parties a copy of the findings of fact and dispositive recommendations. In the presence of the hearing examiner and with his advice, the board shall review these documents, and after consideration of such written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall make a final determination of the appeal by either:]

[(a) Adopting as submitted the findings and recommendations of the hearing examiner;]

[(b) Altering before adoption, in any manner deemed proper, either or both the findings and recommendations of the hearing examiner;]

[(c) If felt necessary by a majority of the board, remanding the case or any part thereof for rehearing by the same hearing examiner, with such hearing examiner to prepare and submit to the parties and the board such additional findings of fact and dispositive recommendations as he feels are necessary upon the conclusion of the rehearing. A stenographic record shall be taken of this additional testimony and the hearing examiner shall submit to the board a transcript of the evidence presented. The board shall then consider the findings of fact, transcript of the evidence presented, and dispositive recommendations from the original hearing and any additional rehearings ordered, and shall, upon request of any member of the board instruct the commissioner to prepare a complete or partial record. The board, upon consideration of these items and such additional written or oral arguments or exceptions as the parties have presented as a matter of right or may present with leave or upon request of the board, shall render its final decision in the case.]

(5) At any time after a hearing but prior to a final order of the Personnel Board, either party may request a copy of the transcript of the evidence presented at the hearing. Such request shall be in writing to the board. Any party requesting such transcript shall bear the expense of preparing the copy of the transcript at the rate of ten (10) cents per page unless otherwise ordered by the Personnel Board. Payment for the transcript copy shall be tendered by certified check or money order prior to the preparation of said copy, and, in the case of an appointing authority, may be tendered by interaccount voucher.

(6) In all appeals pending before the personnel board, the taking of depositions for proof, either prior to or subsequent to the hearing, shall not be permitted except where the deponent is a licensed physician or a nonresident of the State of Kentucky, or where the taking of said deposition for purposes of proof is agreed to by the opposing party, or where other extenuating circumstances of such magnitude exist that the hearing officer by order authorizes the taking of such deposition. All hearings of appeals shall be held in Frankfort, Kentucky, unless otherwise designated by the board for good cause. The duly appointed hearing officer shall have the power to issue all intermediate orders concerning said appeal, prior to the final decision of the board; upon request of the hearing officer, such orders shall be issued by the *executive director* [commissioner] acting as secretary to the board.

DEE MAYNARD, Commissioner

ADOPTED: June 11, 1982

RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, 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 *18A.030, 18A.075, 18A.110* [18.170, 18.190, 18.210]

PURSUANT TO: KRS 13.082, *18A.030, 18A.075, 18A.110* [18.170, 18.190, 18.210]

NECESSITY AND FUNCTION: KRS *18A.075* [18.170] requires the Personnel Board to adopt comprehensive rules consistent with KRS Chapter 18A. KRS *18A.030 and 18A.110* [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 *18A.140, 18.145, or 18A.990* [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) of this section.* 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 *18A.140, 18A.145, or 18A.990* [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 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 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. *(1) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis. Compensatory leave may be accumulated or taken off in one-half (½) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.*

(2) An employee shall accumulate compensatory leave for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority.

(3) 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.

(4) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall

retain his compensatory leave in the receiving agency.

(5) Upon separation from state service, employees shall be paid for all unused accumulated compensatory leave at their regular hourly rate of pay.

(6) Former employees who are reinstated, re-employed, or probationarly appointed and who were credited for unused compensatory leave upon separation shall have their compensatory leave balance revived and placed to their credit upon re-entry into state service.

(7) When an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for fifty (50) hours of his accumulated compensatory leave at his regular hourly rate of pay and reduce the employee's compensatory leave balance accordingly or the appointing authority shall direct the employee to take accumulated compensatory leave time off from work.

(8) Employees who were previously covered by the application of the state wage and hour law and who would be covered by the state wage and hour law if that law was still applicable to state employees shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) A "covered" employee whose prescribed hours of duty are normally less than forty (40) per week and who has not accumulated the maximum amount of compensatory leave shall receive compensatory leave for the hours worked in excess of his normal prescribed hours of duty until the total hours worked in that week reaches forty (40).

(b) A "covered" employee shall be paid at one and one-half (1½) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week, except that an employee who has not accumulated the maximum amount of compensatory leave may request in writing that he accumulate compensatory leave on an hour-for-hour basis for all hours worked in excess of forty (40) per week in lieu of the overtime payment. Compensatory leave earned and used during the same workweek does not constitute "hours worked" for computing overtime pay.

(c) After a "covered" employee has accumulated at least 151 hours of compensatory leave but before the employee has accumulated 200 hours of compensatory leave, the employee may request in writing that he be paid for fifty (50) hours of compensatory leave at his regular hourly rate of pay. If the employee is so paid, his accumulated compensatory leave balance shall be reduced accordingly.

(d) A "covered" employee who has had his compensatory leave balance reduced in accordance with paragraph (c) of this subsection shall be eligible to accumulate compensatory leave in accordance with this section.

(e) A "covered" employee shall accumulate compensatory leave or be paid for overtime for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority and when such payment has received the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:055.

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.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days in a calendar year pending an investigation into allegations of employee misconduct, provided that, if such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all copies of correspondence will be purged from agency files.

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 who is approved by the employee and the supervisor. 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 in this section is not followed, then the employee may appeal this lack of correct review procedure to the Personnel Board; this right of appeal is in addition to any other right of appeal the employee may have.

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 *and the board* shall be [considered] public records and *open to public inspection as provided in KRS 61.870 to 61.884* [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.

DEE MAYNARD, Commissioner

ADOPTED: June 11, 1982

RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, 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 *18A.155* [18.220]
PURSUANT TO: KRS 13.082, *18A.155* [18.220]
NECESSITY AND FUNCTION: KRS *18A.155* [18.220] requires the Commissioner of Personnel to submit to the Governor proposed rules for the unclassified service persons in positions enumerated in KRS *18A.155* [18.140](1)(f), (g), (h), (i), (j), (o), (t), and (u). KRS *18A.155* [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 *18A.140, 18A.145, or 18A.990* [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) of this section.* 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 *18A.140, 18A.145, or 18A.990* [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. *(1) An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis. Compensatory leave may be accumulated or taken off in one-half (½) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.*

(2) An employee shall accumulate compensatory leave for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority.

(3) 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.

(4) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(5) Upon separation from state service, employees shall be paid for all unused accumulated compensatory leave at their regular hourly rate of pay.

(6) Former employees who are reinstated, re-employed, or probationarily appointed and who were credited for unused compensatory leave upon separation shall have their compensatory leave balance revived and placed to their credit upon re-entry into state service.

(7) Employees who were previously covered by the application of the state wage and hour law and who would be covered by the state wage and hour law if that law was still applicable to state employees shall accumulate compensatory leave or be paid overtime in accordance with the following provisions:

(a) A "covered" employee whose prescribed hours of duty are normally less than forty (40) per week and who has not accumulated the maximum amount of compensatory leave shall receive compensatory leave for the hours worked in excess of his normal prescribed hours of duty until the total hours worked in that week reaches forty (40).

(b) A "covered" employee shall be paid at one and one-half (1½) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week, except that an employee who has not accumulated the maximum amount of compensatory leave may request in writing that he accumulate compensatory leave on an hour-for-hour basis for all hours worked in excess of forty (40) per week in lieu of the overtime payment. Compensatory leave earned and used during the same workweek does not constitute "hours worked" for computing overtime pay.

(c) After a "covered" employee has accumulated at least 151 hours of compensatory leave but before the employee has accumulated 200 hours of compensatory leave, the employee may request in writing that he be paid for fifty (50) hours of compensatory leave at his regular hourly rate of pay. If the employee is so paid, his accumulated compensatory leave balance shall be reduced accordingly.

(d) When a "covered" employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for fifty (50) hours of his accumulated compensatory leave at his regular hourly rate of pay and reduce the employee's compensatory leave balance accordingly or the appointing authority shall direct the employee to take accumulated compensatory leave time off from work.

(e) A "covered" employee who has had his compensatory leave balance reduced in accordance with paragraph (c) of this subsection shall be eligible to accumulate compensatory leave in accordance with this section.

(f) A "covered" employee shall accumulate compensatory leave or be paid for overtime for hours worked in excess of his normal prescribed hours of duty only when such work is expressly authorized by the appointing authority and when such payment has received the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet in accordance with 101 KAR 1:055.

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.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days in a calendar year pending an investigation into allegations of employee misconduct, provided that, if such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all copies of correspondence will be purged from agency files.

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 who is approved by the employee and the supervisor. 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; this right of appeal is in addition to any other right of appeal the employee may have.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Personnel, Room 373, New Capitol Annex, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:038. Fractional service year.

RELATES TO: KRS 161.545
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.545(1) provides that members of the Teachers' Retirement System may make contributions for " . . . any service other than regular full-time teaching as provided in rules and regulations adopted by the board of trustees." This regulation is intended to establish guidelines for accepting contributions and granting service credit for members employed for less than a full school year.

Section 1. Members employed in regular full-time positions for less than the regular contract year shall receive a proportional fraction of a year of service credit computed to the nearest hundredth, except that members who are employed for the first one-half (½) or more of a regular contract year shall have the privilege of purchasing credit for the balance of the contract year. This privilege may not be exercised more than one (1) time in any three (3) year period. Payment of contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.

Section 2. Members who are employes in regular full-time positions at the beginning of a school year and who are so employed for at least seven-tenths (7/10) of any school year may make contributions based upon the equivalent annual contract salary and receive a full year of service credit. Such contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.

Section 3. Members who are employed after the beginning of a regular contract year shall not be eligible to obtain credit for service time that occurred prior to their employment.

Section 4. Members regularly employed at the beginning of a fiscal year for at least one (1) complete pay period shall have the privilege of making contributions for the balance of the fiscal year and receiving one (1) full year of service credit. Such payment of contributions shall be made at the end of the fiscal year next succeeding the year in which the last salary payment was made. The provisions of this section shall be applicable only once in any ten (10) year period.

Section 5. Interest charges of *eight (8)* [six (6)] percent shall be added to payments made after June 30 of the fractional year.

Section 6. Nothing in this regulation shall be construed as limiting payments made under a bona fide leave of absence as provided in other regulations.

Section 7. The provisions of this regulation shall become effective July 1, 1983.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: June 29, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:050. Out-of-state service interest rates.

RELATES TO: KRS 161.515
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.515 provides that members of the Teachers' Retirement System may secure credit for out-of-state service under certain circumstances, and requires the trustees to set the interest rate on contributions made to cover such service. This regulation is intended to provide the procedures required to carry out the provisions of this statute and to set the interest rate to be charged.

Section 1. In presenting out-of-state service for credit, the most recent service may be presented first in order.

Section 2. Persons presenting out-of-state service credit shall be required to file an appropriate affidavit on forms provided by the retirement system certifying that the service being tranferred is not being used at present and will not be used in the future to qualify for any benefits from any other retirement program.

Section 3. Contributions for each year to be transferred shall be at such rate as is currently effective for members of the Teachers' Retirement System and shall be based on the first annual salary received for service in Kentucky subsequent to the out-of-state service. Interest at the rate of *eight (8)* [six (6)] percent compounded annually from the end of each school year concerned to the date of payment shall be added to the required contributions.

Section 4. The provisions of this regulation shall be become effective July 1, 1983.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: June 29, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:110. Leave of absence.

RELATES TO: KRS 161.545
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.545 provides that members of the Teachers' Retirement System may make contributions and receive service credit while on a leave of absence as set out in regulations of the Board of Trustees. This regulation provides procedures for receiving such contributions and granting of service credit for members on leave of absence.

Section 1. Members may make contributions while on leave of absence granted by the governing board of a school district or institution in accordance with the provisions of the statutes at the time the leave is granted. Payment of contributions shall be made by the end of the fiscal year next succeeding the year in which the leave was effective. No member may make payment on leave of absence for more than three (3) years in any ten (10) year period beginning with the first year of such leave. The administrative head of the district or institution granting the leave shall certify the granting or extension of leave to the Teachers' Retirement System. No leave for a period longer than one (1) year shall be recognized, but such leaves may be extended annually for a total not to exceed three (3) years.

Section 2. Contributions for a period of leave shall be based on the annual salary for the last year of active service at the contribution rate in effect for the period of leave. Interest at the rate of *eight (8)* [six (6)] percent per annum shall be added for contributions paid after the end of the school year for which the leave was granted.

Section 3. A leave of absence shall not be recognized by the Teachers' Retirement System as a basis for making contributions to the system unless the member was employed in a covered position as defined in KRS 161.220(22), by the employer granting the leave and received compensation for at least one-half (½) a regular school year during the year the leave was granted or during the next preceding school year.

Section 4. The provisions of this regulation shall become effective July 1, 1983.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: June 29, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:122. Voluntary and tax-sheltered contributions.

RELATES TO: KRS 161.705
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.705 provides that members of the Teachers' Retirement System may make voluntary contributions to the retirement system in excess of the mandatory percentage, or that boards of education may make such contributions on behalf of their teachers in order to qualify for additional annuity payments at the time of retirement. This regulation sets out the procedures to be followed in making such contributions on a "tax-sheltering" basis as provided for in Section 403(b) of the Internal Revenue Code and the procedures for receiving such contributions and the payment of additional annuities.

Section 1. This regulation is adopted to implement the provisions of KRS 161.705, certain provisions of Public Law 87-370, and Section 403(b) of the Federal Internal Revenue Code as amended. [The tax-sheltered annuity program of the Kentucky Teachers' Retirement System has been approved as a qualified plan by the Internal Revenue Service.]

Section 2. Any teacher desiring to do so may authorize the employer to reduce the teacher's salary and transmit the funds thus available to the Teachers' Retirement System for deposit to the member's credit in a tax-sheltered account as provided in KRS 161.705.

Section 3. Each participating member shall receive an immediate vested and nonforfeitable interest in the amounts credited to a tax-sheltered account. The participant is precluded from selling, assigning, or pledging their funds in the tax-sheltered account to another person or party.

Section 4. A board of education desiring to make the provisions of this program available to teachers must adopt a resolution on forms supplied by the Retirement System. A copy of this resolution must be filed with the Retirement System prior to deductions from teachers' salaries.

Section 5. Requests by members to participate in the tax-sheltered program must be made in writing on forms supplied by the Teachers' Retirement System. Authorization for participation must be made on a fiscal year basis or remaining fraction thereof, and may not be revoked during that period.

Section 6. Funds deriving from such reductions of salary shall be transmitted to the Teachers' Retirement System on a regular basis and report of contributions shall be made on the appropriate form which will be provided by the system. Under no circumstances shall the contributions be reported or commingled with the regular mandatory contribution.

Section 7. The reporting period may be determined in the local district (i.e. monthly, quarterly, etc.), but the report of contribution and submission of funds must be the same for all teachers in a district.

Section 8. Single contribution of not less that four (4) percent of the teacher's monthly salary will be accepted by the Teachers' Retirement System providing that no single contribution for less than thirty dollars ($30) will be accepted.

Section 9. For purpose of calculating contributions to the regular mandatory retirement program, the salary shall be the gross salary received before any deductions including any sums deducted by the board of education under the terms of KRS 161.705 and this regulation.

Section 10. *All voluntary and tax sheltered contributions shall be invested in accordance with the restrictions and limitations imposed under KRS Chapter 161.430. The following two (2) investment alternatives shall be made available to the participating members:* [Interest credited to voluntary accounts made by teachers and boards of education under authority of KRS 161.705 shall be fixed annually by the board of trustees. At the last regular quarterly meeting of the fiscal year, the board of trustees shall fix the interest rate to be credited for the following fiscal year.]

(a) Tax-Sheltered Account I - contributions shall be invested in the same manner as regular mandatory retirement contributions. While the member tax-sheltered accounts shall be maintained separately from the regular mandatory retirement accounts, the funds in the voluntary and tax-sheltered accounts shall be commingled with other funds for investment purposes. All tax-sheltered contributions shall be invested in Tax-Sheltered Account I unless the participating member enters into a written agreement to participate in the investments offered under Tax-Sheltered Account II.

(b) Tax-Sheltered Account II - eligible participants may choose to have their tax-sheltered contributions invested through agreements with the Kentucky Teachers' Retirement System that guarantee specific rates of return over specified periods of time. Investments of this type of account shall be limited to bonds, notes and other obligations of or guaranteed by the United States government; any bonds, notes, debentures or any other obligations of securities issued or generated by any federal government agency presently or in the future established by an Act of Congress; and or by bank certificates of deposit that are insured by an agency of the United States government. The conditions of such investment agreements shall be developed by the Kentucky Teachers' Retirement System, based on current investment market conditions, and offered to the members at least one (1) time each fiscal year. Investments in the Tax-Sheltered Account II shall be restricted to sums of $10,000 or more.

Section 11. Interest credited to the Tax-Sheltered Account I (regular voluntary tax-sheltered accounts) accounts shall be fixed annually by the board of trustees. At the third regular quarterly meeting of the fiscal year, the board of trustees shall fix the interest rate to be credited for the following year. It is further provided that the board of trustees may not fix a rate lower than "regular interest" as defined in KRS 161.220(13) nor at a rate greater than the average annual yield rate on the "fixed dollar" investments of the retirement system for the previous four (4) quarters. Interest shall be calculated and posted at the end

of each month with interest being based on the accumulated balance at the beginning of the month concerned, less any withdrawals made during that month. *Interest credited to the Tax-Sheltered Account II accounts shall be set forth in the certificate of agreement between the retirement system and the member. The annual rate of interest shall under no circumstances exceed the rate of interest that is available to the retirement system at the time the agreement is offered.*

Section 12. Tax-sheltered contributions may be withdrawn, without penalty, in the event of the member's death, retirement for disability or service, or upon attainment of age sixty (60) years. Withdrawals for any other reasons shall be subject to a penalty equal to the interest credited on such amounts during the three (3) months preceding such withdrawal. In the case of death of the member prior to retirement, the accumulated balance in the tax-sheltered account shall be returned to the named beneficiary.

Section 13. The beneficiary of the member's tax-sheltered account shall be the same as that designated for the member's regular account unless the member specifies otherwise to the Teachers' Retirement System.

Section 14. When a member files an application for service retirement, they must choose the method that they wish to receive their tax-sheltered funds. The choices are:
(1) Monthly annuity under one (1) of the options available for service retirement;
(2) Payment through no more than one (1) withdrawal during a calendar year up to age seventy (70) with monthly payments on any remaining balance at age not to exceed seventy (70); and
(3) A combination of a single partial withdrawal and monthly payments. Retiring members may defer payments from their tax-sheltered accounts until age seventy (70), but shall be limited to the options set out above upon electing to receive benefit payments.

Section 15. Members who participate in a non-tax sheltered voluntary plan are subject to all regulations pertaining to tax-sheltered contributions except there is no penalty for early withdrawals.

Section 6. The provisions of this regulation shall become effective October 1, 1982.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: July 12, 1982 at 4:20 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
(Proposed Amendment)

102 KAR 1:125. Omitted contributions.

RELATES TO: KRS 161.560
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: KRS 161.560 provides that each agency employing members of the Teachers' Retirement System shall deduct the appropriate member contributions and forward them to the system on a monthly basis. This regulation sets out the conditions under which these required contributions shall be paid in the event that the employing agency fails to deduct such amounts from the member's salary and forward same to the retirement system.

Section 1. In every case where a properly certificated teacher entitled to membership under KRS 161.470 was employed, or is employed in the future, to teach regularly, and the board of education fails for any reason to deduct the retirement contribution due under the retirement Act, such teacher if a member of the retirement system, and not retired, may pay the retirement dues which should have been deducted by the employer plus *eight (8)* [six (6)] percent compound interest from the end of the year in which the service was done to date of payment, and receive credit for those years; providing the teacher was not at fault in creating this delinquency.

Section 2. Members of the retirement system, who have previously withdrawn their contributions, may reinstate such accounts by complying with the requirements of KRS 161.470(3), and by repaying the amount refunded plus interest at the rate of *eight (8)* [six (6)] percent compounded annually from the date of withdrawal to date of repayment.

Section 3. Payment may be made directly to the retirement system, but payment shall not be made in installments. Receipt shall be given to the member making such payment.

Section 4. The provisions of this regulation shall become effective July 1, 1983.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: June 29, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

DEPARTMENT OF MILITARY AFFAIRS
Division of Disaster and Emergency Services
(Proposed Amendment)

106 KAR 1:030. Rescue organizations.

RELATES TO: Executive Order 78-356
PURSUANT TO: Executive Order 78-356, KRS 13.082
NECESSITY AND FUNCTION: Executive Order 78-

356 directed that all responsibilities, functions, and funds relating to rescue organizations, both voluntary and professional, be assumed by the Division of Disaster and Emergency Services (DES). It further authorized the Division to establish eligibility criteria for funding. This regulation provides policy, procedure, and qualification requirements for implementation of the Executive Order.

Section 1. Purpose. The rescue aid program is designed to:

(1) Reduce and prevent the loss of life by creating a better equipped, trained, and coordinated rescue force throughout the Commonwealth;

(2) Upgrade the capabilities of local rescue squads by providing financial assistance to be used to purchase equipment and obtain training;

(3) Encourage the development of rescue squads where none exist.

Section 2. Responsibilities. (1) The Adjutant General, shall have overall responsibility for the program policy, administration and implementation.

(2) The executive director, DES, shall insure proper utilization of funds and shall serve as the principal advisor to the Adjutant General.

(3) The review board shall be responsible for reviewing applications for funds and, with the concurrence of the Adjutant General, shall allocate available funds. The board shall be composed of the DES executive director, [assistant director,] director of operations, *director of plans and recovery,* [director of support services,] administrative officer, and search and rescue coordinator.

(4) DES area coordinators shall provide liaison between local rescue squads and the review board, ensuring compliance with this regulation, continuity with other emergency preparedness programs, and accuracy of submitted documentation.

(5) Local DES civil defense (DES/CD) coordinators shall insure coordination of rescue programs at the local level and process all applications for assistance for squads within his jurisdiction.

(6) The chief officer of the rescue squad shall initiate project applications for funds and shall insure that all funds are expended for items or services as approved.

Section 3. Definition. "Rescue squad" means an organization composed of twelve (12) or more individuals who provide emergency rescue service to the public in the form of search, rescue from peril, and victim recovery, either on land or water. The group will operate by assisting, extricating, or otherwise removing persons trapped, lost, injured, incapacitated or deceased from buildings, vehicles, aircraft, bodies of water, and other emergency situations.

Section 4. Eligibility. To be eligible to receive rescue funds allocated under the provisions of this regulation, a squad must meet all of the following requirements:

(1) It must be organized to conduct search, rescue and victim recovery;

(2) It must operate a vehicle dedicated to rescue activities and equipped to meet the minimum equipment requirements for a light duty squad;

(3) It must be formally affiliated with the county DES or civil defense organization through one (1) of the following means:

(a) Execution of a county resolution/ordinance, or written agreement signed by the county judge/executive, DES/CD coordinator, and chief rescue officer, outlining a specific working agreement. This document will include, as a minimum, chain of command and responsibilities of each concerned party;

(b) Incorporation of the responsibilities of the rescue squad into the county emergency operations plan. This plan must have the concurrence of the county judge/executive, county DES/CD coordinator, and chief rescue officer.

(4) When a rescue squad is not independent, but is incorporated within other emergency service departments, such as a fire department, the squad members must be available for and capable of performing rescue services not incidental to their primary mission. For example, a rescue squad within a fire department must perform rescue missions other than those associated with fires.

(5) No individual may be counted as a squad member more than once for the purposes of grant application, though he may normally be available to serve with more than one (1) squad;

(6) Squads which specialize in certain facets of rescue, such as water and/or under water recovery, shall maintain at least a light duty rescue capability to be eligible for funding;

(7) Squads may not assess fees for services rendered;

(8) In order to encourage the development of new rescue squads where a need is verified, funding may be provided to groups under the following conditions:

(a) A minimum of twelve (12) persons must be identified as active members;

(b) Formal guidelines or by-laws must be written to define administrative and operational procedures for the squad;

(c) Section 4(3) must be fully complied with.

Section 5. Application Procedures. (1) A rescue squad aid project application (DES Form 107, filed herein by reference) will be initiated by the chief rescue officer and forwarded to the local DES/CD coordinator for review and consolidation. In the absence of a local coordinator, the county judge/executive will fill this role.

(2) The local coordinator will forward all applications to the DES area coordinator, who will review them and forward documentation to the review board.

(3) The review board will convene three (3) times during the year to assess applications and allocate funds. Reviews will begin on or about August 15, December 1, and April 1 of each year. All applications on file will be reviewed during each session.

(4) The review board will notify the local organization of grant awards and the DES administrative officer will insure payment.

(5) The local DES/CD coordinator will retain copies of all applications on file.

Section 6. Expenditures. The rescue squad must expend all grant money within thirty (30) days of receipt of grant funds and must provide a copy of the invoice, as well as proof of payment to the DES area coordinator within seventy-five (75) days of receipt of the award. Funds not expended must be returned to DES.

Section 7. Equipment. (1) All equipment purchased with rescue aid funds will be selected from the required equipment list attached unless otherwise approved by the review board. Optional items will not be approved until all items on the required list have been purchased.

(2) The rescue squad shall be accountable to the Com-

monwealth of Kentucky for all equipment purchased in whole or in part with these funds, providing that the unit purchase price is $300 or more. After five (5) years from the date of the grant award, the equipment shall become the property of the squad. All such accountable property will be marked in accordance with guidance provided by the DES administrative officer.

(3) Permission to dispose of unserviceable, obsolete, or damaged items purchased with these funds may be granted by the Adjutant General or executive director. Requests for such action must be submitted through the local DES/CD coordinator and the DES area coordinator.

(4) Equipment personally owned by members of a rescue squad may not be used to fulfill requirements of the minimum equipment list.

(5) When a squad is disbanded, loses its local charter to operate, or otherwise becomes incapable of performing duties outlined in Section 3, all equipment purchased with these funds will revert to DES for re-allocation. In cases in which local funds paid for a portion of the equipment or the equipment has depreciated, the squad may return the equipment to DES or repay an amount determined appropriate by the review board.

Section 8. Waivers. Requests for waiver of any section or subsection of this regulation may be submitted with appropriate justification to the DES executive director. Waivers approved will apply only to the specific request.

Section 9. Inspection/Audit. (1) Equipment purchased with these funds shall be subject to inspection, with twenty-four (24) notice, by the local DES/CD coordinator, DES area coordinator, or any member of the review board.

(2) An inspection will be made when items are reported damaged, in need of replacement, or when there is evidence of misuse. Inspections may also be required upon request of any member of the review board.

(3) An annual inspection of equipment purchased under this regulation will be conducted by the DES area coordinator. Such review will be made for purposes of accountability, maintenance and proper utilization.

(4) All funds are subject to state audit and local squads shall cooperate fully to provide necessary documentation.

Section 10. Reports. (1) A report to the DES area coordinator must be made within twenty-four (24) hours when:

(a) Accountable equipment purchased with these funds is lost, stolen, or damaged;

(b) The squad is disbanded or otherwise rendered incapable of performing duties as outlined in Section 3.

(2) Local DES/CD coordinators must maintain a cumulative list of equipment owned by each squad, denoting those items purchased with these funds. An updated list must be made available to the DES area coordinator at the time of each application.

(3) Rescue squads must submit *incident/training reports* [DES Form 29 (search and rescue activity report, filed herein by reference)] monthly to the local DES/CD coordinator, who must forward the report to the DES area coordinator. Negative reports shall not be required.

BILLY G. WELLMAN
The Adjutant General

ADOPTED: March 1, 1982
RECEIVED BY LRC: June 21, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Billy G. Wellman, The Adjutant General, Department of Military Affairs, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims
(Proposed Amendment)

108 KAR 1:010. Board operation and claim procedure.

RELATES TO: KRS 44.070, 44.080, 44.086, 44.090
PURSUANT TO: KRS 13.082, 44.080
NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to establish rules for procedures for claims and rules for operation of the board.

Section 1. Meetings. (1) Additional meetings of the board may be called by the chairman or a majority of the board at such times and places as the call directs.

(2) Three (3) members of the board shall constitute a quorum.

(3) The board shall be considered in continuous session to enter orders.

(4) The Executive Director of the Board of Claims shall serve as secretary to the board and shall have authority to order the submission of briefs, set hearings, and issue such other orders as the board may direct.

Section 2. Filing of Claims; Response to Claims. (1) Claims shall be legibly written, typed or printed and mailed or delivered to the Board of Claims office in Frankfort, Kentucky.

(2) Each claim shall contain the name and address of the claimant, the amount he is claiming and a statement of facts sufficiently clear to show that the claimant is entitled to relief under the provisions of KRS 44.070 and to enable the defendant to investigate the claim and prepare its defense.

(3) Claims may be filed by the claimant or by an attorney or legal representative acting in the claimant's behalf.

(4) The board's secretary shall promptly furnish a copy of each claim to the head of the affected agency and to the Attorney General. [At the request of the board, within thirty (30) days, the agency concerned shall investigate the matter and shall answer the charges in writing to the board and to the claimant.]

(5) All claims under $1,000 shall be investigated by the board in-house. Within forty-five (45) days from the date receipt of claim is acknowledged to the claimant, the board shall, if the claim is for less than $500, issue a Findings of Fact, Opinion and Order either awarding or denying the claim; and if the claim is for $500 or more, the board shall render a Decision as to Liability which shall set forth whether the Commonwealth is or is not liable for the damages which gave rise to the particular claim.

(6) All claims over $1,000 shall be investigated by the agency concerned and within thirty (30) days the agency shall answer the charges in writing to the board and to the claimant.

(7) [(5)] If the Attorney General wishes to enter the matter, he shall file such response as he desires with the board.

(8) [(6)] If the response filed by the affected agency admits liability, the secretary shall submit the matter to the board at an early meeting.

(9) [(7)] If the affected agency fails to respond to the board concerning its investigation within thirty (30) days, the secretary shall submit the matter to the board at an early meeting.

(10) [(8)] If the response filed by the affected agency denies liability, *or if the board's Decision as to Liability holds the Commonwealth not liable and the value of the claim is $500 or greater,* the secretary shall set a hearing before a hearing officer and shall notify the claimant and the head of the affected agency (or their attorney) of the time and place of the hearing.

Section 3. Hearings. (1) Hearings shall be open to the public. The proceedings of hearings shall be taken by a stenographer. The hearing officer shall cause the hearing to be conducted with decorum *and in accordance with the Kentucky Rules of Civil Procedure.*

(2) The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction *in this Commonwealth and Kentucky evidentiary laws shall apply.*

(3) All testimony and proof shall be presented at the hearing before the hearing officer *by all parties* [, or within thirty (30) days thereafter by deposition, with the exception of medical or expert testimony]. *Medical testimony is excepted from this requirement and, subject to board approval obtained prior to the hearing date and for good cause shown, a party may present all other expert testimony to the board by deposition.*

(4) *Any party desiring to submit medical testimony, or having been granted permission to present other expert testimony by deposition, shall be allowed thirty (30) days after the hearing for that purpose. The other party or parties to the action shall be allowed thirty (30) days to submit its medical or expert proof, after which the requesting party shall be allowed five (5) days for rebuttal, unless otherwise ordered by the hearing officer or the board. After good cause shown, the claimant shall fully present its case to the board within sixty (60) days from the date of the hearing. After claimant's case has been submitted, the defendant shall have sixty (60) days within which to submit its case.* [If either party desires to submit medical or expert testimony by deposition, that party shall be allowed thirty (30) days after the hearing for that purpose. The second party shall then be allowed thirty (30) days, after which the first party shall be allowed five (5) days for rebuttal, unless otherwise ordered by the hearing officer.]

(5) If the claimant fails to appear at a scheduled hearing of which he has notice and fails to show good cause within five (5) days for failure to appear, the board may order the claim dismissed. If the affected state agency fails to appear at the hearing, the hearing officer in his discretion may take the testimony of any witnesses present.

(6) The hearing officer shall furnish a finding of fact to the board within thirty (30) days after the record is completed.

Section 4. Board Decision. (1) Each claim shall be submitted to the board at an early meeting following the hearing officer's report.

(2) The board, or a majority of its members, shall render a decision on each claim at a board meeting.

Section 5. Exchange of Facts by Parties to Contested Claims. All discovery procedures as outlined in the Kentucky Rules of Civil Procedure are applicable to proceedings before the board, except that a party shall not take a deposition for discovery without prior approval by the board. Further, any party may request admissions of fact. If a party fails to admit a requested fact which is later established, that party shall be responsible for all costs necessary to establishing the fact.

TRACY FARMER, Secretary
ADOPTED: July 12, 1982
RECEIVED BY LRC: July 12, 1982 at 1:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Board of Claims, 113 East Third Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Board of Accountancy
(Proposed Amendment)

201 KAR 1:095. Code of ethics.

RELATES TO: KRS 325.340
PURSUANT TO: KRS 325.240
NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to the code of ethics.

Section 1. Rules of professional conduct governing the activities of all persons holding a permit to practice issued by this board shall be promulgated, incorporated herein by reference, *as amended,* and copies shall be furnished to any interested person upon request.

JAMES T. AHLER, Executive Director
ADOPTED: May 28, 1982
RECEIVED BY LRC: July 2, 1982 at 11:10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James T. Ahler, Executive Director, Kentucky State Board of Accountancy, 310 W. Liberty Street, Suite 315, Louisville, KY 40202.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:040. Registration of interns.

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.050*(4) and (5)* [(3)], 315.191(1) [and (2)]
NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is authorized by KRS 315.050(1) to determine the minimum experience internship required to qualify for examination as a registered pharmacist. KRS 315.191 also authorizes the board to establish requirements and standards for educational, technical and professional qualifications of applicants for license to practice pharmacy. This regulation is to assure uniformity of the minimum experience internship.

Section 1. Every person who desires to become a pharmacy intern in Kentucky shall register as an intern with the Kentucky Board of Pharmacy. No credit for internship shall be recognized by the board for periods prior to such registration. To qualify for registration, a person shall

have successfully completed two (2) full year's attendance at an accredited college or university, and shall furnish proof of such to the executive secretary of the board prior to the registration.

Section 2. The practical experience required prior to licensure shall be referred to as internship. The minimum internship required as a prerequisite for licensure examination shall be 1,600 hours; not more than forty-eight (48) hours of internship may be allowed for credit in any one (1) calendar week.

Section 3. The board shall furnish application blanks and issue a numbered registration indentification card to each applicant who meets the requirements for registration as a registered intern upon receipt of a completed registration form and the [five dollars ($5) recording] fee. [The registration identification card shall be valid for five (5) years from date of issue, but may be extended for cause at the discretion of the board.] The registered intern shall have his registration identification card in his possession at all times when on duty and it shall be exhibited by the holder upon request of any member of the board or its authorized agents.

Section 4. (1) Internship registration shall be limited to those persons who are actively engaged in meeting the academic or practical experience requirements for licensure examination. No person who terminates the educational requisites is entitled to the privileges of internship registration, with the exception of any hardship case given written approval by the board.

(2) No person not registered with the board as a pharmacy intern shall take, use, or exhibit the title pharmacy intern, pharmacy apprentice, pharmacy extern, or any term similar or like import.

(3) Internship shall be credited only when it has been obtained in a pharmacy acceptable to the board for that purpose [and having a valid pharmacy permit].

[(4) No credit for internship will be granted concurrent with college enrollment as a full-time student, with the exception of between academic semesters or term breaks for more than three (3) weeks (21 days).]

(4) [(5)] Internship may be acquired only under the supervision of a preceptor. The preceptor, the pharmacy intern's supervising pharmacist, must have been licensed by the board for at least one (1) year. He must be actively engaged in the practice of pharmacy full-time in the pharmacy where the pharmacy intern is to obtain his internship. A preceptor may supervise only one (1) pharmacy intern at a time.

Section 5. A pharmacy intern having served part or all of his time in a pharmacy outside the state shall be given credit for the same, when affidavit(s) of his said employment is made by his preceptor(s) showing the exact time and dates served, and when same is attested by the [Secretary of the State] Board of Pharmacy at that state. In such cases, their requirements for internship must be comparable and acceptable to the Kentucky board.

Section 6. Internship report forms may be obtained from the board and shall be filed *in accordance with printed instructions on such forms* [within ten (10) days from the beginning and termination of each internship period].

JOHN H. VOIGE, Executive Secretary
ADOPTED: June 16, 1982
RECEIVED BY LRC: July 1, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:020. Licensing qualifications; approved schools.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to assure uniformity of requirements to all applicants for regular licenses to practice medicine or osteopathy in Kentucky.

Section 1. Qualifications for Regular Medical and Osteopathic Licenses. No person shall be entitled to a regular license unless he meets all requirements specified in KRS 311.570(1) and has successfully passed a written examination prescribed by the board; provided, however, that regular licenses may be issued by reciprocity for endorsement as otherwise provided by regulation of the board without written examination. Provided, further, that graduates of medical schools situated outside the United States or Canada shall have successfully completed at least one (1) year of internship or postgraduate training in a hospital or institution located in the United States or Canada and approved by the board. In addition, all foreign medical graduates whose native language is not English shall have successfully passed a written examination to the satisfaction of the board.

Section 2. Medical and Osteopathic Schools in the United States and Canada Approved by the Board. (1) All medical schools, colleges, and universities located in the United States approved by the Council on Medical Education of the American Medical Association are approved by the board, in connection with the issuance of regular licenses to practice medicine in Kentucky.

(2) All medical schools, colleges, and universities located in Canada and approved by the Canadian Medical Association are approved by the board, in connection with the issuance of regular licenses to practice medicine in Kentucky.

(3) All osteopathic schools and colleges located in the United States and approved by the American Osteopathic Association are approved by the board in connection with the issuance of osteopathic licenses in Kentucky.

[Section 3. Medical Schools Outside the United States or Canada. All medical schools situated outside the United States or Canada are approved for regular medical licenses provided the applicant has been fully certified by the Educational Commission for Foreign Medical Graduates (ECFMG), or has been fully certified by an approved American Medical Specialty Board recognized and approved by the American Medical Association and the board.]

Section *3.* [4.] Medical and Osteopathic Programs Approved for Internship and Postgraduate Training. (1) All internship and postgraduate programs in hospitals and institutions located in the United States approved by the Council on Medical Education of the American Medical Association are approved by the board in connection with the issuance of a regular license to practice medicine in Kentucky.

(2) All internships and postgraduate programs in hospitals and institutions located in Canada and approved by the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada are approved by the board in connection with the issuance of a regular license to practice medicine in Kentucky.

(3) All internships and postgraduate programs in hospitals and institutions located in the United States and Canada and approved by the American Osteopathic Association are hereby approved by the board in connection with the issuance of a license to practice osteopathy in Kentucky.

(4) The equivalency of all other programs in hospitals and institutions may be considered for approval by the board in connection with the issuance of a regular license on an individual basis.

Section *4.* [5.] Personal Interview. If the board so directs, an applicant shall personally appear before the secretary or assistant secretary of the board, or some person designated by the secretary or assistant secretary, for a personal interview to establish his identity and qualifications.

Section *5.* [6.] Endorsement. "Endorsement" means a written and signed certification by the duly authorized officer or representative of the official statutory medical or osteopathic examining board of some other state of the United States, or by the National Board of Medical Examiners, or by the National Board of Examiners for Osteopathic Physicians and Surgeons, or any approved successors thereof, that a certain person is a licentiate, in good standing, or said board, and that the person was required to and did, as a condition precedent to such licensure, satisfactorily pass a comprehensive written examination conducted by said board. Endorsement may be accepted by the board in lieu of further written examination in Kentucky without regard to the existence or nonexistence of a reciprocal agreement, but shall not be in lieu of standards and qualifications prescribed by KRS 311.570(1) and the regulations of the board. The secretary or assistant secretary of the board shall prepare, or cause to be prepared, all forms desirable and appropriate for licensure by endorsement, including applications, questionnaires, certificates, and licenses. The secretary or assistant secretary is authorized to require the submission of photographs, fingerprints, personal history data, and grades of his licensure examining board in connection therewith.

C. WILLIAM SCHMIDT, Assistant Secretary
ADOPTED: July 14, 1982
RECEIVED BY LRC: July 14, 1982 at 12 noon
SUBMIT COMMENT OR REQUEST FOR HEARING TO: C. William Schmidt, Kentucky State Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission
(Proposed Amendment)

201 KAR 11:030. License cancellation; reasons for.

RELATES TO: KRS 324.330
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. A license is automatically cancelled if the holder thereof fails to promptly notify the commission of any of the following changes: broker's business address, a change of firm name, [salesman's] or *sales associate's* [broker-salesman's] transfer from one (1) broker to another, or a change of surname.

[Section 2. The fee for all the above-listed changes is two dollars ($2) per license.]

Section *2.* [3.] The commission shall be notified of a change of a residence address. (There is no charge for this.)

JACK H. NEELY, Chairman
ADOPTED: June 25, 1982
RECEIVED BY LRC: July 6, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to Kentucky Real Estate Commission, 100 E. Liberty Street, Suite 204, Louisville, KY 40202.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission
(Proposed Amendment)

201 KAR 11:070. Branch offices.

RELATES TO: KRS 324.115, 324.045
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

[Section 1. No broker shall maintain a branch office outside a fifty (50) mile radius of his main office without having a broker-salesman managing the branch office.]

[Section 2. The licenses of all brokers, broker-salesmen, and salesmen shall be displayed in the office in which they are actively engaged and employed.]

Section *1.* [3.] In the absence of a showing of special circumstances satisfactory to the commission, no *principal* broker shall sponsor or employ a *sales associate* [salesman] whose residence is located outside a fifty (50) mile radius of the broker's main or branch office.

JACK H. NEELY, Chairman
ADOPTED: July 5, 1982
RECEIVED BY LRC: July 6, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to Kentucky Real Estate Commission, 100 E. Liberty Street, Suite 204, Louisville, KY 40202.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission
(Proposed Amendment)

201 KAR 11:095. Closing statements; rental management agreements.

RELATES TO: KRS 324.160
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. A real estate broker shall furnish a debit and credit type closing statement to a buyer and seller upon closing a real estate transaction.

[Section 2. When acting as a property manager, he shall render an accounting and remit all monies to his client strictly in accordance with the contract of employment.]

Section *2.* [3.] All rental management agreements shall be in writing in order to avoid controversies.

JACK H. NEELY, Chairman
ADOPTED: July 5, 1982
RECEIVED BY LRC: July 6, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 E. Liberty Street, Suite 204, Louisville, KY 40202.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission
(Proposed Amendment)

201 KAR 11:110. Exclusive authority retained by original broker.

RELATES TO: KRS 324.160
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

[Section 1. No real estate broker shall negotiate the sale, exchange or lease of any property directly with an owner or lessor if he knows that such owner or lessor has an existing written contract granting exclusive authority in connection with such property with another broker.]

Section *1.* [2.] No real estate broker shall induce any party to a contract or sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal.

JACK H. NEELY, Chairman
ADOPTED: July 5, 1982
RECEIVED BY LRC: July 6, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 E. Liberty Street, Suite 204, Louisville, KY 40202.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission
(Proposed Amendment)

201 KAR 11:135. Salesman's obtaining broker's license.

RELATES TO: KRS 324.045
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

[Section 1. A salesman who desires to obtain a broker's license is a person who has been actively engaged in the real estate business averaging at least twenty (20) hours per week during the preceding two (2) years.]

[Section 2. If the applicant can meet the educational requirements, then the two (2) year requirement is reduced to one (1) year. Proof of said activities will take the form of a notarized sworn affidavit signed by both the applicant and his employing broker.]

Section *1.* [3.] Any affiant found to have misrepresented facts in their sworn statement shall be subject to disciplinary proceedings by the commission and criminal penalties for perjury.

JACK H. NEELY, Chairman
ADOPTED: June 25, 1982
RECEIVED BY LRC: July 6, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 E. Liberty Street, Suite 204, Louisville KY 40202.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing
(Proposed Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), 314.051(1)
PURSUANT TO: KRS *13.082*, Chapter 314
NECESSITY AND FUNCTION: To assure that applicants for licensure by examination meet minimum standards set forth by the board as necessary for safe practice. To provide some security in the examination process.

Section 1. Eligibility for Licensure by Examination. To be eligible for licensure by examination, applicants shall:

(1) Hold a high school diploma or equivalent.

(2) Have completed a state approved program of practical nursing for licensed practical *nurse licensure* [nursing] or a state approved program of registered nursing for registered nurse licensure.

(3) Submit an official transcript of nursing program.

(4) Submit at least *sixty (60)* [thirty (30)] days prior to the date of the examination:

(a) A properly executed application *for licensure*;

(b) Current *administration of* examination fees;

(c) Current *application for* licensure fee; and

(d) Two (2) photographs (two (2) x three (3) inches) taken within the past six (6) months with the photographs signed by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program (if graduated therefrom) on the back of the photographs. Snapshots are not acceptable.

(5) Submit official copy(ies) of court record(s) of any misdemeanor and/or felony conviction(s) with a letter of explanation.

(6) Notify the board in writing as soon as any new address is established after submitting the application.

(7) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(8) Abide by and cooperate with security procedures established by the board, when taking the examination.

(9) Achieve a minimum passing standard score of 350 on the state board test pool examination or its equivalent as reported for licensed practical nurse or registered nurse licensure. Effective with the July, 1982 examination administration, achieve a minimum passing score of 1600 on the national council licensure examination for registered nurse licensure.

(10) Pay all necessary fees to show evidence of meeting requirements for licensure as stated in this section and, if applicable, Sections 2 and 4 of this regulation.

(11) An application for licensure is valid for a period of one (1) year from date filed with the board or for a period of one (1) year from date last examination was written in Kentucky not to exceed two (2) years since the filing date of the original application for licensure in Kentucky.

Section 2. Graduates of Foreign Nursing Schools. (1) To be eligible for application for licensure by examination, graduates of foreign nursing schools shall submit evidence of the following:

(a) Certificate showing successful completion of commission on graduates of foreign nursing schools examinations (registered nurse applicants only).

(b) Verification of licensure as a nurse in another country with a statement from the licensing authority that the license is in good standing and has not been revoked, suspended, probated, or otherwise disciplined in that country.

(c) Legal permanent or temporary residency in the United States according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor.

(2) Applicants for licensure by examination shall meet requirements as stated in Section 1.

(3) Citizens of the United States who are graduates of foreign nursing schools shall show evidence of citizenship, thereby meeting requirements pertaining to citizenship privileges and shall meet all other requirements of this section and as stated in Section 1.

(4) The applicant shall have a satisfactory comprehension of the English language written and spoken which shall be established by a written examination (CGFNS) and an interview with a representative of the board.

(5) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

[(6) The applicant shall pay all necessary fees to show evidence of meeting requirements of this section.]

[(7) An application is valid for a period of one (1) year from date of submission to board. After one (1) year, the applicant must submit new application, current fee and, if applicable, evidence of legal residency in the United States.]

Section 3. Licensing Examination Standards. (1) The applicant shall pass the state board test pool examination or an examination acceptable to the board.

(2) An applicant who has taken any examination other than the state board test pool examination subsequent to 1953 shall provide evidence to the board that such examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) Norms for each administration of the examination are derived from at least 10,000 candidates who are recent graduates of a nursing program and who are writing the examination for the first time;

(c) The examination is available in the English language;

(d) The examination test plan blueprint is available for board review and identifies, to the satisfaction of the board, test content and content weightings equivalent to that delineated for the state board test pool examinations;

(e) Test items are available for board review and demonstrate to the satisfaction of the board the testing of competency necessary for safe practice;

(f) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(g) The examination is revised after each administration to insure currency and security of content;

(h) The examination is given under strict security measures;

(i) Acceptable passing scores shall be no more than one and one-half (1½) standard deviations below the mean of the norm group.

Section 4. Rewriting the Examination. Examination candidates who fail to achieve a passing score may rewrite the examination after *submission of retake application, after* meeting the requirements as stated in Section 1 and, if applicable, Section 2 of this regulation and submission of current *administration of* examination fee. [Effective with the July, 1982 examination administration, any registered

nurse candidate who has not achieved a passing score must write the entire examination.]

Section 5. Release of Examination Scores. The board shall not release examination scores to any individual or agency without written authorization from the applicant or licensee except as follows:

(1) The candidate;

(2) Other state boards of nursing for out-of-state graduates;

(3) Other state boards when requested for licensure;

(4) National council of state boards of nursing datacenter.

SHARON M. WEISENBECK, Executive Director
ADOPTED: June 4, 1982
RECEIVED BY LRC: July 8, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

COMMERCE CABINET
Department of Fish and Wildlife
(Proposed Amendment)

301 KAR 1:145. Gear allowed for commercial fishing.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: It is necessary to accurately describe the gear allowed in commercial fishing so that the limitations and susceptibilities of the gear will permit the harvesting of the proper size and species of fishes, and so that the sport harvest is not affected and the fishery resources perpetuation is assured. This amendment is necessary to *remove the restrictions on the type of material used in the construction of slat trap baskets* [increase the effectiveness of trotline fishing].

Section 1. The following gear is the only commercial gear that can be used in commercial waters designated in 301 KAR 1:150 and under conditions described in 301 KAR 1:155 by appropriately licensed commercial fishermen.

Section 2. Legal Commercial Gear: (1) All lines and mesh must be made of linen, cotton, or flexible synthetic fiber only.

(2) All mesh is measured by bar measure. This measure is the length of one (1) side of the square, or as measured between two (2) knots on the same line.

(3) The functions of the various commercial fishing tags authorized under KRS 150.175 are consolidated into one (1) tag called "commercial gear tag" which shall serve as they each were designated in KRS 150.175, sections (5), (6), (7), and (8).

(4) Gear:

(a) Hoop net, wing net, straight lead net, heart lead net:

1. Must have a minimum mesh size of three (3) inches, except in the Ohio and Mississippi Rivers and those portions of the Cumberland River below Barkley Dam and the Tennessee River below Kentucky Dam that are open to commercial fishing where the minimum mesh size shall be one (1) inch.

2. Hoops may be any size or shape or material.

3. Maximum length of the lead or wing is thirty (30) feet.

4. One (1) commercial gear tag must be attached to the first hoop of each net.

(b) Gill net or trammel net:

1. Are legal gear in Ohio and Mississippi Rivers and overflow lakes directly connected with each river. Minimum mesh size is three (3) inches in the Mississippi and overflow lakes and four (4) inches in the Ohio River and its overflow lakes. Gill and trammel nets may also be authorized for other waters under certain conditions by separate regulations.

2. May be fished weighted or as a flag net.

3. Must have one (1) commercial gear tag attached to each 100 feet or part thereof.

(c) Commercial trotline:

1. Must have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.

2. Must have one (1) commercial gear tag attached.

3. A commercial trotline may be no longer than 3,000 feet, including staging, and must be fished separately, not tied together in a continuous line.

(d) Seine:

1. Must have a minimum mesh size of two (2) inches.

2. Must have both float and lead lines.

3. Must have wood, fiberglass or metal poles or brails attached at each end.

4. When seine is in the water, it must be attended by persons pulling the seine through the water for the entrapment of fish.

5. At no time may a seine be left unattended to act as a set net or other purpose.

6. Must have one (1) commercial gear tag attached to each 100 feet or part thereof.

(e) Slat trap or wood basket:

1. [Must be constructed entirely of wood and nails or similar fastenings.] No wire or other mesh may be added to any part of trap.

2. There must be at least two (2) openings left between slats no smaller than one and one-fourth (1¼) inches wide in the catch portion of the trap. These openings may not be restricted by cross-bracings to a length shorter than eight (8) inches.

3. The trap may be no larger than two (2) feet in diameter or square end measure.

4. Must have one (1) commercial gear tag attached to opening ring or square.

CARL KAYS, Commissioner
ADOPTED: June 11, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: July 8, 1982 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: The Commissioner, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

State of Kentucky and shall have features that at least provide for eighty percent (80%) co-insurance, a deductible on perils not to exceed $2,500 and a replacement cost endorsement.

Section 3. Buildings requiring insurance and containing steam boilers shall have boiler and machinery coverage having a limit of liability equal to the total value of the real and personal property in the building in which the steam boiler is located.

Section 4. School districts may cover property in a self-insurance pool providing coverage at least equal to the standard of coverage specified in Sections 2 and 3.

Section 5. In the event a school building cannot be insured on a replacement cost basis, the policy insuring the building shall carry an agreed amount endorsement, and a certification signed by the local superintendent and board chairman shall be attached to the policy stating that it would not be fiscally responsible to provide replacement cost coverage for the building being insured.

Section 6. Insurance coverage provided for in Sections 2 and 3 shall be obtained by local school districts by bids submitted on standard bid forms provided by the Superintendent of Public Instruction after having advertised for bids, where bids are required by KRS Chapter 45A or 424 as applicable.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 22, 1982
RECEIVED BY LRC: July 7, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 3:010. Administrative and special services.

RELATES TO: KRS 157.360[(7), 156.160]
PURSUANT TO: KRS 13.082, 156.070, *157.360* [156.130, 156.160]
NECESSITY AND FUNCTION: *KRS 157.360(7) requires the State Board of Education to define by regulation authorized types of administrative and special instructional services, which can be recognized for Minimum Foundation purposes. This regulation implements that function.* [To provide authorization of positions to be included in classroom units for administrative and special instructional services under the foundation program.]

Section 1. The following positions shall be classroom units for administrative and special instructional services under the foundation program:
(1) Art education teacher;
(2) Assistant principal (shall be employed at least one-half (½) time in the position);
(3) Assistant superintendent (shall devote full-time to the position);
(4) Director, coordinator or manager of district-wide services;
(5) [(4)] Consultants:
(a) Academic subject fields;
(b) Elementary education;
(c) Reading;
(d) School media services;
(e) Teacher consultant for exceptional children.
(6) [(5)] Driver education teacher;
(7) [(6)] Guidance counselor;
(8) [(7)] Industrial arts teacher;
(9) [(8)] Instructional coordinator (shall be employed at least one-half (½) time in the position);
(10) [(9)] Instructional television coordinator;
(11) [(10)] Local director of vocational education;
(12) [(11)] Media librarian (shall be employed at last one-half (½) time in the position);
(13) [(12)] Music education teacher;
(14) [(13)] Physical education teacher;
(15) [(14)] Principal (shall be employed at least one-half (½) time in the position);
(16) [(15)] School business administrator and/or finance officer (shall devote full-time to the position);
(17) [(16)] School health coordinator;
(18) [(17)] School lunch director;
(19) [(18)] School psychologist;
(20) [(19)] School psychometrist;
(21) [(20)] School social worker/visiting teacher;
(22) [(21)] Special education work-study program coordinator.

Section 2. The following administrative and special instructional service classroom units shall be allotted as basic classroom units provided the school district has not staffed its total basic classroom unit entitlement and has staffed more administrative and special instructional service classroom units than allotted:
(1) Art education teacher;
(2) Driver education teacher;
(3) Industrial arts teacher;
(4) Music education teacher;
(5) Physical education teacher.

RAYMOND BARBER
Superintendent of Public Instruction
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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 3:304. Required program of studies.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to establish minimum courses of study and the scope of instruction that may be offered in the different classes of common schools, and to establish the minimum requirements of graduation from the courses offered. This regulation implements that duty.

Section 1. Pursuant to the authority vested in the State Board of Education by KRS 156.070 and 156.160, the "Program of Studies for Kentucky Schools, Grades K-12," as adopted on *June 22, 1982,* [January 10, 1979, and the various addenda thereto, namely, "Military Science Education," December, 1979, "CETA In-School Youth Programs," May, 1980, "Procedures Concerning the Offering of Enrichment Courses," June, 1980, "Science," May 27, 1981, and "Health and Personal Services Occupations," May 27, 1981,] *is* [are] hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Copies may be obtained from the Department of Education.

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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 5:050. Public school programs.

RELATES TO: KRS 157.312, 157.315, 157.360, 158.030, 158.090, *HB 295 (1982 General Asembly)*
PURSUANT TO: KRS 13.082, 156.070, 157.315, 157.360
NECESSITY AND FUNCTION: KRS 157.312 and 158.090 authorize public school kindergartens; KRS 157.315 requires the State Board of Education to adopt regulations defining and prescribing the criteria for kindergartens in the common schools; KRS 157.360 allows the Superintendent of Public Instruction to allot kindergarten units under regulations of the State Board; [and] KRS 158.030 sets forth the kindergarten entrance age requirements; *and HB 295 passed by the 1982 General Assembly (the Budget Bill) requires kindergarten units to be allotted in fiscal years 1983 and 1984 on the basis of one (1) for every two (2) classes with twenty-five (25) pupils in ADA.* This regulation sets forth the criteria for public school kindergartens, the procedure for allotment of units, and entrance requirements.

Section 1. Personnel qualified to serve in an approved unit for kindergarten shall hold Kentucky teacher certification as follows:
(1) A Kentucky certificate endorsement for kindergarten teaching; or
(2) A Kentucky certificate valid for kindergarten teaching; or
(3) A Kentucky certificate valid for elementary classroom teaching initially issued prior to September 1, 1971.

Section 2. (1) State funding for a kindergarten unit *for fiscal year 1982-83 and 1983-84* shall be made on *twenty-five (25)* [twenty-three (23)] average daily attendance for the end of the previous school year[; except for the 1981-82 school year, which shall be made on the end of year average daily attendance].
(2) The average daily attendance for programs operating under subsections (2) or (3) of Section 3 shall be calculated by dividing the total aggregate days attendance for the year by the actual number of days the school is in session. The average daily attendance for programs operating under any other plan shall have the total aggregate days attendance divided by two (2) before the average daily attendance for the year is calculated.
[(3) If the total kindergarten units appropriated in the state biennium budget bill are not allocated based on the average daily attendance requirement, the Superintendent of Public Instruction may make a percentage reduction in the average daily attendance requirement. This reduction shall not be lower than twenty (20) average daily attendance.]

Section 3. Scheduling for a kindergarten unit shall meet one (1) of the following plans, with a kindergarten school day to consist of six (6) hours unless shortened as provided for in KRS 158.060:
(1) Conduct half-day session(s) for the school year.
(2) Conduct all day session(s) for the first semester. Conduct all day session(s) for the second semester. The second semester enrollment shall be children *who* [that] have not previously enrolled in a kindergarten session in the district.
(3) Conduct alternate day session(s) all year.

Section 4. Any child who is five (5) years of age or who may become five (5) years of age by October 1[, 1980, and any] *of the school* year *in which the child seeks to enroll* [thereafter], shall be permitted to enroll in a public school kindergarten.

Section 5. The program shall include appropriate developmental experiences in social living, physical development, emotional growth and stability, creative expression and in academic areas including math, language, science, and social studies. The program shall provide opportunities and experiences in accordance with each ch. level of comprehension and maturation.

Section 6. The facilities shall be in compliance with the

regulations of the Department of Education's Division of Buildings and Grounds.

RAYMOND BARBER
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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 10:022. Elementary, middle and secondary schools standards.

RELATES TO: KRS 156.160
PURSUANT TO: KRS 13.082, 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board of Education to adopt rules and regulations relating to grading, classifying, and accrediting all common schools. This regulation implements this duty by prescribing general standards to be used in evaluation of elementary, middle and secondary schools.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education by KRS 156.070 and 156.160, the Kentucky Standards for Grading, Classifying and Accrediting Elementary, Middle and Secondary Schools, as amended on *June 22, 1982* [January 12, 1982], are presented herewith for filing with the Legislative Research Commission, and incorporated by reference. *The Standards for Accrediting Kentucky Schools, 1980-81, shall remain in effect for not longer than the next succeeding three (3) school years for those districts which cannot, because of time and personnel contraints on the Superintendent of Public Instruction, be assessed by the Department of Education under the new standards until the 1985-86 school year, and said accreditation standards are also incorporated herein by reference.*

[Section 2. The 1981 Experimental Revised Standards for Accrediting School Districts, as adopted by the State Board on May 26, 1981, are incorporated herein by reference, and filed with the Legislative Research Commission. The Experimental Revised Standards are to be used on a pilot basis, in lieu of the standards adopted in Section 1, in no more than twenty-five (25) school districts, selected on a volunteer basis, during the 1981-82 school year.]

Section *2.* [3.] "The Merit Rating Procedural Information and General Criteria for Guidance Programs" and "Merit Rating Guidelines for Kentucky Schools," as amended on January 12, 1982, are presented herewith for filing with the Legislative Research Commission and incorporated by reference.

Section *3.* [4.] A copy of all documents incorporated in this regulation may be obtained from the Department of Education.

RAYMOND BARBER
Superintendent of Public Instruction
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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Vocational Education
(Proposed Amendment)

705 KAR 2:030. Foundation program units.

RELATES TO: KRS 156.070, 157.360, 163.020, 163.030
PURSUANT TO: KRS 13.082, 156.035, 156.070, 163.030
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of the common schools; KRS 157.360 requires the Superintendent of Public Instruction to allot to school districts, as a part of the Foundation Program, classroom units for vocational education; and KRS 163.020 and 163.030 mandate that the state provide for and administer a vocational education program. This regulation establishes methods and procedures to cover the allocation of vocational education units under the Foundation Program.

Section 1. Local school districts shall request vocational education units on [form FP-VE-1 provided by the Division of Finance,] Bureau of Administration and Finance, by May 15. The request shall be made only for programs which have been included in the required local plan for vocational education. Request for new units shall be based on plans submitted by the local school district which are developed in conjunction with the regional vocational staff and the Program Development Division, Bureau of Vocational Education.

Section 2. Vocational units shall be allocated to local school districts to provide vocational education programs for the secondary school students in that district. *A calculation shall be made to determine the relative number of units per district as cmpared to their proportionate share of the total statewide econdary, grades 7-12, enrollment. Districts having less than their calculated number of units shall receive priority in the allocation of new units.* [The number of vocational units allocated will be based on the relationship of the existing number of vocational units in the district and the secondary school enrollment.] Only that portion of a teacher's time devoted to vocational education shall be used for calculating vocational units. [As a part of the vocational unit, a vocational teacher shall be permitted to perform non-instructional duties assigned to all teachers, not amounting to more than an average of thirty (30) minutes per day.] Vocational units shall be allocated only for those programs that have:

(1) Certified [vocational] teachers who satisfy the requirements of the Kentucky State Plan for [the Administration of] Vocational Education *and meet the requirements of the Kentucky Program of Studies.*
(2) Facilities and equipment which meet established minimum requirements.
(3) A curriculum which serves at least one (1) of the objectives of vocational education.
Failure to meet any one (1) of these criteria shall be cause to withhold the vocational unit.

Section 3. The following activities shall be approvable for vocational units [when the teacher is listed as a vocational teacher responsible for a minimum of three (3) vocational periods]:
(1) *A planning period for up to one-tenth (0.1) vocational unit for teachers with two (2) vocational periods and up to two-tenths (0.2) vocational unit for teachers with three (3) or more vocational periods.* [Each vocational teacher shall have a planning period if any part of the unit is to be allocated. Vocational units shall be used to support the planning period only for teachers having at least five-tenths (0.5) unit resulting from vocational teaching and other vocational activities. Teachers who teach two (2) three (3) hour vocational blocks or three (3) two (2) hour vocational blocks shall not be required to have a planning period during the six (6) hour school day.]
(2) One (1) class period [shall be permitted] for supervision of cooperative vocational education or work experience programs when there is a minimum of ten (10) and a maximum of fifteen (15) participating students with training agreements on file; [.] two (2) class periods [shall be permitted] for this purpose when the number of students enrolled is a minimum of sixteen (16) and a maximum of twenty-seven (27). When only one (1) supervision period is provided, the supervision and planning periods shall be scheduled consecutively during the time students are on the job.
(3) One (1) class period [shall be permitted] for one (1) teacher in each vocational program area to work with activities of integrated and approved vocational student organizations.
(4) *One (1) class period for one (1) designated teacher to serve as a vocational department head in a high school with five (5) or more full-time equivalent vocational teachers.* [A high school with five (5) or more full-time vocational teachers shall be permitted to designate one (1) teacher to use one (1) period to serve as a vocational department head.]
(5) *One (1) class period for each agriculture teacher for supervision of occupational work experience programs for a minimum of thirty (30) and a maximum of fifty (50) students; two (2) periods for a teacher with more than fifty (50) students when at least twenty (20) students are juniors or seniors.* [Agriculture teachers shall be permitted one (1) period for supervision of occupational work experience programs for a minimum of thirty (30) and a maximum of fifty (50) students. Two (2) periods shall be permitted for a teacher with more than fifty (50) students when at least twenty (20) students are junior or seniors.]
(6) *Class period(s) for supervision of cooperative work experience and agriculture programs supervision require a prerequisite of at least three (3) vocational teaching periods for the teacher.* [Teachers shall qualify solely for supervision of cooperative work experience and agricultural programs supervision with the prerequisite of first teaching at least three (3) vocational periods.]

Section 4. Class sizes shall be considered in allocating vocational education units. (1) All vocational classes shall have a minimum membership of ten (10) students.
(2) *Two sections* [More than one (1) section] of the same class shall have *a minimum average* [an average] of twelve (12) students per class*; three (3) or more sections of the same class shall have a minimum of fifteen (15).*
(3) The maximum number of students per class shall be based on the class setting. For a classroom setting, the maximum enrollment shall be thirty (30). For a laboratory or shop setting, the maximum enrollment shall be twenty-seven (27) or the number for which the facility is equipped, whichever is less. For a supervised out-of-school setting, the maximum enrollment shall be twenty-seven (27).
(4) Approval by the Superintendent of Public Instruction is required for justification of exceptions. Justifications shall be submitted by the local superintendent concurrent with the professional staff data forms.

Section 5. [The class length standard for vocational classes shall be a minimum of sixty (60) minute periods and 300 minutes per week including passing time. If the Bureau of Instruction approves a different pattern of class schedules for the total school program, the Superintendent of Public Instruction shall, on request, approve shorter class periods for non-laboratory, shop, or practical exercise classes.] Vocational classes which are laboratory, shop, or practical exercise classes shall require two (2) consecutive class periods if the gross period of time for one (1) class is less than sixty (60) minutes. Programs having exploratory objectives shall be considered on individual requests as exceptions to the minimum length of class period.

Section 6. The Superintendent of Public Instruction shall calculate units for programs offered in local high schools based on the information provided on the professional staff data (PSD) form which is completed on September 15 and amended as of February 1. The PSD shall be used to determine the amounts of time devoted to vocational programs, services, and activities. Additional justification shall be provided as needed to justify periods not devoted to teaching. Units shall be allocated for each vocational period calculated to the nearest tenth of a unit.

Section 7. The allocation of units to local school districts sending students to state vocational-technical schools and area vocational education centers shall be calculated on the basis of the number of students enrolled as of October 1. A vocational education unit shall be allotted for thirty (30) students attending the school three (3) hours per day, five (5) days per week or equivalent to this amount of student time. Units will be calculated to the nearest one-tenth (0.1) unit. The "contract" vocational unit shall be calculated at the value for a Rank III teacher with four (4) to nine (9) years experience and one (1) month extended employment. The unit shall include the foundation program value for salary, capital outlay, and current expenses.

Section 8. The funds calculated from the Foundation Program for students attending state-operated vocational schools shall be divided. Twenty (20) percent shall be transferred to the local school district owning the facility and eighty (80) percent transferred to the Bureau of Vocational Education for operating the program. If the facility

is state-owned, 100 percent of the funds shall be transferred to the Bureau of Vocational Education.

RAYMOND BARBER
Superintendent of Public Instruction
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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Vocational Education
(Proposed Amendment)

705 KAR 4:010. General standards.

RELATES TO: KRS 156.112, 163.020, 163.030
PURSUANT TO: KRS 13.082, 156.112, 163.030
NECESSITY AND FUNCTION: KRS 156.112 gives the State Board of Education the function and authority to develop and adopt policies and regulations by which the Department *of* [for Occupational] Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating occupational education programs, services, and activities; and KRS 163.020 and 163.030 mandate a state vocational education program with certain purposes. This regulation establishes general standards for all vocational education programs.

Section 1. Vocational education programs shall be designed to serve one (1), or combinations, of the following groups of persons: secondary, postsecondary, short term adult, long term adult, disadvantaged, and handicapped. Instructional programs will not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or handicap.

Section 2. Vocational instruction shall be provided to serve occupations within the following vocational program areas: agribusiness, business and office, health and personal services, home economics, industrial, marketing and distributive, practical arts, public service, and special vocational.

Section 3. Objectives of the instruction shall be designed to: (1) Prepare individuals for gainful employment as semi-skilled or skilled workers, technicans, or semi-professionals in recognized occupations and in new or emerging occupations; or

(2) Prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs; or

(3) Assist individuals in *the career development process of career awareness and indepth career exploration necessary for making meaningful occupational choices* [making informed and meaningful occupational choices]; or

(4) Up-grade and up-date individuals in their present occupations; or

(5) Achieve any combination of the above.

Section 4. The content of instruction in vocational education programs shall: (1) Be based on a consideration of the skills, attitude, and knowledge required to achieve the objective of such instruction and include a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve such objectives.

(2) Be developed and conducted in consultation with potential employers and other individuals having skills and substantive knowledge of the occupation or the occupational fields included in instruction.

(3) Include the most up-to-date knowledge and skills necessary for competencies required to meet the objectives of such instruction.

(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to achieve the objectives of instruction.

Section 5. The vocational program of instruction shall combine and coordinate classroom instruction with field, shop, laboratory, cooperative work, or other occupational experience which:

(1) Is appropriate to the objectives of instruction,

(2) Is of the sufficient duration to develop competencies necessary for the student to achieve such objectives, and

(3) Is supervised, directed, or coordinated by persons qualified under the Kentucky State Plan for the Adminstration of Vocational Education.

Section 6. Secondary vocational education programs shall provide a variety of learning experiences and related services. Programs in grades 7-8 shall be coordinated to allow students to explore clusters of occupations. Programs at the 9-10 grades shall provide indepth exploration courses by occupational area. Programs at the 11-12 grades shall provide specialized skill development to make individuals more employable in one (1) group of occupations than any other. Students enrolled in public or private schools shall be permitted to enroll in state-operated vocational programs consistent with that school's student enrollment quota for cooperating local school districts.

Section 7. Long-term adult (postsecondary) programs shall be designed for occupational preparation of persons sixteen (16) years of age or older who have completed or left the regular high school. The programs shall be organized on a full-time basis during the day or evening hours. Students may enroll in all or any part of the scheduled program. Registration and tuition fees shall be set annually by the State Board of Education.

Section 8. Short-term adult programs shall be designed to meet the needs of persons who have entered the labor market or are temporarily unemployed and who need training in preparing or supplementing knowledge and skills for employment and/or job advancement. Courses shall consist of either single or multiple units of intensive instruction. Student fees for short-term adult vocational education programs shall be set annually by the State Board of Education.

Section 9. The vocational program shall be designed to accommodate students with special learning needs mainstreamed into the regular program. Special vocational programs in specific occupational areas or incorporating a variety of occupational areas shall be permitted when the handicapped conditions warrant.

Section *10.* [6.] Instructional personnel in vocational education shall be qualified and fully certified under the provisions of the Kentucky State Plan for [the Administration of] Vocational Education and other regulations of the State Board of Education. Work experience requirements not included as a part of certification programs shall be approved by the Superintendent of Public Instruction.

Section *11.* [7.] All instructional personnel shall attend district, regional, or state in-service education meetings called and/or approved by the Superintendent of Public Instruction when such meetings are reimbursed by funds from the Bureau of Vocational Education. Instructional personnel may be excused by the local superintendent when the reasons are justified and submitted in writing to the Superintendent of Public Instruction.

Section *12.* [8.] Annual plans for vocational programs and applications for funds for the next school year shall be submitted by local educational agencies to the regional program coordinator for vocational education by April 15. The program plan shall be reviewed by the regional staff and the Bureau of Vocational Education staff and approved by the Superintendent of Public Instruction prior to program implementation.

Section *13.* [9.] Recognized vocational student organizations shall be an integral part of the instructional program and shall be supervised by qualified vocational education personnel.

Section *14.* [10.] Each occupational preparation program area [offered by a local educational agency] shall have an active program advisory committee to assist in planning, implementing, and evaluating programs.

Section *15.* [11.] A continuous evaluation of the vocational education program shall be conducted by the local educational agency in accordance with requirements and instruments developed or approved by the Department of Education and by the local educational agency to determine the effectiveness of the program in terms of its objectives. The evaluation shall include a follow-up of students after their termination from the program. The Superintendent of Public Instruction shall designate the records and reports to be kept by local educational agencies operating approved vocational education programs. *Staff from the Department of Education shall make periodic evaluation visits for program improvement purposes.*

Section *16.* [12.] Where applicable, all vocational education programs shall operate according to guidelines developed by state and/or national licensure, certification, and registration agencies having jurisdiction over graduates who seek employment in occupations governed by such agencies.

Section *17.* [13.] Classrooms, libraries, shops, laboratories, and other facilities, including instructional equipment, supplies, teaching aids, and other materials, shall be provided in quantity and quality to meet the objectives in the vocational instruction. *Although the amount of supplies needed by each class will vary in local districts, the districts shall provide an appropriate portion of the operating money allotted with each vocational unit.* The facilities [and equipment] for any vocational education program shall be of adequate size and design to accommodate the activities and number of work stations unique to each program. [Minimum standards for facilities and equipment shall be prepared and distributed by the individual program unit in the Bureau of Vocational Education.] Facilities and equipment shall be approved by the Superintendent of Public Instruction.

[Section 14. The Bureau of Vocational Education shall prepare course descriptions and criteria for distribution to local school districts when the criteria for approval are more specific than these general standards.]

Section 18. Vocational preparation programs shall provide a curriculum of sufficient length to permit students to secure entry-level skills in the occupations for which they are training. They shall conform to the requirements in the Kentucky Program of Studies.

Section 19. Minimum and maximum class size shall be based on program design and available facilities. No class shall be offered for less than ten (10) students.

Section 20. A vocational school may be permitted to provide an optional senior plan for students from secondary schools being served by that vocational school. A senior plan provides that a student may choose to attend a vocational school for six (6) hours a day while enrolled in a high school for the senior year. The local district shall receive ADA credit for students participating in this plan.

(1) The vocational school requesting permission to implement an optional senior plan shall receive approval from the State Superintendent of Public Instruction in accordance with this and other Kentucky Administrative Regulations.

(2) For ADA calculation purposes, students accepted in the senior plan shall be enrolled in a public school in Kentucky.

(3) The local school superintendent shall certify that students participating in this program will be eligible for graduation upon successful completion of the program.

(4) An annual evaluation of the senior plan shall be submitted to the State Board.

(5) With approval of the local board of education, a local high school may choose to participate in the senior plan. Individual students will have the option of participating in the senior plan or the usual plan of attending a vocational school three (3) hours a day for the junior and senior year.

(6) Participation in the senior plan shall in no way jeopardize the student's high school standing in terms of participation in other high school activities. Participation in the high school activities shall be the responsibility of the local board of education and appropriate arrangements for such participation will be ensured by the vocational school.

Section *21.* [15.] Requests for exceptions to any standards for vocational instructional programs shall be submitted in writing by the local educational agency, recommended by the appropriate program unit director, and approved by the Superintendent of Public Instruction. Exceptions shall be limited to experimental programs, in-

novative programs, and unusual cases and shall be approved on an individual and annual basis.

RAYMOND BARBER
Superintendent of Public Instruction
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EDUCATION AND ARTS CABINET
Department of Education
Bureau of Vocational Education
(Proposed Amendment)

705 KAR 7:050. Adult plan.

RELATES TO: KRS 156.035, 156.070, 156.112
PURSUANT TO: KRS 13.082, 156.070, 156.112, 163.030
NECESSITY AND FUNCTION: KRS 156.035 gives the State Board of Education the authority to implement the provisions of any act of Congress appropriating and apportioning funds to the state; KRS 156.070 gives the State Board the management and control of the common schools and all programs operated therein; and KRS 156.112 designates the State Board as the sole state agency for the purpose of developing and approving state plans required by federal law as a prerequisite to receiving federal funds for adult education. This regulation adopts the three-year program plan for adult education that is required in order to be eligible to receive federal funds under the Adult Education Act.

Section 1. Pursuant to the authority vested in the Kentucky State Board of Education, the Kentucky Three-Year Program Plan for Adult Education shall be prepared and approved by the State Board of Education, in accordance with the appropriate federal regulations and guidelines, and submitted to the U.S. Commissioner of Education by June 30 of the appropriate year for approval. The current document, *as amended June 22, 1982,* is incorporated by reference and hereinafter shall be referred to as the Three-Year Program Plan for the years July 1, 1982 to June 30, 1985. Copies of the Three-Year Program Plan may be obtained from the Adult Education Unit, State Department of Education.

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(Proposed Amendment)

804 KAR 1:100. General advertising practices.

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

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

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

Section 3. (1) Except as provided by subsection (2) of this section, no licensee shall advertise in material directed to the home or business of the consumer either by United States mail, personal delivery, or otherwise.
(2) Subsection (1) of this section shall not prohibit advertising in newspapers, magazines or periodicals having a general circulation among regular paying subscribers or patrons.

Section 4. (1) Except as provided by subsection (2) of this section, advertising novelties are permitted.
(2) No licensee shall require directly or indirectly the purchase or consumption of any alcoholic beverage as a condition for the sale, gift, or reduction in price of any advertising novelty.
(3) No malt beverage distributor shall sell, give away or furnish advertising novelties in any manner, directly or indirectly, to a retail licensee.

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

Section 6. (1) Licensees may sponsor athletic and charitable events provided that the consumption or purchase of alcoholic beverages is not a requirement, directly or indirectly, for participation therein.
(2) Any licensee sponsoring or co-sponsoring an event described in subsection (1) of this section upon the premises of another licensee may advertise said event upon that licensed premises for thirty (30) days immediately preceding the event.

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

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

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

RICHARD LEWIS, Commissioner
ADOPTED: July 15, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: July 15, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Alcoholic Beverage Control Board, 123 Walnut Street, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 6:050. Formula for allocation of funds.

RELATES TO: KRS 210.420, 210.440
PURSUANT TO: KRS 13.082, 210.420, 210.450
NECESSITY AND FUNCTION: KRS 210.440 requires the Secretary of the *Cabinet* [Department] for Human Resources to allocate funds to the mental health-mental retardation boards at the beginning of each fiscal year. KRS *210.420* [210.430] requires the Secretary to prescribe, by regulation, a formula for the allocation of these funds, including provisions for per capita allocations, incentive allocations which require local matching funds based on per capita wealth of the area served, and discretionary allocations to be available to the Secretary to maintain essential services pursuant to KRS 210.410. This regulation prescribes the formula for allocation of such funds.

Section 1. Population. (1) Population figures used by the secretary to determine the formula allocations come from the U.S. Department of Commerce, Bureau of the Census, *as reported by the Urban Studies Center, University of Louisville, Population Research Unit 7, Report 7, January, 1982.* [Current Population Reports. The publication is Federal-State Cooperative Program-for Population Estimates, Series P-26, No. 76-17, July, 1977.] The estimates available from the most recent *edition* [addition] of this publication will be used for formula allocations in future years.

(2) Any geographic breakdown in population is in accordance with KRS 210.370.

Section 2. Definitions. (1) *"Cabinet" means Cabinet for Human Resources.* ["Per capita funds" means the figure derived by taking seventy and two-tenths (70.2) percent of the yearly allocation and dividing this figure by the population of the state.]

(2) *"Local tax match" includes revenue raised locally by a mental health/mental retardation board from:* ["Local match funds" means any revenue raised by a region that does not come from federal or state governments such as local tax, match other, or monies submitted by affiliate health care providers, including in-kind contributions, valued according to the assessed fair market value.]

(a) A mental health/mental retardation tax (KRS 210.460, 210.470, 210.480);

(b) A county fiscal court appropriation and/or an appropriation by a city legislative body, including in-kind contributions at fair market value.

(3) *"Other local match" includes revenue raised locally by a mental health/mental retardation board, but is limited to:* ["Local tax" means any funds coming from a mental health-mental retardation tax or an appropriation from a county fiscal court or municipal government, including in-kind contributions, valued according to the assessed fair market value.]

(a) In-kind contributions other than those from a county fiscal court or city legislative body;

(b) Cash donations and contributions;

(c) Sales of workshop products;

(d) Interest income;

(e) Rental income; and

(f) Funds provided by affiliates derived from the sources specified in this subsection, but only to the extent that such funds are used to finance programs endorsed by the board in its Annual Plan and Budget.

[(4)"Match other" means all funds raised locally that do not meet the definition of local tax funds. This would include but not be limited to donations, collections for services, earnings from contracts, or other non-appropriations from local governments or fiscal courts, etc. Funds budgeted from savings from prior years cannot qualify as matching funds.]

(4) [(5)] "Per capita wealth" means the current total assessed value of property, as adjusted and recorded by the Kentucky Department of Revenue, divided by the population of a given area.

(5) [(6)] "Region" means that geographic locality determined by incorporation thereof for the purpose of delivery of comprehensive mental health-mental retardation services under KRS 210.370 as controlled by a board of directors. [Region and "district" are synonymous to area development districts as defined by KRS 147A.050 with the exception of Livingston County's placement. Because of isolation, Livingston County is included in the Purchase Area rather than the Pennyrile District found in KRS 147A.050.]

Section 3. *Formula for Allocation of State Appropriated Funds. The formula for allocation of state appropriated funds shall be as follows: (1)* Per capita allocations. Of the *total* general funds *appropriated* [allocated] *by the General Assembly for a fiscal year* [to the department] for the [operation of regional] community mental health-mental retardation *services* [centers] *programs, fifteen (15)* [, seventy and two tenths (70.2)] percent thereof shall be distributed based on [a] per capita allocations. The sum available to each region [as it is incorporated] shall be determined by dividing the total funds available *in the per capita allocation* by the total population of the Commonwealth, multiplied by the population of each region; *provided, however, that the payment of such sum shall be on a cost related fee for service basis following receipt of appropriate and timely billings submitted by each respective board.*

(2) [Section 4. Secretary's] Discretionary [Funds] *allocations.* The discretionary allocations available to the secretary to maintain essential services pursuant to KRS 210.410 shall be equal to ten (10) percent of the general funds *appropriated* [allocated to the department] *by the General Assembly* for *a fiscal year* [the operation of

regional] *for* community mental health-mental retardation programs.

(3) Cost-related fee for service allocations. Of the total general funds appropriated by the General Assembly for a fiscal year for the Community Mental Health/Mental Retardation Services Program sixty percent (60%) thereof shall be allocated based on service units reported in the board's Annual Plan and Budget as approved by the Secretary including approved amendments thereto; provided, however, that payment shall be on a cost-related fee for service basis following receipt of appropriate and timely billings submitted by the board. In the event any board fails to report sufficient service units to access its cost-related fee for service allocation, such funds shall be reallocated on a cost-related fee for service basis to those regions whose reported service units exceed their allocation.

(4) [Section 5.] Incentive allocations. *(a)* [(1)] Of the *total* general funds *appropriated* [allocated to the department] for [the operation of regional] community mental health-mental retardation *programs* [centers], *fifteen (15)* [nineteen and eight-tenths (19.8)] percent thereof shall be allocated to the regions based on local *tax match* [matching funds,] *and other local match* weighted to reflect the per capita wealth of the region. Local *tax match* [matching fund figures] *and other local match* shall be based upon the preceeding fiscal year's local collections as determined by the independent auditor[s] of each board and certified by the *cabinet* [department]. [The per capita wealth adjustment alters the local tax and match other by adjusting the credit for matching funds from the state. The adjustment figure is computed by dividing the per capita wealth of the state by the per capita wealth of a region. Therefore, the true local tax and match other figures are figured by multiplying the per capita wealth adjustment by the local tax funds or the match other funds respectively.]

(b) The cabinet shall adjust the local tax match revenue and other local match revenue by applying a per capita wealth adjustment factor. The adjustment factor shall be computed by dividing the per capita wealth of the state by the per capita wealth of a region.

(c) [(a)] *The matching rates shall be* [The state shall match at a rate of] thirty-five (35) cents for each dollar of local tax match after per capita adjustment *and fifteen (15) cents for each dollar of other local funds after per capita wealth adjustment. The preceeding totals shall equal the total state funds earned by each board under the incentive allocation provided there are sufficient funds appropriated and allocated to the incentive allocation.*

(d) An initial incentive ceiling shall be calculated for each board by dividing the local incentive funds available (fifteen percent (15%) of the total general funds appropriated) by the population of the state, multiplied by the population of each region. In the event one (1) or more boards fail to report sufficient local tax match and other local match funds to attain their ceiling, the amount they are under the ceiling shall be placed back into the incentive allocation for reallocation to regions that exceeded their ceiling. If through this method all incentive funds cannot be allocated, the remaining funds shall be placed in the cost-related fee for service fund to be allocated on a cost-related fee for service basis.

(e) Incentive funds shall be adjusted following the receipt of actual collections for the previous fiscal year. The report of actual collections shall be submitted by the independent auditor in conjunction with each annual audit report of each respective board.

[(b) The state shall match at the rate of fifteen (15) cents for each dollar of local match other funds after per capita wealth adjustment.]

[(c) Therefore, the total of paragraphs (a) and (b) equals the total state funds earned by each center under their incentive section if there are sufficient funds appropriated and allocated to the incentive section of the grant.]

[(2) Because it is possible that mental health-mental retardation boards may raise sufficient local funds to match more state funds than are available under the incentive section, a maximum must be calculated for each board. This maximum shall be applied only if all boards reach their maximum. If one or more boards do not reach their maximum, the amount they are under their maximum shall be used to raise the maximum of all other boards. The calculation used to determine the initial maximum incentive funds available to each board is as follows: divide the total incentive funds available (nineteen and eight-tenths (19.8) percent of the total general funds appropriated) by the population of the state and multiply that figure by the population of each region.]

[(3) Any incentive funds not distributed to a region because the region failed to reach its maximum shall be placed back into the fund for reallocation to those regions that exceeded their local match.]

[(a) If through this method all incentive funds cannot be allocated, the remaining funds would then be allocated on the per capita method of allocation.]

[(b) First quarter allocations of the incentive funds shall be based on estimate of local matching funds available. Incentive funds shall be adjusted based upon the receipt of actual collections for the previous fiscal year. The actual collections shall be a by-product of each annual audit report of each respective board.]

[(c) Local funds can be provided by affiliates but only to the extent that these funds are used to finance programs endorsed by the board in their annual plan and budget.]

DAVID T. ALLEN, Commissioner
ADOPTED: June 21, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 2, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department 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 *Cabinet* [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 *cabinet* [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 *cabinet* [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 through 42 CFR 447.272. 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 *cabinet* [department] *(Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Payment System, revised July 1, 1982, which is hereby incorporated by reference)* and supplemented by the use of the Title XVIII-A reimbursement principles.

Section 3. Implementation of the Payment System. The *cabinet's* [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 *cabinet's* [department's] reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the *cabinet* [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 *cabinet* [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.

(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 *cabinet* [department] exceeding twenty-five (25) percent of billed charges, or where an evaluation by the *cabinet* [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 *cabinet* [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 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.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) 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 and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data 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) 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 political contributions, *travel and related costs for trips outside the state (for purposes of training, conventions, meetings, assemblies, conferences, seminars, or any related activities)* [the cost of travel outside the state (and all costs related thereto)], and legal fees for unsuccessful lawsuits against the *cabinet* [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 *cabinet* [department]) as the *cabinet* [department] may require to justify and document all costs to and services performed by the facility. The *cabinet* [department] shall have access to all fiscal and service records and data maintained by the provider, including unlimited onsite 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) *Cabinet* [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 other-

wise 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 *cabinet* [department] shall not be construed as approval of the item or expansion.

(13) The *cabinet* [department] shall audit each year-end cost report in the following manner: an initial desk review shall be performed of the report and the *cabinet* [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 *cabinet* [department]).

(16) The *cabinet* [department] may develop and/or utilize methodology to assure an adequate level of care. Facilities determined by the *cabinet* [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. This time limit may be extended at the specific request of the facility (with the *cabinet's* [department's] concurrence). The *cabinet* [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 *cabinet* [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 *cabinet* [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 *cabinet* [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 *7-1-82* [7-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$*25.99 & below* [24.99 & below]*	—	—
26.00 - 26.99 [25.00 - 25.99]	$1.38	$ .87
27.00 - 27.99 [26.00 - 26.99]	1.29	.75
28.00 - 28.99 [27.00 - 27.99]	1.18	.62
29.00 - 29.99 [28.00 - 28.99]	1.06	.47
30.00 - 30.99 [29.00 - 29.99]	.92	.31
31.00 - 31.99 [30.00 - 30.99]	.76	.13
32.00 - 34.19 [31.00 - 32.55]	.53	—

Maximum Payment *$34.19* [$32.55]

* For a basic per diem of *$25.99* [$24.99] 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 *7-1-82* [1-1-82])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$*31.99 & below* [29.99 & below]*	—	—
32.00 - 33.99 [30.00 - 31.99]	$1.38	$ .87
34.00 - 35.99 [32.00 - 33.99]	1.29	.75
36.00 - 37.99 [34.00 - 35.99]	1.18	.62
38.00 - 39.99 [36.00 - 37.99	1.06	.47
40.00 - 41.99 [38.00 - 39.99]	.92	.31
42.00 - 43.99 [40.00 - 41.99]	.76	.13
44.00 - 45.99 [42.00 - 43.99]	.53	—

* For a basic per diem of *$31.99* [$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 *7-1-82* [10-1-81])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$*34.00 & below* [31.99 & below]*	—	—
35.00 - 36.99 [32.00 - 33.99]	$1.38	$ .87
37.00 - 38.99 [34.00 - 35.99]	1.29	.75
39.00 - 40.99 [36.00 - 37.99]	1.18	.62
41.00 - 42.99 [38.00 - 39.99]	1.06	.47
43.00 - 44.99 [40.00 - 41.99]	.92	.31
45.00 - 46.99 [42.00 - 43.99]	.76	.13
47.00 - 49.99 [44.00 - 45.99]	.53	—

Maximum Payment *$52.69* [$48.75]**

* For a basic per diem of *$34.99* [$31.99] 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 *$83.09* [$75.65].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. 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 have special requirements that must be considered. The *cabinet* [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 *cabinet* [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 *cabinet* [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, *Department* [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 *Division for Management and Development* [Center for Program Development], *Department* [Bureau] for Social Insurance. A date for the rate review panel to convene will be established within fifteen (15) days after receipt of the written request. The panel shall issue a binding decision on the issue within ten (10) 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 *cabinet's* [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 *cabinet* [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 *cabinet* [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 *cabinet's* [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 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 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 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 *cabinet* [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 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 *cabinet* [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: June 30, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 2, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [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 *cabinet* [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 *cabinet* [department] for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.321, the *cabinet* [department] shall make payment to providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the *cabinet* [department] may require of this class of provider) set by the *cabinet* [department], on the following basis:

(1) *Payment shall be on a prospective basis based on usual and customary charges compared against the mental health center's annualized upper limit on payments. Payments may not exceed usual and customary charges or the annualized upper limits.* [Payment shall be made on the basis of reasonable allowable costs.]

(2) Payment amounts shall be determined by application of the "Community Mental health Center General Policies and Guidelines and Principles of Reimbursement," herein incorporated by reference, developed and issued by the *cabinet* [department], supplemented by the use of Title XVIII reimbursement principles.

(3) *Under this system, a center will receive in total Title XIX payments during the year the amount of its usual and customary charges for services rendered Title XIX eligible recipients, so long as such usual and customary charges do not exceed (on a cumulative basis) the annualized upper limit (total payments amount) which has been set for the*

center. [Allowable costs shall not exceed customary charges which are reasonable.]

(4) *The annualized upper limit shall be the lesser of the prior fiscal year (July 1—June 30) audited allowable Title XIX costs or Title XIX payments to the center, with such amount increased by ten (10) percent to allow for inflation in the payment period. Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state (for purposes of training, conventions, meetings, assemblies, conferences, seminars, or any related activities), and legal fees for unsuccessful lawsuits against the cabinet.* [The upper limit for allowable costs shall be set at the median visit cost, for the four (4) different service areas reimbursed under the program (inpatient, outpatient, partial hospitalization, and personal care), with the upper limit imposed on a prospective basis at the time final rates are determined.]

[(5) Allowable costs shall not include the costs associated with political contributions, membership dues, travel and related costs for trips outside the state, and legal fees for unsuccessful lawsuits.]

Section 2. Implementation of Payment System. (1) *Interim payments made shall be based on charges, and shall be considered final payments except under the following circumstances:* [The system shall utilize a method whereby community mental health centers are reimbursed on a prospective basis based on actual allowable cost.]

(a) The program may pay a percentage of charges to assure that the annualized upper limit (the lesser of fiscal year 1982 costs or program expenditures) with respect to the center is not exceeded. When a reduction factor is used, any payments owing to the center at the end of the payment period shall be settled (paid) to ensure that payments for the period equal usual and customary charges subject to the upper limit for the center. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure an even flow of reimbursement to the center throughout the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.

(b) Any overpayments due the program at the end of the period as a result of exceeding the upper limit shall be recouped in a similar manner, i.e., by settlement or by withholding.

(c) Overpayments discovered as a result of audits may be settled in the usual manner.

[(2) The department may establish an interim rate at the end of each fiscal year until such time as a final prospective rate is determined with interim payments adjusted to the final prospective rate as necessary.]

(2) [(3)] The vendor shall complete an annual cost report on forms provided by the *cabinet* [department] not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(3) [(4)] Each community mental health center provider shall make available to the *cabinet* [department] at the end of each fiscal reporting period, and at such intervals as the *cabinet* [department] may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the *cabinet* [department].

(4) [(5)] Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Billing and Data Collection. For purposes of Title XIX program payments, this regulation and the "Title XIX Payments Addendum" to the reimbursement manual shall supersede any conflicting sections (e.g., sections 100, 103, 205, and 207) of the reimbursement manual. However, no provision of this regulation should be construed as relieving any center of the necessity of collecting and submitting such data as the program may require, for implementation of the unit system for payments, during the payment period covered by this regulation.

Section 4. [3.] Nonallowable Costs. The *cabinet* [department] shall not make reimbursement under the provisions of this regulation for services not covered by 904 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the *cabinet's* [department's] "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

Section 5. Implementation Date. Payments under this system shall begin effective July 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: June 29, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 2, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

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

RELATES TO: KRS 205.245
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973 recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation: Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the

recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the *department* [bureau] in determining optional supplementation payments for a class of recipients is increased.

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

Section 2. Optional State Supplementation: Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR 1:003 and 904 KAR 1:004 who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:030 or family care home as defined in 902 KAR 20:040 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Income Considerations: In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income is conserved for an ineligible, non-SSI spouse and/or minor dependent children in the amount of the medical assistance program basic maintenance scale for family size adjusted by deduction of sixty-five dollars ($65) from monthly earnings of spouse.

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

Section 4. Standard of Need: (1) The standard, based on living arrangement, from which income as computed in Section 3 is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: [not less than $409, effective 7/1/80;] not less than $436, effective 7/1/81; *not less than $456, effective 7/1/82;*

(b) Family care home: [not less than $322, effective 7/1/80;] not less than $349, effective 7/1/81; *not less than $369, effective 7/1/82;*

(c) Caretaker:

1. Single individual: [not less than $276, effective 7/1/80;] not less than $303, effective 7/1/81; *not less than $323, effective 7/1/82;*

2. Married couple, one (1) requiring care: [not less than $395, effective 7/1/80;] not less than $435, effective 7/1/81; *not less than $465, effective 7/1/82;*

3. Married couple, both requiring care: [not less than $433, effective 7/1/80;] not less than $473, effective 7/1/81; *not less than $503, effective 7/1/82.*

(2) In couple cases, both requiring a caretaker, and both eligible, one-half (½) of the deficit is payable to each. If one (1) is ineligible (neither aged, blind nor disabled) the payment is computed on the basis of a married couple, one (1) requiring care.

Section 5. Institutional Status: No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.130.

Section 6. Residency: (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 5, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.130. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be pre-authorized by staff of the *Department* [Bureau] for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

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

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any non-institutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any non-institutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(11) Notwithstanding subsections (3) through (10), any individual placed by the *cabinet* [department] in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(12) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(13) An individual eligible for and receiving a supplemental payment in *April 30, 1983,* [October, 1979] shall be considered a Kentucky resident through October, 1981, even if he does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(14) Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) above are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

JOHN CUBINE, Commissioner
ADOPTED: June 29, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 2, 1982 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

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

RELATES TO: KRS 205.200(2), 205.210(1)
PURSUANT TO: KRS 13.082, 205.200(2)
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

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

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

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

(4) "Full-time school attendance" means a workload of at least:

(a) Twenty-five (25) clock hours per week in *a General Educational Development (GED) program* [secondary school]; or

(b) Twelve (12) semester hours or more in a college or university; or

(c) *The number of hours required by the individual high school/vocational school to fulfill their definition of full time.* [Thirty (30) clock hours per week in a trade or vocational school in a program with shop practice; or]

[(d) Twenty-five (25) clock hours per week in a trade or vocational school in a program without shop practice; or]

[(e) Thirty (30) clock hours per week in apprenticeship training under the Secondary Education Program of Apprenticeship Training or the standard for the industry involved; or]

[(f) Four (4) clock hours per day with a minimum of one (1) hour in class and two (2) hours on the job for the Cooperative Vocational Education Program.]

[(g) Less than full-time attendance in apprenticeship or cooperative training is not recognized as school attendance.]

(5) "Part-time school attendance" means a workload of *anything less than "full-time school attendance."* [at least:]

[(a) Twelve (12) clock hours per week in a secondary school; or]

[(b) Eight (8) semester hours in a college or university; or]

[(c) Fifteen (15) clock hours per week in a trade or vocational school in a program with shop practice; or]

[(d) Twelve (12) clock hours per week in a trade or vocational school in a program without shop practice.]

[(e) Attendance of less than part-time workload but fulfilling the number of hours required to complete a course leading to a certificate, degree or diploma by the end of the current term is considered part time.]

(6) "Gross income limitation standard" means 150 percent of the sum of the assistance standard, as set forth in Section 8, and any educational allowance as set forth in Section 9.

(7) [(6)] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(8) [(7)] "Recoupment" means recovery of overpayments of assistance.

(9) [(8)] "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

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

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

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

(b) Home furnishings, including all appliances;

(c) Clothing;

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

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise; and

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

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

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

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

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

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

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4, subsections (1), (2), and (3). If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

[(4) Beginning July 1, 1982, a case may be suspended rather than terminated when ineligibility occurs for only one (1) month in accordance with 45 CFR 233.34(d).]

(4) [(5) Prior to July 1, 1982, a period of ineligibility shall be established for recipients whose income exceeds the limits set forth in subsections (1) or (3) of this section. Beginning July 1, 1982,] A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(D), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

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

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

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

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

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

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

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

(f) Value of food coupons;

(g) Non-emergency medical transportation payments;

(h) Principal of loans;

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

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grants;

(m) Home produce for household consumption;

(n) Any housing subsidies received from federal, state or local governments;

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

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

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

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

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

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

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

(v) Energy assistance payments;

(w) [Beginning July 1, 1982,] Earnings received by a person employed by CETA under the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Project (YCCIP), and the Youth Employment and Training Program (YETP). [; and]

[(x) For the period prior to July 1, 1982, earned income tax credits.]

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

(a) Earnings received from participation in the Job Corps Program under CETA by an AFDC child;

(b) Earnings of a child in full-time school attendance or *earnings of a child* in part-time school attendance, if not working full time;

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

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed $160 per month *per individual* for full-time employment or $110 per month *per individual* for part-time employment. [; and]

[(e) Prior to July 1, 1982, earnings received by a person employed by CETA under the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Project (YCCIP), and the Youth Employment and Training Program (YETP).]

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

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

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

(4) Exceptions. Disregards from earnings in subsection (2)(c) and (d) and subsection (3)(b) shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made.

(b) [For the period beginning July 1, 1982,] Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved *and reported the move timely, however, the move* resulted [ing] in a delay in receiving or failure to receive the mandatory monthly report form; or

2. *An immediate family member living in the home was institutionalized or died during the filing period* [Institutionalization of the specified relative]; or

[3. Death of any member of the assistance group; or]

3. [4.] The specified relative was *out of town* [away from home] during the entire filing period; or

4. [5.] The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

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

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

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

(b) An amount equal to the AFDC assistance standard

for the appropriate family size, for the support of the stepparent and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or could be claimed by the stepparent as dependents for purposes of determining his/her federal personal income tax liability;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Educational Allowance. Effective August 1, 1982, with initial payments beginning October, 1982, an educational allowance shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for said month(s).

(1) Technical requirements. The following requirements must be met during any month for which an education allowance is paid.

(a) The caretaker relative must be included in the assistance grant;

(b) The caretaker relative must be enrolled full-time, as defined in Section 1, in high school, vocational school, or a General Educational Development (GED) program for which no wage or allowance is received. If attending college, the caretaker relative must be enrolled either full or part-time, as defined in Section 1;

(c) A cost must have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. The payment standards are as follows:

Number of Children	*Full-time Enrollment*	*Part-time Enrollment*
1	*$120*	*$70*
2 or more	*$150*	*$90*

(3) Limitations. The number of months an educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	*Maximums*
General Educational Development (GED)	*12 months*
High School	*24 months*

2. A student wishing to continue his/her education past the high school level may be eligible for additional payments not to exceed the maximums for the post-high school level.

(b) Post-high school level. A student may change programs within this level, however, the cumulative number of

months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	*Maximums*
Vocational School	*24 months*
College/University	*50 months*

Section *10.* [9.] Recoupment. [Beginning July 1, 1982,] The following provisions *are* [shall be] effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments shall be recovered from *the responsible person(s) in the AFDC case which was overpaid in the respective orders as follows*:

(a) *Active case.* [The assistance group which was overpaid; and/or]

1. *Specified relative;*
2. *Second parent, if appropriate; or*
3. *Payee, other than protective payee.*

(b) *Inactive case.* [Any assistance group of which a member of the overpaid assistance group has subsequently become a member; and/or]

1. *Most recent specified relative;*
2. *Most recent second parent, if appropriate; or*
3. *Most recent payee, other than protective payee.*

[(c) Any individual members of the overpaid assistance group whether or not currently a recipient.]

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the *cabinet* [department]; and/or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety percent (90%) of the amount of assistance paid to a like size family with no income in accordance with Section 8; and/or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the *cabinet* [department] shall offset one against the other in correcting the payment to current recipients.

[(5) Cases in which the amount of assistance is reduced to zero, as a result of recoupment, shall be considered as recipients of AFDC for all other purposes.]

(5) [(6)] Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administration and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

[Section 10. Foster Care. (1) Payment rates. Payment rates are based on the Department for Human Resources per diem payment rates. The department's rates are based on the age and needs of the child.]

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

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

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

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

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

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

[(3) Provisions of this section shall apply only to the period prior to July 1, 1982.]

JOHN CUBINE, Commissioner
ADOPTED: July 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 14, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary, shall by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth definitions for terms used by the *cabinet* [department] in regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Nutrition Service, hereinafter referred to as FNS, which is completed by a household member or authorized representative; or for household consisting solely of public assistance recipients, it may also mean the application form used to apply for public assistance, including attachments approved by FNS,

which is completed by a household member or authorized representative.

(2) "Authorization to participate card," ATP, means the document which is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities: making application for the program, obtaining the coupons, using the coupons. *Authorized representatives will be disqualified for program abuse in accordance with 7 CFR 273.1(f).*

(4) "Certification" means the action necessary to determine eligibility of a household. Such action includes interviews, verification and decisions.

(5) "Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concessional prices to elderly persons or SSI recipients and their spouses.

(6) "Coupons" mean any stamp, coupon or type of certificate issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(7) "Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the *cabinet* [department] or agencies designated by the Governor as responsible for the administration of the state's programs for alcoholics and drug addicts.

(8) "Elderly person" means a person sixty (60) years of age or older.

(9) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption of eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by a communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(d) Meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under Title II or Title XVI of the Social Security Act; or

(f) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents.

(10) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(11) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(12) "Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113) including any subsequent amendment thereto.

(13) "Group living arrangement" means a public or private nonprofit residential setting that serves no more than sixteen (16) residents and is appropriately certified. Residents must be blind or disabled and receiving benefits under Title II or Title XVI of the Social Security Act to be eligible for food stamps.

(14) "Head of household" is the person in whose name the application for participation is made.

(15) "Household" means any of the following individuals or groups of individuals provided that such individuals or groups are not residents of an institution, and provided that separate household status shall not be granted to a spouse of a member of the household, to children under eighteen (18) years of age under the parental control of a member of the household, to non-elderly parents (regardless of their marital status) and children who live together, or to a boarder:

(a) An individual living alone;

(b) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

(c) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(16) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(17) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(18) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to colleges, universities, and vocational or technical schools.

(19) "Low-income household" means any household whose gross income does not exceed 130 percent of the Office of Management and Budget poverty guidelines, with the following exceptions: Households in which one (1) of the members is sixty (60) years of age or older, or one (1) of the members receives Supplemental Security Income (SSI) under Title XVI of the Social Security Act or disability and blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act shall not have net income exceeding 100 percent of the Office of Management and Budget poverty guidelines.

(20) "Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which the *cabinet* [department] has contracted for the preparation of meals at concessional prices to elderly persons and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(21) "Medicaid" means medical assistance under Title XIX of the Social Security Act, as amended.

(22) "Non-assistance household" hereir after referred to as NA, means a household containing members who are not included in a public assistance household, hereinafter referred to as PA, grant.

(23) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(24) "Non-household member" means individuals residing with a household but not considered household

members in determining the household's eligibility or allotment. Non-household members who are otherwise eligible may participate in the program as separate households.

(a) Roomers. Individuals to whom a household furnishes lodging, but not meals, for compensation.

(b) Boarders. Individuals to whom a household furnishes lodging and meals with the following restrictions;

1. Boarder status shall not be granted to a spouse of a member of the household, non-elderly parents (regardless of marital status) and children who live together even if they do not prepare or eat meals together, or to children under eighteen (18) years of age under the parental control of a member of the household.

2. Boarder status shall not be extended to persons paying less than a reasonable monthly payment for meals.

(c) Live-in-attendants. Individuals who reside with a household to provide medical, housekeeping, child care or other similar personal services.

[(d) Ineligible aliens. Individuals who do not meet the citizenship or eligible alien status.]

(d) [(e)] Ineligible students. Students not meeting eligiblity requirements as set forth in 7 CFR 273.5.

(e) [(f)] Disqualified individuals. Individuals disqualified for fraud, *for failure to meet the citizenship or eligible alien status as set forth in 7 CFR 273.2(f)(1)(ii), 273.2(f)(2)(ii), and 273.4* or for failure to meet social security number requirements as set forth in 7 CFR 273.6.

(f) [(g)] Others. Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

(25) "Overissuance" means the amount by which coupons issued to a household exceeds the amount such household was eligible to receive.

(26) "Public assistance" hereinafter referred to as PA, means any of the programs authorized by the Social Security Act of 1935, as amended; old age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed parents, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.

(27) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(28) "Spouse" refers to either of two (2) individuals:

(a) Who would be defined as married to each other under applicable state law; or

(b) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(29) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees, unless otherwise exempt from work registration for reasons other than employment.

(30) "Supplemental security income (SSI)" means monthly cash payments made under the authority of Title XVI of the Social Security Act, as amended, to the aged, blind and disabled.

(31) "Thrifty food plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty-four (54), a child six (6) through eight (8), and a child nine (9) through eleven (11) years of age, determined in accordance with the Secretary of United States Department of Agriculture's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(32) "Underissuance" means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

JOHN CUBINE, Commissioner
ADOPTED: July 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 14, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 3:020. Eligibility requirements.

RELATES TO: KRS 194.050
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility requirements used by the *cabinet* [department] in the administration of the Food Stamp Program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service, of the United State Department of Agriculture, national uniform standards of eligibility for the Food Stamp Program, composed of both financial and non-financial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Non-financial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) non-farm income poverty guidelines.

Section 2. Countable Income. The following, when received by any household member, shall be considered as income:

(1) All wages and salaries of an employee, including all wages and salaries received by a striker the month prior to the month of the strike.

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.

(4) Payments under Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 shall be considered earned income unless specifically excluded in 7 CFR 273.9(c)(10)(iii).

(5) The earned or unearned income of disqualified individuals as set forth in 904 KAR 3:035, Section 5, subsection 3.

(6) [(4)] Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.

(7) [(5)] Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.

(8) Monies which are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for a household expense.

(9) [(6)] Support or alimony payments made directly to the household from non-household members.

(10) [(7)] Scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like in excess of amounts excluded.

(11) [(8)] Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(12) [(9)] Monies withdrawn or dividends which are or could be received from a trust fund by a household, unless otherwise exempt under the provisions set forth in 7 CFR 273.9(c).

Section 3. Income Exclusions. The following payments shall not be considered as income;

(1) Money withheld from an assistance payment, earned income or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source.

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment.

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty dollars ($30) in a quarter.

(6) Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are used for tuition and mandatory fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped.

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household.

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are members of the household, who are students at least half-time and who have not *attained* [obtained] their eighteenth (18th) birthday.

(11) Money received in the form of a non-recurring lump-sum payment.

(12) The cost of producing self-employment income.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

(14) Any energy assistance payments made under federal, state, or local laws.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below.

(1) Households which contain a member who is sixty (60) years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV or XVI of the Social Security Act shall have their net income compared 100 percent to the Office of Management and Budget (OMB) poverty guidelines.

(2) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the Office of Management and Budget (OMB) poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS.

(2) Eighteen (18) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept or continue employment or attend training or pursue education preparatory to employment. This deduction shall not exceed the standard established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction alone or in combination with the dependent care deduction in subsection three (3) above shall not exceed a fixed monthly amount established by FNS. This fixed monthly amount shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR Part 273.9(d). The *cabinet* [department] shall develop a standard utility allowance for use in calculating shelter cost for those households which

incur utility cost separate and apart from their rent or mortgage payments. If the household is not entitled to the standard or does not choose to use the standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses in excess of thirty-five dollars ($35) per month, excluding special diets, incurred by any household member who meets the definition of aged, blind, or disabled as set forth in 7 CFR 273.9(d)(3). Allowable medical costs are those meeting the criteria set forth in 7 CFR 273.9(d)(3) including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. Uniform national resource standards of eligibility shall apply to applicant households *in accordance with 7 CFR 273.8.* Eligibility shall be denied or terminated if the total value of the liquid and non-liquid household's resources exceed:

(1) $3000: for all households with two (2) or more members, when at least one (1) member is sixty (60) years or older; or

(2) $1500: for all other households.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personal effects including one (1) burial plot per household member, the cash value of life insurance policies and pension funds, and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.

(3) Licensed/unlicensed vehicles as specified in 7 CFR Part 273.8.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express[ed] provision of federal statute.

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 9. Non-financial Criteria. Non-financial eligibility standards apply equally to all households and consist of:

(1) Residency: A household must live in the county in which they make application;

(2) Identity: Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;

(3) Citizenship or eligible alien status: A program participation shall be limited to either a citizen of the United States or eligible alien as outlined in 7 CFR Part 273.4;

(4) Household size: Size of household will be verified through readily available documentary evidence or through a collateral contract; and

(5) Work registration: All household members between the ages of eighteen (18) and sixty (60), except those exempt in 7 CFR Part 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR Part 273.7.

JOHN CUBINE, Commissioner

ADOPTED: July 14, 1982

APPROVED: W. GRADY STUMBO, Secretary

RECEIVED BY LRC: July 14, 1982 at 3:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the certification process used by the *cabinet* [department] in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. Eligibility and benefit levels shall be determined by the *cabinet* [department] by considering the households circumstances for the entire month(s) for which each household is certified. Procedures specified in 7 CFR Parts 273.3, 273.10(a), 273.10(b), 273.10(c), 273.10(d) and 273.10(e) shall be used to determine eligibility and calculate net income and benefit levels.

Section 2. Certification Periods. The *cabinet* [department] shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period entitlement to food stamp benefits ends. Further eligibility shall be established

only upon a recertification based upon a newly completed application, an interview, and verification. Certification periods for non-public assistance households shall be in accordance with those specified in 7 CFR Part 273.10(f)(3)(4)(5)(6). Households in which all members are included in a PA grant shall be certified for one (1) year, except that the food stamp case shall be recertified at the same time they are redetermined for PA.

Section 3. Certification Notices to Households. The *cabinet* [department] shall provide applicants with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility.
(2) Notice of denial.
(3) Notice of pending status.

Section 4. Application for Recertification. The *cabinet* [department] shall process applications for recertification in accordance with 7 CFR Part 273.10(g)(2) and Part 273.14.

Section 5. Certification Process for Specific Households. The following households have circumstances that are substantially different from other households and therefore require special certification procedures:

(1) Households with self-employed members shall have their cases processed in accordance with 7 CFR Part 273.11(a).

(2) Households with boarders shall have their case processed in accordance with 7 CFR Part 273.11(b).

(3) Households with members which have been disqualified from program participation due to fraud or failure to provide a Social Security number *or for being an ineligible alien* shall have their case processed in accordance with 7 CFR Part 273.11(c).

(4) Households with [ineligible aliens or] other non-household members will be processed in accordance with 7 CFR Part 273.11(d).

(5) Residents of drug/alcoholic treatment and rehabilitation programs shall have their case processed in accordance with 7 CFR Part 273.11(e).

(6) Residents of group living arrangements who are blind or disabled receive benefits under Title II or Title XVI of the Social Security Act shall have their case processed in accordance with 7 CFR Part 273(f), which allows residents to apply in their own behalf or through the use of an authorized/certified facility's authorized representative.

(7) Residents of shelters for battered women and children shall have their case processed in accordance with 7 CFR 273.11(g).

(8) Households consisting only of Supplemental Security Income (SSI) applicants or recipients shall have their case processed in accordance with 7 CFR 273.2(k).

(9) Households with a member who is on strike shall have their case processed in accordance with 7 CFR 273.1(g).

(10) Households requesting replacement allotments shall be processed in accordance with 7 CFR 273.11(h), 274.2(h) and 274.3(c).

Section 6. Reporting Changes. Certified households are required to report [within ten (10) days,] those changes in household circumstances specified in 7 CFR Part 273.12(a) *within ten (10) days of the date the change becomes known to the household. An applying household shall report all changes related to its food stamp elibility and benefits at the certification interview, or for changes occurring after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.* The *cabinet* [department] shall [use the change report form designated by FNS and shall] act on reported changes in accordance with 7 CFR Part 273.12(c). The *cabinet* [department] shall comply with other change reporting provisions outlined in 7 CFR Part 273.12.

JOHN CUBINE, Commissioner
ADOPTED: July 14, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 14, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, DHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

LEGISLATIVE RESEARCH COMMISSION

1 KAR 4:005. Legislative oversight procedures applicable to federal block grants administered by state agencies.

RELATES TO: KRS 45.350 through 45.359 and 273.453 through 273.466
PURSUANT TO: KRS 7.320
NECESSITY AND FUNCTION: Pursuant to KRS 45.351 and 273.453, state administering agencies, as defined by KRS 45.350(5) and 273.410(6), are required to submit any federal block grant application to the Legislative Research Commission for review and comments at least ninety (90) days prior to the submission of such application to the federal administering agency, as defined by KRS 45.350(4) and 273.410(4), for funding. Effective July 15, 1982, KRS 273.456 provides that before any community services block grant application is submitted by a state administering agency to a federal administering agency for funding, the application must be approved by the Legislative Research Commission. Effective July 1, 1983, KRS 45.3511(2) provides that before any other federal block grant application is submitted by a state administering agency to a federal administering agency for funding, the application must be approved by the Legislative Research Commission. KRS 45.357 and 273.466 provide for the submission of actual use and distribution reports and block grant status reports to the Commission by state administering agencies. This regulation establishes the procedures applicable to the review, comment, and approval or disapproval by the Commission of federal block grant applications submitted to the Commission by state administering agencies, and procedures

applicable to the review of reports on the actual use and distribution of block grant funds administered by state agencies, and on block grant program status reports filed with the Commission by state administering agencies.

Section 1. Procedures implementing KRS 45.350 through 45.359 and 273.453 through 273.466, respecting the Legislative Research Commission's block grants application oversight functions and responsibilities are as follows:

(1) Every state administering agency applying for a federal block grant shall submit its respective block grant applications to the Legislative Research Commission ninety (90) days prior to date of submission to a federal administering agency, as required by federal law, or no less than ninety (90) days before such agencies elect to submit their respective block grant applications to the appropriate federal administering agencies.

(2) Any block grant application, including community service block grant applications, submitted to the Commission before the effective date of KRS 45.351, shall be subject to a full ninety (90) days of review and processing by the Commission, beginning July 1, 1982, which is the effective date of KRS 45.351.

(3) Any block grant application submitted to the Commission on July 1, 1982, or thereafter, shall be subject to a full ninety (90) days of review and processing by the Commission, running from the date of receipt of the application by the Commission.

(4) State administering agencies submitting block grant applications to the Commission shall forward one (1) complete copy each of such applications to: Director, Legislative Research Commission, The State Capitol Building, Frankfort, Kentucky 40601.

(5) When the Kentucky General Assembly is not in session, the Commission automatically shall refer block grant applications as follows: Community Services, Preventive Health and Health Services, Maternal and Child Health Services, Alcohol and Drug Abuse and Mental Health Services, Social Services (Title XX), and Primary Care Block Grants shall be referred to the Interim Joint Committee on Health and Welfare; Elementary and Secondary Eduation Block Grants shall be referred to the Interim Joint Committee on Education; Low-Income Home Energy Assistance Block Grants shall be referred to the Interim Joint Committee on Energy; and Community Development Block Grants shall be referred to the Interim Joint Committee on Cities. Block grants not falling within these classifications shall be referred by the commission to the interim joint committee with appropriate jurisdiction. Any committee designated herein shall be construed as a "designated legislative body" pursuant to KRS 45.350 and 273.410.

(6) When the Kentucky General Assembly is in session the Commission automatically shall refer block grant applications to the standing committees designated by the Committee on Committees of each house. Any committee designated herein shall be construed as a "designated legislative body" pursuant to KRS 45.350 and 273.410.

(7) With ten (10) days of receipt of any block grant application, the Commissioner or coordinator for block grants oversight for the Commission shall provide for statewide notice of a public hearing on said application in accordance with 1 KAR 4:010, and shall notify the committee to which the application has been referred of the publication of said notice.

(8) Whenever applications and supporting materials submitted to the Commission are incomplete or insufficient, the Commission or the Commission's coordinator for block grants oversight may request the state administering agency to make available to the committee additional background data and supporting information relating to the block grant pursuant to KRS 45.351(2) and KRS 273.453(2). All requests for additional materials shall be in writing under the signature of the Commission's director or the Commission's coordinator for block grants oversight unless the Commission otherwise directs and provides.

Every block grant application submitted by the state administering agency shall be complete in form and content as required by appropriate federal laws and regulations, and KRS 45.351(3) and 273.453(3).

(9) Within the first thirty (30) days from the date of receipt of any block grant application, a public hearing shall be held by the committee to which the application has been assigned, and all deliberations shall be electronically recorded. The committee to which a block grant application has been referred shall conduct the public hearing on the application, except when the Commission has authorized the establishment of a subcommittee of said committee to conduct the public hearing. All public hearings shall be restricted to the receipt of comments from the public and the state agency submitting the application, and shall be held in Frankfort, Kentucky.

(10) Upon the request of the chairman of the committee to which the application has been referred, the Commission may authorize the establishment of a subcommittee of the committee for the purposes of conducting the public hearing and advising the committee on the block grant application. Upon the request of the committee chairman, the subcommittee may include three (3) members of the Interim Joint Committee on Appropriations and Revenue.

(11) A copy of the application as submitted to the Commission shall be available for public review, prior to the public hearing, in the Commission's offices as well as at locations designated by the state administering agency. This copy shall not be removed from the Commission's offices. One (1) copy of the application under consideration also shall be available for public inspection at the public hearing on the application; however, copies of the application for retention by the public must be obtained from the state administering agency and not from the Commission.

(12) Public inquiries about specific proposals contained in the application, including but not limited to the intent of the application and programs proposed to be funded by the application, should be directed to the appropriate state administering agency, and shall not be directed to the Commission or its staff. Responses to such public inquiries are solely within the purview and responsibility of the state administering agency submitting the application. One (1) copy of any public inquiry on any block grant application and responses thereto shall be submitted by the state administering agency to the Commission within five (5) days prior to the Commission's public hearing on such application.

(13) Transcriptions of hearings shall not be made unless the Commission so directs. When a transcription is required and approved by the Commission, the requesting party shall reimburse the Commission for its total costs for making such transcription.

(14) Within sixty (60) days from the date the application is received by the Commission (except that no application shall be considered officially received by the Commission until July 1, 1982), the committee shall complete its review of the application in accordance with the criteria specified in KRS 45.353(2) or KRS 273.460(2), and shall issue a writ-

shall be a cash bonus of ten (10) percent of the documented savings, not to exceed $2,500.

DEE MAYNARD, Commissioner
ADOPTED: June 11, 1982
RECEIVED BY LRC: July 15, 1982 at 2:50 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Dee Maynard, Commissioner, Department of Personnel, Room 373, New Capitol Annex Building, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System

102 KAR 1:200. Value of service performed.

RELATES TO: KRS 161.620
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: Legislation enacted by the 1982 General Assembly specifies that the value of a year of service will increase to two and one-half percent (2.5%) on January 1, 1984. The legislation further provides that the Board of Trustees shall establish the value of service performed during the 1983-84 fiscal year and stipulates that in no case shall the value of service exceed two and one-quarter percent (2.25%). This regulation is intended to establish two and one-quarter percent (2.25%) as the value for a full year of credit for 1983-84 and provide that fractional service performed during 1983-84 be determined as a pro rata part of this base amount.

Section 1. The retirement allowance value for a full year of service performed during the 1983-84 fiscal year shall be two and one-quarter percent (2.25%). Members entitled to a full year of service credit for service performed during 1983-84 shall receive two and one-quarter percent (2.25%) service credit and this base shall be used in determining fractional service credit for fractional service performed during 1983-84.

Section 2. The provisions of this regulation shall become effective October 1, 1982.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: July 12, 1982 at 4:20 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System

102 KAR 1:210. Submission of employer data.

RELATES TO: KRS 161.560
PURSUANT TO: KRS 13.082, 161.310
NECESSITY AND FUNCTION: Amendments to KRS 161.560 enacted by the 1982 Session of the General Assembly requires the Teachers' Retirement System to impose an interest penalty of twelve percent (12%) per year on employers who do not remit member contributions within fifteen (15) days following each payroll period. This regulation is intended to establish the guidelines for submission of payroll reports, contribution lists, other data from employers, and imposition of the interest penalty.

Section 1. Each employer shall advise the Teachers' Retirement System as to the payroll dates that are applicable to all employees that are members of the Teachers' Retirement System. The initial report of this information shall be due in the Retirement System Office by October 1, 1982. The employers shall be responsible for advising the Teachers' Retirement System of any and all future changes in the payroll dates.

Section 2. No later than fifteen (15) days following the end of each payroll period, the employer shall forward all member contributions to the Teachers' Retirement System. In forwarding the member contributions, the employer shall certify that the submitted monies represent all contributions deducted for the applicable pay period.

Section 3. In the event that member contributions are not received by the Teachers' Retirement System within fifteen (15) days following a payroll period, the employer shall be charged one percent (1%) of the amount of the late contribution for each month or part of a month that the contributions are late. The employer shall pay the imposed penalty to the Teachers' Retirement System within thirty (30) days after notification of the infraction.

Section 4. The employment contract, payroll and retirement contribution records of members shall be made available to representatives of the Teachers' Retirement System by the employer at any time during regular working hours.

Section 5. The Teachers' Retirement System may require from the employer such payroll reports, contribution lists and other pertinent data that are necessary to identify member retirement contributions. The required information shall be on forms furnished by the Retirement System or approved by the Retirement System.

Section 6. The provisions of this regulation shall become effective October 1, 1982.

PAT N. MILLER, Executive Secretary
ADOPTED: June 21, 1982
RECEIVED BY LRC: July 12, 1982 at 4:20 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Teachers' Retirement System, 216 West Main Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:056. Repeal of 201 KAR 2:055 and 201 KAR 2:060.

RELATES TO: KRS Chapter 315
PURSUANT TO: KRS 13.082, 315.110(3), 315.120, 315.191(1)
NECESSITY AND FUNCTION: Senate Bill 241 of the General Assembly, Commonwealth of Kentucky, Regular Session 1982 provided for changes in KRS Chapter 315 Sections .110(1) and (3) which covers the issues of 201 KAR 2:055 and 201 KAR 2:060.

Section 1. 201 KAR 2:055, License renewal; renewal fee, and 201 KAR 2:060, Pocket certificate, are hereby repealed.

JOHN H. VOIGE, Executive Secretary
ADOPTED: June 16, 1982
RECEIVED BY LRC: July 1, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:110. Drug products for which there is insufficient data.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited, "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products for which there is insufficient data to determine the equivalency.

Section 1. The following are determined to be non-interchangeable:
Drug products for which there is insufficient data to determine the equivalency.
Disulfiram—oral; tablet
Erythromycin base—oral; tablet
Erythromycin base, sterate or estolate may not be interchanged.
Prednisolone—oral; tablet
Prednisone—oral; tablet

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:115. Controlled release tablets, capsules and injectables.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited, "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists controlled release tablets, capsules and injectables as non-interchangeable.

Section 1. The following are determined to be non-interchangeable: Controlled release tablets, capsules and injectables—these dosage forms are subject to bioavailability and bioequivalence differences, primarily because different manufacturers developing controlled release products for the same active ingredient do not employ the same approach to formulating their controlled release products.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:120. Enteric coated oral dosage forms.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists enteric coated oral dosage forms.

Section 1. The following are determined to be non-interchangeable: Enteric coated oral dosage forms—drug products in enteric coated dosage forms containing the same ingredients are subject to significant differences in absorption. Such products, in general, cannot be considered pharmaceutically equivalent because they do not necessarily meet similar standards.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:125. Drug products in aerosol-nebulizer delivery systems.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7)(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited, "Approved Presciption Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products in aerosol-nebulizer delivery systems.

Section 1. The following are determined to be non-interchangeable: Drug products in aerosol-nebulizer delivery systems—applies to drug solutions or powders that are a component of or are only compatible with a specific drug delivery system. There may be significant differences in the dose of a drug and particle size delivered by different products. Such products are not regarded as pharmaceutically equivalent.

J. H VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P. O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:130. Schedule I and II controlled substances.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists Schedule I and II controlled substances.

Section 1. The following are determined to be non-interchangeable: Controlled substances listed in Schedules I and II in the Kentucky Controlled Substances Act of 1972 (KRS 218A) shall be non-interchangeable.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:135. Drug products with bioinequivalence problems.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products with active ingredient and/or dosage forms with bioinequivalence problems.

Section 1. The following are determined to be non-interchangeable:

Drug products with active ingredient and/or dosage forms with bioinequivalence problems.

Aminophyllin—oral; tablet
Levodopa—oral; capsule; tablet
Propylthiouracil—oral; tablet
Theophylline—oral; tablet
Warfarin sodium—oral; tablet
Phenytoin sodium—oral; capsule.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:140. Drug products having drug standard deficiencies.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products having drug standard deficiencies.

Section 1. The following are determined to be non-interchangeable:

Drug products having drug standard deficiencies—if the drug standards for an active ingredient in a particular dosage form are found to be deficient so as to prevent an evaluation, all drug products containing that active ingredient in that dosage form are considered non-interchangeable.

Estrogens, conjugated—oral; tablet
Estrogens, conjugated; meprobamate—oral; tablet
Estrogens; esterified—oral; tablet.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:145. Drug products with potential bioinequivalence issues.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists drug products with active ingredients and/or dosage forms with potential bioinequivalence issues.

Section 1. The following are determined to be non-interchangeable:

Drug products with active ingredient and/or dosage forms with potential bioinequivalence issues.

Alseroxylin—oral; tablet
Amitriptyline hydrochloride—oral; tablet
Amitriptyline hydrochloride; perphenazine—oral; tablet
Benzthiazide—oral; tablet
Chlorothiazide; reserpine—oral; tablet
Chlorpromazine hydrochloride—oral; tablet
Colchicine; probenicid—oral; tablet
Cortisone acetate—oral; tablet
Cyclothiazide—oral; tablet
Dapsone—oral; tablet
Dichlorphenamide—oral; tablet
Diethylstilbestrol—oral; tablet
Dydrogesterone—oral; tablet
Dyphylline—oral; tablet
Ethinyl estradiol—oral; tablet
Ethoxzolamide—oral; tablet
Fluoxymesterone—oral; tablet
Fluphenazine hydrochloride—oral; tablet
Hydralazine hydrochloride hydrochorothiazide—oral; tablet; capsule
Hydralazine HCl Hydrochlorothiazide; reserpine—oral; tablet
Hydralazine HCl; reserpine—oral; tablet
Hydrochlorothiazide; reserpine—oral; tablet
Hydrocortisone—oral; tablet
Imipramine hydrochloride—oral; tablet
Liothyronine sodium—oral; tablet
Mazindol—oral; tablet
Medroxyprogesterone—oral; tablet
Methyclothiazide—oral; tablet
Methylprednis-olone—oral; tablet
Methyltestosterone—oral; tablet; capsule; buccal/sublingual tablets
Nortriptyline hydrochloride—oral; capsule
Promethazine hydrochloride—oral; tablet
Rauwolfia serpentina—oral; tablet
Reserpine—oral; tablet
Reserpine; trichlormethiazide—oral; tablet
Sulfasoxazole—oral; tablet
Sulfasalazine—oral; tablet
Terbutaline sulfate—oral; tablet
Testosterone—implantation; pellet
Thyroglobulin—oral; tablet
Triamcinolone—oral; tablet
Trichlormethiazide—oral; tablet

All injectable suspensions containing an active ingredient suspended in an aqueous or oleaginous vehicle.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:150. Topical products.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists topical products.

Section 1. The following are determined to be non-interchangeable: Topical products—different topical dosage forms are not pharmaceutically equivalent even though they may contain the same active ingredient(s), and, therefore, they are considered therapeutically inequivalent.

Section 2. This regulation refers to topical, ophthalmic, otic, rectal and vaginal administration and includes solutions, creams, ointments, gels, lotions, pastes, sprays, and suppositories.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Pharmacy

201 KAR 2:155. Suppositories and enemas for systemic use.

RELATES TO: KRS Chapter 217
PURSUANT TO: KRS 13.082, 217.814(7),(8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a non-equivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists suppositories and enemas for systemic use.

Section 1. The following are determined to be non-interchangeable: Suppositories and enemas for systemic use—the absorption of active ingredients intended to have a systemic effect vary significantly from product to product.

J. H. VOIGE, Executive Secretary
ADOPTED: June 30, 1982
RECEIVED BY LRC: July 12, 1982 at 10:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Secretary, Kentucky Board of Pharmacy, P.O. Box 553, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Real Estate Commission

201 KAR 11:165. Repeal.

RELATES TO: KRS Chapter 324
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: The Commission has determined that the following regulations should be repealed as they have been repealed by implication in amendments to the Real Estate licensing law.

Section 1. The following regulations are hereby repealed:
201 KAR 11:010, Classroom instruction required;
201 KAR 11:035, Complaints against licensee;
201 KAR 11:037, List of licensees; fee;
201 KAR 11:050, Net listings; requirements;
201 KAR 11:055, Broker's sign requirements;
201 KAR 11:060, Broker's name required on advertising;
201 KAR 11:065, Trust agency accounts required;
201 KAR 11:075, Broker's interest disclosure;
201 KAR 11:085, Conduct when managing property;
201 KAR 11:120, Broker-salesman defined;
201 KAR 11:125, Salesman required to complete instruction for examination;
201 KAR 11:130, Complaints must be resolved;
201 KAR 11:140, Salesman operating as broker; when.

JACK H. NEELY, Chairman
ADOPTED: June 25, 1982
RECEIVED BY LRC: July 6, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: John Stephen Kirby, Counsel to the Kentucky Real Estate Commission, 100 East Liberty Street, Suite 204, Louisville, Kentucky 40202.

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional
Engineers and Land Surveyors

201 KAR 18:140. Code of professional practice and conduct.

RELATES TO: KRS 322.050, 322.180, 322.190, 322.200, 322.290, 322.350, 322.430
PURSUANT TO: KRS 13.082, 322.290
NECESSITY AND FUNCTION: KRS Chapter 322 gives the board certain authority to promulgate a Code of Professional Practice and Conduct which is intended to regulate the professional conduct of professional engineers and land surveyors licensed by the board. To safeguard the life, health, property, and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the following Code of Professional Practice and Conduct is promulgated in accordance with KRS 322.290 and shall be binding upon every person holding a certificate of registration as a Professional Engineer and/or Land Surveyor. The Code of Professional Practice and Conduct as promulgated herein is an exercise of the police power vested in KRS Chapter 322 by virtue of the acts of the legislature, and as such, the Kentucky State Board of Registration for Professional Engineers and Land Surveyors is authorized to establish conduct, policy, and practices in accordance with the powers herein above stated. All persons registered under KRS Chapter 322 are charged with having knowledge of the existence of the Code of Professional Practice and Conduct, and shall be deemed to be familiar with its several provisions and to understand them. Such knowledge shall encompass the understanding that the practice of the registrant shall be forthright and candid in his statements or written response to the board or its representatives on matters pertaining to professional conduct.

Section 1. The engineer or land surveyor shall conduct his practice in order to protect the public health, safety, and welfare.

Section 2. The engineer or land surveyor shall issue public statements only in an objective and truthful manner.

Section 3. The engineer or land surveyor shall avoid conflicts of interest.

Section 4. The engineer shall solicit or accept engineering work only on the basis of his or his firm's qualifications or his associates' qualifications for the work offered.

Section 5. The engineer or land surveyor shall not knowingly associate with any person engaging in illegal or dishonest activities.

Section 6. The engineer or land surveyor shall perform his services only in areas of his competence.

Section 7. The engineer or land surveyor shall not affix his signature and/or seal to any engineering or land surveying plan, plat, or document dealing with subject matter in which he lacks competence by virtue of education or experience, nor to any such plan, plat, or document not prepared by him or under his direct supervisory control.

Section 8. The engineer or land surveyor shall not offer to pay or accept either directly or indirectly any bribe, commission, political contribution, or a gift, or other consideration in order to secure specific work, exclusive of commissions for securing salaried positions through employment agencies.

Section 9. The professional engineer or land surveyor shall avoid conduct likely to discredit or reflect unfavorably upon the dignity or honor of the profession.

Section 10. An individual professional engineer or land surveyor or his firm may advertise its services as long as such advertising is not self-laudatory or misleading.

Section 11. If the engineer or land surveyor has knowledge or reason to believe that another person or firm is in violation of any of these provisions or of KRS 322, they shall present such information to the board in writing and shall cooperate with the board in furnishing such information that they have available and will appear before the board if required.

ROBERT E. MOE, Secretary-Treasurer
ADOPTED: July 13, 1982
APPROVED: GEORGE E. FISCHER, Secretary
RECEIVED BY LRC: July 15, 1982 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 612, Frankfort, Kentucky 40602.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing

201 KAR 20:085. Licensure periods.

RELATES TO: KRS 314.041, 314.051, 314.073
PURSUANT TO: KRS 13.082, Chapter 314
NECESSITY AND FUNCTION: To provide for licensure periods for licenses issued. To provide for expiration dates of licenses.

Section 1. The licensure periods of original Kentucky licenses issued by examination or endorsement shall be as follows:

(1) Registered nurse licenses.
(a) Registered nurse licenses issued prior to January 1, 1983 shall expire on April 30, 1983.
(b) Registered nurse licenses issued January 1, 1983 through June 30, 1984 shall expire on October 31, 1984.
(c) Registered nurse licenses issued July 1, 1984 through June 30, 1986 shall expire on October 31, 1986.
(d) Registered nurse licenses issued during the first twenty (20) months of a biennial licensure period shall expire at the end (October 31) of the current biennial licensure period.
(e) Registered nurse licenses issued during the last four (4) months of a biennial licensure period shall expire at the end (October 31) of the succeeding biennial licensure period.
(2) Practical nurse licenses.
(a) Licensed practical nurse licenses issued prior to July 1, 1982 shall expire on October 31, 1982.
(b) Licensed practical nurse licenses issued July 1, 1982 through June 30, 1983 shall expire on October 31, 1983.
(c) Licensed practical nurse licenses issued July 1, 1983 through June 30, 1985 shall expire on October 31, 1985.
(d) Licensed practical nurse licenses issued during the first twenty (20) months of a biennial licensure period shall expire at the end (October 31) of the current biennial licensure period.
(e) Licensed practical nurse licenses issued during the last four (4) months of a biennial licensure period shall expire at the end (October 31) of the succeeding biennial licensure period.

Section 2. Biennial Licensure Periods. (1) Beginning in 1983 and thereafter, the biennial licensure period for licensed practical nurse licenses shall be November 1 of uneven years through October 31 of the following uneven years.
(2) Beginning in 1984 and thereafter, the biennial licensure period for registered nurse licenses shall be November 1 of even years through October 31 of the following even years.

Section 3. 201 KAR 20:080, License year, is hereby repealed.

SHARON M. WEISENBECK, Executive Director
ADOPTED: June 4, 1982
RECEIVED BY LRC: July 8, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Sharon M. Weisenbeck, Executive Director, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073
PURSUANT TO: KRS 13.082, Chapter 314
NECESSITY AND FUNCTION: To assure that applicants for renewal of licenses meet minimum standards

(c) Fees are not refundable due to incomplete applications, inadequate qualifications, unethical conduct, failure to pass examinations, or withdrawn applications.

Section 3. Supervision. Each holder of a certificate of qualification must practice under the periodic direct supervision of a licensed psychologist, as required by KRS 319.055.

(1) Approval of supervision. A supervisor of record for each certificand must be approved by the board. Both the supervisor and the certificand must request such approval in writing. Such request should be made at the time of application for certification.

(2) The board will reply to such requests within thirty (30) days. Until such time as the board's reply has been received the certificand may function under the supervision of the proposed supervisor of record.

(3) Reports of supervision. Supervisory reports should be submitted by the supervisor to the board at least annually. The board may approve less frequent supervisory reports after the certificand has had two (2) years of supervised experience and the supervisor's recommendation that less frequent supervision and reporting are needed. For holders of certificates with at least two (2) year's experience the frequency of such reports may be on a two (2) year basis. For those with at least five (5) year's experience the frequency of reports may be on a three (3) year basis.

(4) Direct supervision. Face-to-face supervisory sessions should be no less than once per week for the first year of supervision. Less frequent supervisory sessions are permissible as the certificand gains experience, but they should always be sufficient to allow the supervisor time to be familiar with the certificand's work and progress.

(a) The supervisor of record may or may not be the administrative supervisor of a certificand, but he or she must have the opportunity for free exchange of information concerning clients.

(b) Holders of certificates of qualification who engage in private practice must do so in direct association with a licensed psychologist who is that certificand's supervisor of record. The supervisor and certificand will be considered to be in direct association when:

1. The certificand is an employee of the supervisor; or
2. The certificand and supervisor are partners or otherwise associated together in a private practice; or
3. The certificand and supervisor have no formal, legal relationship but practice in the same office in a setting in which the supervisor has access to information necessary for adequate supervision.

(5) Termination of supervision. Termination of the supervisor of record may be at the request of either the supervisor or the certificand or may be affected by the board when there is reason to believe that supervision is not being done effectively or reports are not being submitted to the board. When a supervisor of record has been terminated it shall be the certificand's responsibility to secure another supervisor within thirty (30) days of the date of such termination.

(6) Supervisor responsibilities. Licensed psychologists who accept supervision responsibilities are expected to provide adequate supervision, guide the certificand in professional growth and development, and to submit reports on a regular basis. When the board finds that a psychologist listed as a supervisor of record is not making a good faith effort to meet the supervisory responsibilities, it may refuse to approve that psychologist as a supervisor.

EDWARD HAMPE, Chairman
ADOPTED: May 7, 1982
RECEIVED BY LRC: June 22, 1982 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602.

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Office of Marketing Services

302 KAR 45:010. Ginseng, general provisions.

RELATES TO: KRS 246.650, 246.660
PURSUANT TO: KRS 13.082, 246.660
NECESSITY AND FUNCTION: KRS 246.660 authorized the Department of Agriculture to adopt rules and regulations relating to the administration of a program for Wild American Ginsen. This regulation sets forth general provisions which apply in this chapter with regard to definitions, harvest season, and cooperative agreements.

Section 1. (1) "Ginseng Dealer" means any person engaged in the business of buying ginseng roots from ginseng collectors, ginseng cultivators, and other ginseng dealers for resale to ginseng exporters or to other ginseng dealers or any person who sells ginseng in any form in interstate commerce.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" unless otherwise specified means the Kentucky Department of Agriculture.

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

Section 2. License. (1) No person shall be a ginseng dealer without first obtaining a license issued by the department.

(2) Licenses will be issued for a period of one (1) year, and will expire on the 30th day of June each year.

(3) Completed applications, issued by the department, must be returned prior to June 30th of each year along with the ten dollars ($10) license fee.

Section 3. Record Keeping. (1) All ginseng dealers shall keep records, on forms furnished by the department, of all purchases and sales of ginseng. These records will include month purchased, month dug, county where dug, weight of purchase, and signature of digger or seller.

(2) Retention. All persons required to maintain records under this section shall retain the records for a period of three (3) years.

(3) Availability. Records required under this section shall be made available to the department upon request.

Section 4. Annual Report. All ginseng dealers will file an annual report with the department by June 30th. The annual report shall include the listing of each purchase and sale of ginseng made by the dealer since July 1 the previous year.

Section 5. Harvest Season. Wild ginseng will only be dug between August 15th and December 1st of each year. Any seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 6. All sales of ginseng by dealers shall be certified for sale during the ginseng selling season beginning August 15th of each year and extending until March 31st of the following year.

Section 7. All ginseng dealers licensed hereunder must obtain a certificate of legal taking issued by the department identifying the origin, year of taking, and weight of any shipment of ginseng to a destination outside the Commonwealth of Kentucky. The certificate shall also state whether the ginseng is Wild American Ginseng or whether the ginseng has been cultivated or propagated by a grower. Such certification shall be issued to the dealer on triplicate forms issued by the department. A copy of such certification must be enclosed with the shipment subject of the certification. A copy of such certificate shall be retained for a minimum of three (3) years by the licensed ginseng dealer and a copy of the certificate shall be retained by the certifying agent of the department and submitted in accordance with internal procedures of the department.

ALBEN W. BARKLEY II, Commissioner
ADOPTED: July 15, 1982
RECEIVED BY LRC: July 15, 1982 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Department of Agriculture, Alben W. Barkley II, Commissioner, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 9:072. Kentucky highway use license, taxes and records.

RELATES TO: KRS Chapter 138
PURSUANT TO: KRS 13.082, 138.725
NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier fuel use tax and weight distance tax to motor carriers covered by KRS 138.655 to 138.725. This regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Application for Kentucky Highway Use License. Every motor carrier as defined in KRS 138.655(5) shall apply for and obtain on a department approved form a license before using or continuing to use the public highways in the state. The department shall issue a license number to each motor carrier, and the carrier shall cause said license number to be displayed on a motor vehicle identification card issued it by the department. The card shall be carried in each vehicle operated by the carrier at all times.

Section 2. Bonds-Cash Deposit. Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 and 138.670 shall file with the department at the time of application for a license a corporate bond, cash bond, or security approved by the department. The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee. In the event the department decides to accept a bond in lieu of the cash bond or securities, the bond will be conditioned as required in KRS 138.670. The department shall administer the bond as provided in KRS 138.670.

Section 3. Registration for Weight Distance Tax. (1) For the purpose of this section registration shall mean the registration of the licensee for the purpose of the tax imposed by KRS 138.660 and shall be required of all motor carriers as defined in KRS 138.655(5). The current registration period shall be deemed that quarterly period for which the tax is due under KRS 138.660 or required to be reported on the quarterly return. The applicant for the license shall apply to the department for a motor vehicle identification card on forms prescribed and furnished by the department. The completion by the applicant and submittal to the department for validation shall be necessary prior to the authority of the applicant to operate a motor vehicle on the public highways of Kentucky. A motor carrier identification card shall be issued which must contain the name and address of the owner or operator, the identification of the vehicle, and such other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined hereinabove.

(2) Definitions.

(a) "Combined license weight" shall mean the declared combined maximum gross weight of the vehicle and any towed unit for the registration purposes for the current registration period as defined hereinabove; or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period as defined herein.

(b) "Declared gross weight" shall mean the same as paragraph (a) of this section.

(c) "Tare weight" shall mean the weight of the vehicle without the weight of the load.

(d) "Net weight" shall mean the same as paragraph (c) of this section.

(e) "Gross weight" shall mean the unloaded weight of the vehicle plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

(3) The identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.655. Each day constitutes a separate violation.

Section 4. Communications, Business Names and License Address. All licensees must immediately report any change in principal business address, legal status or business name to the department. All motor carrier operations must be conducted in the name in which the license and the identification plate is issued or the duly assumed business name of the licensee, as it appears on the application for the license. All licensees are required to use the name utilitized in the application for the license in all documents relating to their operations and in all cor-

respondence with the department. All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, Division of Fuel and Roadway Taxation, Post Office Box 2007, Frankfort, Kentucky 40602.

Section 5. Trip Permits. A trip permit may be issued in the discretion of the department under the provisions of KRS 138.665. Application for trip permits will be considered on a case by case basis.

Section 6. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 7. Kentucky Highway Use License for Leased Vehicles. (1) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in private carriage, where the operator of such vehicle is required to have a Kentucky Highway Use License may obtain the license by making application to the department and complying with the appropriate rules and regulations. The license shall entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2) The lease shall be carried in the vehicle and the required cab card shall be in the lessor's name and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(3) A motor vehicle which is leased to a certificated carrier, will be required to have the Kentucky Highway Use License and the lessee shall be responsible for the payment of any tax which may become due.

(4) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where the lessor's records are maintained. A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the name of the lessee, the lessee's address, the number of vehicles leased to each lessee and other pertinent information which the department may require. The list required herein shall be updated and kept current on a semi-annual basis by the lessor.

Section 8. Kentucky Highway Use License to Shipper in Lieu of Carrier. (1) In order to encourage the free flow of commerce to and from points in Kentucky without imposing unnecessary burdens or inconvenience, application to act as agent for one (1) or more carriers, for use tax purposes, will be accepted from business organizations with shipping facilities domiciled within the commercial area of a city located within ten (10) miles of the borders of the Commonwealth.

(2) Upon application and approval by the department, applicants may be authorized to secure a motor carrier fuel use license as agent for one (1) or more carriers. Such carriers must be exclusively engaged in Kentucky in the business of transporting merchandise to or from applicant's place of business in Kentucky. The license will be issued, along with cab cards for the motor vehicles owned by the carriers. The applicant will be designated on said cab cards as agent for a particular carrier.

(3) Any applicant so licensed shall be responsible for filing quarterly returns with the department, and returns shall evidence the entire mileage operation of each such carrier in Kentucky and be accompanied by payment. Bond shall be required as in other cases.

Section 9. Authorized Deductions on Quarterly Returns. Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided the purchase is made in Kentucky and the Kentucky motor fuel tax has been paid. A valid receipt must be obtained as evidence of purchase from the person making the sale or delivery.

(1) The valid receipt is one (1) in which:

(a) The purchase receipt shall be the original prepared by a station or vendor located in the State of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky are invalid.

(b) The following is included:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of units; and
6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten are not valid.

(2) Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when such fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage to fuel taxable units (highway units), tax will be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax free storage tank without adequate records to prove non-highway use shall be taxable. Approved location of tax free storage shall be issued by the Revenue Cabinet before tax free fuel is purchased.

((b)Credit for fuel purchase receipts other than the taxable units shall not be allowed.

(3) In instances where fuel is purchased by trip leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

(4) All receipts shall be kept in the possession of the carrier for a period of five (5) years, subject to examination by representatives of the Transportation Cabinet or Revenue Cabinet.

Section 10. Cancellation of License. (1) If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, Kentucky Highway Use Tax License will be cancelled. Reasons for cancellation include, but are not limited to, the following:

(a) Failure to file tax return thirty (30) days after the due date. The licensee will be mailed a second notice or reminder and be given fifteen (15) days to file the return. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(b) Failure to pay additional taxes assessed by the department. To be reinstated after cancellation of license, the carrier must prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax Returns.

(c) Failure by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 11. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all cab cards issued to such carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a cab card after notice of revocation of the highway use license shown thereon, shall be a violation of this regulation.

(3) Cancellation of the user's license shall also constitute a revocation of the grant of reciprocal privileges for an interstate motor vehicle.

(4) Any interstate carrier operating a motor vehicle displaying a cab card or plate with a cancelled highway use license shown thereon shall be subject to citation before the department to show cause why such carrier's operating authority, if any, should not be revoked and in every case the motor vehicle shall be subjected to seizure in accordance with KRS 138.990(18).

Section 12. Tax Liability and Protest Procedures. (1) The licensee will be mailed a tax statement, found as the result of an audit or found as the result of an examination of licensee's tax return. The licensee has thirty (30) days to pay or protest to the department per KRS 131.110 in writing any assessment or tax liability imposed by the department. A protest must be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(2) If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(3) The department will acknowledge receipt of the protest and if protest is acceptable, a tax conference will be set between the department and licensee within sixty (60) days of the protest. The department will notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest. If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(4) If the licensee does not acknowledge the tax statement within thirty (30) days, a reminder will be sent to licensee demanding payment within fifteen (15) days. If within fifteen (15) days, the taxes have not been remitted to the department, a demand will be made against the licensee's surety bond. Any balance of unpaid taxes will be submitted to the department's legal section for collection.

Section 13. Penalties. Licensee shall be subject to the penalties provided for the violation of KRS 138.655 to 138.725 specifically including KRS 138.720 and the penalties as set forth in KRS 138.990(17) and (18) shall apply and will be accessed by the department through its personnel or the proper law enforcement agencies or by courts of competent jurisdiction.

Section 14. Inspection. Any highway enforcement officer or state police officer may inspect the vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the State of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the vehicle identification card.

Section 15. Maintenance of Records. (1) Licensees shall keep and maintain complete and comprehensive records of all business transactions.

(2) All papers, books, accounts, payroll records, time records, bills, invoices, notes, mortgages, memoranda, correspondence files, vouchers, journals, ledgers, contracts, leases and agreements, operating and statistical statements or exhibits, stock books, minutes of meetings of directors, trustees and/or stockholders, records of mileage operated, annual or other periodic or special reports, working sheets or papers and all other papers and records disclosing or appertaining to operations of licensees authorizing transportation of persons or property by motor vehicle shall be maintained and shall at all reasonable times be available for examination, inspection and audit by the department.

(3) Odometer readings for each vehicle shall be retained on file, with drivers' logs of miles, trip reports, manifests and/or any other such records which prove miles operated.

(4) Kentucky miles reported shall be no less than the miles as calculated on the official Kentucky mileage map prepared by the Kentucky Department of Highways. The motor carrier shall not calculate miles operated by fuel purchases and miles per gallon.

(5) Miles per gallon reported shall be calculated by maintaining adequate records of total miles operated and total fuel consumed. Total fuel consumed is the sum of road purchases and bulk storage withdrawals or data from maintenance records.

(6) Mileage records must be maintained as follows:

(a) Total miles operated in Kentucky for each unit with less than 59,999 pounds.

(b) Total miles operated in Kentucky for each unit with more than 59,999 pounds.

(c) Separate records must be maintained where a licensee has hauled or is hauling under the provisions of a Resource Recovery Road Permit. To qualify for the exemption provided by that permit, valid trip tickets for all dates and miles which represent hauling under the permit must be kept and provided to the department.

(7) Any licensee must produce and make available for audit and examination at any reasonable time, within or without this state, the records, accounts, papers, reports and other documents under the licensee's control.

(a) When such records are maintained outside this state by licensees engaged in transportation in Kentucky, the licensee shall reimburse the department for all expenses incurred by the department in making audits and examinations of such records and accounts at their out of state location.

(b) Records maintained by licensees outside this state may be presented at a designated place in this state for audit and examination. This may be done at the request of the licensee or by direction of the department. Such records must be presented by a representative of the carrier who can explain all entries and records and be responsible for their safekeeping.

(c) When a motor carrier keeps and maintains its records outside this state, the department may examine such

records and shall be reimbursed by the motor carrier for all expenses incurred in making such out of state examination. The department shall bill the carrier for transportation, lodging and meals at the rate set by the Kentucky regulations on travel expense.

(d) The refusal by a licensee to produce such records after written demand may result in cancellation of the license and any other penalties applicable by law. Each succeeding day shall constitute a separate violation until the requested records are produced at the place stated in the demand.

(e) In addition to any other penalty authorized by law, the operating authority or license of a person who fails to prepare or maintain records required by statute or regulation of the state shall be subject to suspension or cancellation.

(f) Such records must be preserved for five (5) years.

Section 16. Records Disposition. The department will retain the active file of KYU tax returns for at least five (5) years. An inactive KYU license will be retained two (2) years after cancellation.

Section 17. Certified Scale Weights. (1) Actual weight of shipments of machinery, machines, heavy equipment and household goods must be otained by having such shipment weighed over a certified scale whenever scale is available at point of origin, destination or enroute. The scale ticket shall be attached to the carrier's copy of the freight bill and be retained as a part of the carrier's records.

(2) Actual weights shall also be obtained by the carrier for other shipments when the weight declared appears incorrect or is not in accord with established shipping weights for like articles or marks.

Section 18. Reinstatement of License. (1) If the carrier desires to be reinstated after cancellation, the carrier must:

(a) Prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(b) Submit quarterly returns for all missed periods.

(c) Pay all taxes for missed returns plus penalties and interest:

Section 19. 601 KAR 9:070, Motor carrier fuel use tax, and 601 KAR 9:071, Records of fuel tax licensees, are hereby repealed.

JAMES F. RUNKE, Commissioner
ADOPTED: July 15, 1982
APPROVED: FRANK R. METTS, Secretary
RECEIVED BY LRC: July 15, 1982 at 1:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance

702 KAR 1:110. Allocation of basic classroom and kindergarten units.

RELATES TO: KRS 157.360, HB 295 (1982 General Assembly)

PURSUANT TO: KRS 13.082, 156.070, 156.360, HB 295 (1982 General Assembly)

NECESSITY AND FUNCTION: KRS 157.360 directs the Superintendent of Public Instruction to allot, for Minimum Foundation purposes, basic classroom and kindergarten units. The General Assembly provided in the appropriations bill, however, a controlling provision to award classroom units in grades one (1) through three (3) and in kindergarten in the Foundation Program on the basis of twenty-five (25) pupils in the average daily attendance. They further provided that the Superintendent of Public Instrsuction is to enforce this provision on a district-wide basis. This regulation implements and interprets this provision by providing for the allocation of these units, providing for the deduction of average daily attendance on special education classroom units and vocational education units as provided for in House Bill 295 (1982 General Assembly) and requiring the submission of necessary information to the Department of Education.

Section 1. Classroom units for kindergarten for each school district shall be allotted in accordance with 702 KAR 5:050.

Section 2. The allotments to school districts of basic classroom units for grades one (1) through three (3) shall be made on the basis of one (1) for every twenty-five (25) pupils in average daily attendance.

Section 3. The allotment of basic classroom units for grades four (4) through twelve(12) shall be made on the basis of one (1) for every twenty-seven (27) pupils in average daily attendance.

Section 4. Average daily attendance generated in grades one (1) through three (3) in excess of an average of twenty-five (25) pupils in average daily attendance for units staffed by basic classroom teachers in each school district shall not be transferable to the average daily attendance pool in grades four (4) through twelve (12).

Section 5. The standard deduction of nine and six tenths (9.6) pupils in average daily attendance for vocational education units and seven and two tenths (7.2) pupils in average daily attendance for each exceptional children's unit, shall be made from the average daily attendance generated by grades four (4) through twelve (12) for each school district.

Section 6. The superintendent of each local distrsict shall certify on the Central Office Data Form 1600-106, annually the number of kindergarten pupils enrolled and the number of kindergarten teachers employed and the number of pupils enrolled in grades one (1) through three (3) and the number of basic classroom teachers employed to teach in grades one (1) through three (3) in each school district.

Section 7. The superintendent of each local district shall

certify on the Superintendent's Annual Statistical Report, Form RR-55, the average daily attendance and the number of teachers employed for kindergarten and the average daily attendance of grades one (1) through three (3) and the number of basic classroom teachers employed in grades one (1) through three (3) for each school district.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 22, 1982
RECEIVED BY LRC: July 7, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Vocational Education

705 KAR 4:200. Repeal.

RELATES TO: KRS 156.070, 156.112, 157.520, 163.020, 163.030
PURSUANT TO: KRS 13.082, 156.070, 156.112, 156.160, 163.030
NECESSITY AND FUNCTION: Pertinent items in the herein-repealed regulations have been incorporated into other regulations, so the herein-repealed regulations are no longer necessary.

Section 1. The following regulations are hereby repealed:
705 KAR 4:020, Extended employment; local districts;
705 KAR 4:060, Secondary vocational education standards;
705 KAR 4:070, Agribusiness education;
705 KAR 4:090, Business and office education;
705 KAR 4:100, Health and personal service education;
705 KAR 4:105, Experimental senior plan;
705 KAR 4:110, Home economics; consumer and homemaking;
705 KAR 4:120, Home economics; gainful;
705 KAR 4:131, Industrial education programs;
705 KAR 4:140, Marketing and distributive education;
705 KAR 4:151, Practical arts (career exploration) education program;
705 KAR 4:160, Public service occupations;
705 KAR 4:170, Special vocational education;
705 KAR 4:180, Long term adult program standards;
and 705 KAR 4:190, Adult program standards.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: June 22, 1982
RECEIVED BY LRC: July 13, 1982 at 1:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control

804 KAR 4:230. Extended hours supplemental licenses.

RELATES TO: KRS 243.050
PURSUANT TO: KRS 13.082, 241.060
NECESSITY AND FUNCTION: KRS 241.050(4) establishes a new class of liquor licenses and authorizes the board by regulation to set the necessary conditions and restrictions upon this class of license.

Section 1. There is, hereby, created an Extended Hours Supplemental License for the retail sale of alcoholic beverages, distilled spirits, wine and malt beverages by the drink. This license is divided into three (3) catagories:
(1) The Convention Center Extended Hours Supplemental License;
(2) The Horse Race Track Extended Hours Supplemental License;
(3) The Commercial Airport Extended Hours Supplemental License.

Section 2. The above licenses may be issued by the Distilled Spirits Administrator and Malt Beverage Administrator who shall consider whether or not the issuance of the license is in the best interest of promoting tourism, conventions, and/or the economic development of Kentucky or any part thereof.

Section 3. (1) The Convention Center Extended Hours Supplemental License may be issued to any facility which holds a Convention Center Caterers License pursuant to the provisions of 804 KAR 7:045. The hours of operation under this license shall be prevailing time Monday through Saturday and Sunday 1:00 p.m. until prevailing time for weekday closing.
(2) The Horse Race Track Extended Hours Supplemental License may be issued to any horse race track licensed to conduct a race meeting under KRS Chapter 230 and which is the holder of a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be prevailing time Monday through Saturday, and Sundays 1:00 p.m. until prevailing time for weekday closing.
(3) The Commercial Airport Extended Hours Supplemental License may be issued to any commercial airport through which 500,000 or more passengers arrive or depart annually and which holds a license authorizing the sale of distilled spirits and wine by the drink at retail. The hours of operation under this license shall be Monday through Saturday, prevailing opening time until 4:00 a.m. and Sundays, 1:00 p.m. until 4:00 a.m.

Section 4. As used in Section 3, "prevailing time" means those opening and closing hours applicable to the standard retail license or licenses held by the facility making application for the Extended Hours Supplemental License.

Section 5. No Extended Hours Supplemental License shall be issued to any applicant which does not hold one (1) or more licenses authorizing the retail sale of distilled spirits and wine by the drink.

Section 6. Only one (1) Extended Hours Supplemental License will be required for each licensed premises.

Section 7. The fee for the Extended Hours Supplemental License shall be $1,000 per year and shall be in addition to all other licenses and license fees due by the holder in connection with the retailing of alcoholic beverages.

Section 8. Application shall be made on forms supplied by the Department of Alcoholic Beverage Control and each applicant shall furnish such certification of qualification as the administrators may require on an individual basis.

Section 9. The holder of an Extended Hours Supplemental License may be required, from time to time, to furnish the administrators such information as requested indicating continued qualification to hold the Extended Hours Supplemental License.

Section 10. No Extended Hours Supplemental License may be issued in any portion of a county containing an Urban County Government.

RICHARD H. LEWIS, Commissioner
ADOPTED: July 15, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: July 15, 1982 at 2:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Alcoholic Beverage Control Board, 123 Walnut Street, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:002. Organization.

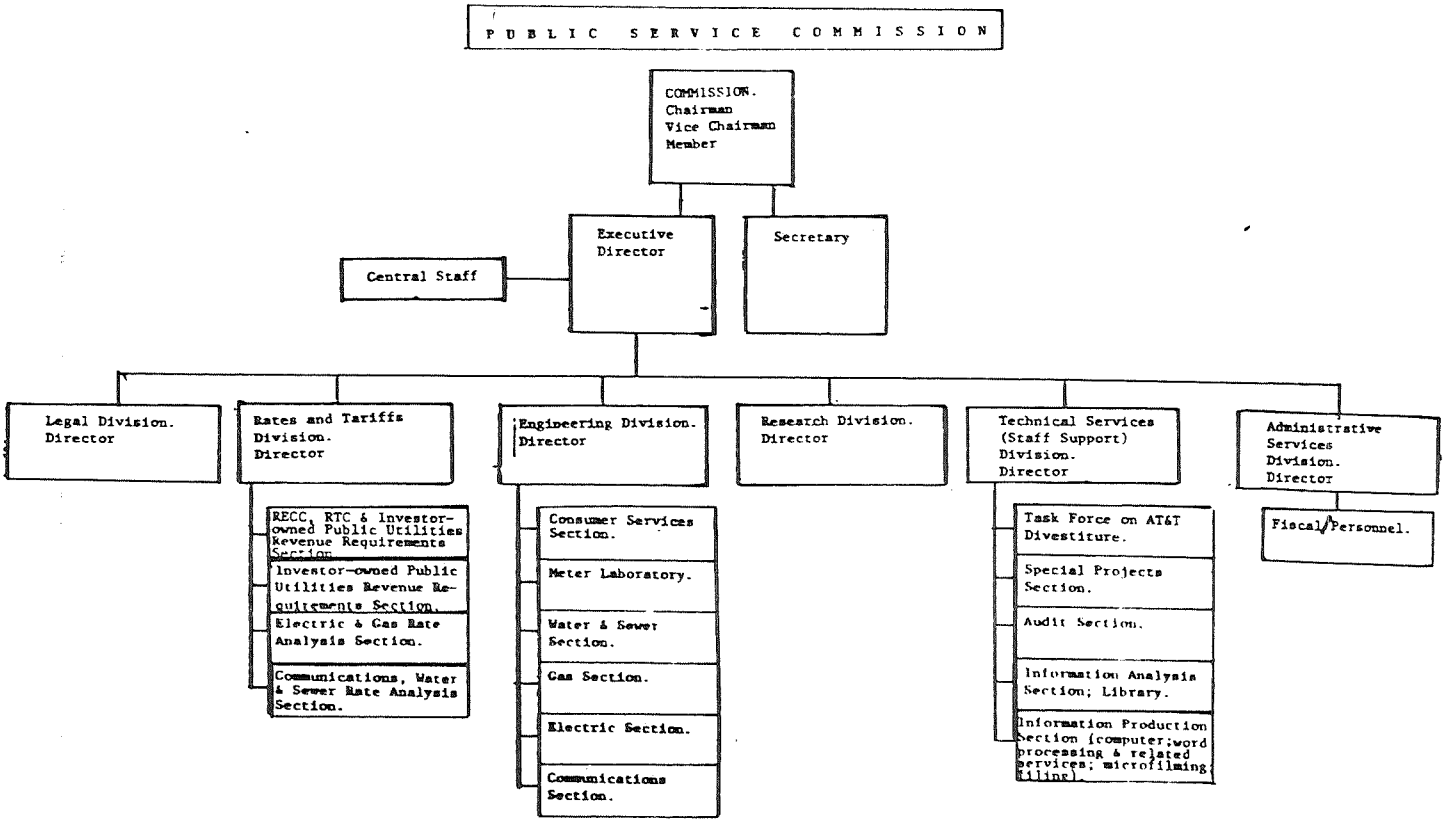
RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 278.115
NECESSITY AND FUNCTION: KRS 278.115 provides that the Public Service Commission shall organize its offices for administration and management under the executive director. This regulation prescribes the organization of the Public Service Commission's offices.

Section 1. The offices of the Public Service Commission are organized for administration and management under the executive director to reflect their functions as follows:

(See Flow Chart below.)

MARLIN M. VOLZ, Chairman
ADOPTED: July 1, 1982
RECEIVED BY LRC: July 12, 1982 at 4:20 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary, Public Service Commission, P. O. Box 615, 730 Schenkel Lane, Frankfort, Kentucky 40602.

Flow Chart for 807 KAR 5:002



CABINET FOR HUMAN RESOURCES

900 KAR 2:010. Access and hours of visitation.

RELATES TO: KRS 216.540
PURSUANT TO: KRS 194.050, 216.545
NECESSITY AND FUNCTION: The Cabinet for Human Resources must set forth criteria pertaining to the ability of the administrator of a long term care facility to terminate visitation to that facility. This regulation is designed to give guidance to administrators under the provisions of KRS 216.540(4) and to comply with the requirements of KRS 216.545(1) concerning hours of visitation.

Section 1. Definitions. (1) "Administrator" means the administrator of a long term care facility subject to the provisions of the nursing home reform act, KRS 216.540 et. seq.

(2) "Cabinet" means Cabinet for Human Resources.

(3) "Designated representative" means an individual association or corporation authorized in writing to act as agent for certain specified purposes in behalf of a designating entity.

(4) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes and intermediate care facilities for the mentally retarded and developmentally disabled.

(5) "Resident" means any person admitted to a long term care facility.

Section 2. The administrator of a long term care facility or his designated representative may request those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c) and those groups or individuals assured access under KRS 216.540(5) terminate visitation upon the occurence of any one (1) of the following:

(1) A resident of the facility is physically or verbally abused by the individual or group;

(2) Any individual carries a firearm or other deadly weapon into the facility who is not a peace officer. For the purpose of this regulation, "deadly weapon" is defined as including, but not limited to, any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, gravity knife, billy, blackjack, or metal knuckles;

(3) Any individual or group commits a felony or misdemeanor while on the facility's premises; or

(4) Any individual or group is visibly under the influence of alcohol or controlled substances.

Section 3. With respect to those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c), the administrator of a long term care facility or his designated representative may request the termination of visitation upon the unwarranted interference with an employee of a facility during the performance of his duties within the scope of his employment.

Section 4. Those individuals assured access during visiting hours under the provisions of KRS 216.540(1)(b) and (c) have assured access to only the residents' dining area, living area, recreation area, lounge and areas open to the general public. Access to other areas within the facility may be gained after having received the permission of the administrator or his designated representative to enter the area in question.

Section 5. Those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c), except for family and legal guardians, including employees of agencies within the Cabinet duly appointed legal guardian by a court of law, and KRS 216.540(5) are:

(1) Upon entering the facility, to promptly advise the administrator or his designated representative of their presence; and

(2) Not to enter the living area of any resident without identifying themselves to the resident.

Failure to comply with the requirements of this regulation may be grounds for requesting termination of visitation.

Section 6. In order to satisfy the requirements for licensure by the state, a long term care facility shall establish daily visiting hours which, at a minimum, shall consist of six (6) hours between the hours of 8:00 a.m. and 5:00 p.m. local time, and two (2) hours between the hours of 5:00 p.m. and 8:00 p.m. local time. All visiting hours are to be posted in a conspicuous place in the lobby, in the entrance way, or at the front door of the long term care facility.

Section 7. Administrators of long term care facilities may establish visiting hours in addition to those required pursuant to KRS 216.537.

Section 8. Representatives or employees of the Cabinet for Human Resources, including the long term care ombudsman or his designated representative in the process of complaint resolution, any representative or employee of any local government entity having responsibility regarding residents of long term care facilities, and the family or legal guardian(s) of any individual resident shall have unrestricted access to and in all long term care facilities.

Section 9. Nothing in this regulation shall be deemed to prohibit or restrain the right of a resident of a long term care facility to deny visitation or to terminate a visit by any individual or group.

Section 10. Each administrator of a long term care facility shall appoint a member of the facility's existing staff to act as his designated representative present at the facility and authorized to act in the absence of the administrator.

W. GRADY STUMBO, Secretary
ADOPTED: July 13, 1982
RECEIVED BY LRC: July 14, 1982 at 9:30 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 10:060. Onsite sewage disposal.

RELATES TO: KRS 211.350
PURSUANT TO: KRS 13.082, 194.050, 211.350
NECESSITY AND FUNCTION: KRS 211.350(5) authorizes the Cabinet for Human Resources to establish a schedule of reasonable fees to cover the costs of services performed by the Cabinet with respect to onsite sewage disposal systems. The function of this regulation is to set forth the fee to be charged in order to cover the actual cost to the Cabinet of the administration of the onsite sewage disposal system program.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.
(2) "Onsite sewage disposal system" means an installation intended for the treatment and disposal of sewage by means of a septic tank, or other approved device, and includes the drainfield into which the effluent will be dispersed.

Section 2. All applications for a permit to construct, install, or alter an onsite sewage disposal system filed with the Cabinet or its agent shall be accompanied by a fee of nine dollars ($9).

DAVID T. ALLEN, Commissioner
ADOPTED: July 12, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 13, 1982 at 1:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOUCRES
Department for Health Services

902 KAR 45:110. Inspection fees; food plants, markets, warehouses and distributors.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125
PURSUANT TO: KRS 13.082, 194.050, 217.125(2)
NECESSITY AND FUNCTION: KRS 217.125(2) authorizes the Secretary for Human Resources to provide by regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food markets, salvage distributors, and salvage processing plants for inspectional activities carried out by the Cabinet for Human Resources. This regulation is to set forth the fee to be charged.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.
(2) "Department" means Department for Health Services and local health departments having jurisdiction.

Section 2. Fees for Inspections. (1) For inspections conducted by the department or its representatives to determine compliance with regulations adopted by the cabinet for salvage distributors and salvage processing plants, and to determine compliance with KRS 217.025, 217.035 and 217.037 applicable to food manufacturing plants and food storage warehouses, a fee of sixteen dollars ($16) per inspection hour not to exceed the total amount of $200 per year shall be assessed.
(2) With respect to retail food markets, for inspections conducted by the department or its representative to determine compliance with regulations adopted by the cabinet pertaining to adulteration, misbranding, packaging and labeling of food products pursuant to KRS 217.025, 217.035, 217.037 and 217.125, a fee of sixteen dollars ($16) per inspection hour shall be assessed. In no event shall the fee exceed in any year the sum of fifty dollars ($50).

Section 3. Travel Reimbursement. In addition to the inspection fees assessed pursuant to Section 2 the department or its representative shall be reimbursed for travel by its employees to and from the inspection site in accordance with the provision of 200 KAR 2:006E pertaining to travel reimbursement.

Section 4. Payment of Fees. (1) Payment of fees shall be made to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury.
(2) Inspection fees shall be due thirty (30) days from the date of the billing.

Section 5. Exemptions. State and local government agencies shall be exempt from the payment of fees.

DAVID T. ALLEN, Commissioner
ADOPTED: July 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 15, 1982 at 3:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 45:120. Inspection fees; food service establishments, hotels.

RELATES TO: KRS 219.031, 219.041
PURSUANT TO: KRS 13.082, 194.050, 219.041(4)
NECESSITY AND FUNCTION: KRS 219.041(4) authorizes the Secretary for Human Resources to provide by regulation a schedule of reasonable fees to be paid by food service establishments and hotels to cover the cost of inspection activities carried out by the Cabinet for Human Resources. This regulation is to set forth the fees to be charged.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.
(2) "Department" means Department for Health Services and local health departments having jurisdiction.

Section 2. Fees for Inspections. (1) For inspections conducted by the department or its representative to determine compliance with regulations adopted by the cabinet pursuant to KRS 219.041, food service establishments and hotels shall be subject to the payment of the following fees:
(a) Hotels with twenty-five (25) rooms or less—$25 per year.
(b) Hotels with twenty-six (26) rooms or more—$50 per year.
(c) Permanent food service establishments with no seats or twenty-five (25) or less—$30 per year.
(d) Permanent food service establishments with twenty-six (26) to fifty (50) seats—$40 per year.
(e) Permanent food service establishments with more than fifty (50) seats—$50 per year.

Section 3. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate as required by KRS 219.021.

Section 4. Exemptions. Private, parochial, and public school cafeterias or lunchroom facilities through the twelfth grade and all facilities operated by the cabinet or the Cabinet or Corrections shall be exempt from the payment of inspection fees.

DAVID T. ALLEN, Commissioner
ADOPTED: July 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 15, 1982 at 3:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 5:121. Repeal of 904 KAR 5:120 and 904 KAR 5:240.

RELATES TO: KRS 341.370, 341.710
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The 1982 General Assembly, by amendments to KRS 341.370 and KRS 341.710, effectively revised the requirements of administrative regulations of the Division for Unemployment Insurance. For this reason, these regulations are no longer necessary, and this regulation acts specifically to repeal the regulations affected.

Section 1. 904 KAR 5:120, Duration of unemployment, is hereby repealed.

Section 2. 904 KAR 5:240, Eligibility standards for extended benefits, is hereby repealed.

JOHN CUBINE, Commissioner
ADOPTED: July 13, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 13, 1982 at 1:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 5:250. Recoupment and recovery.

RELATES TO: KRS 341.415
PURSUANT TO: KRS 13.082, 341.155
NECESSITY AND FUNCTION: This regulation defines the term "departmental error" for the purposes of recovery and recoupment of improperly paid employment insurance benefits.

Section 1. "Departmental error" means: (1) Errors in computing benefit rate;
(2) Incorrect weekly payment due to failure to consider deductible amount;
(3) Payment beyond the expiration of the benefit year;
(4) Payment in excess of maximum benefit amount;
(5) Payment under incorrect program where no program adjustment can be made;
(6) Retroactive non-monetary determinations;
(7) Monetary re-determinations;
(8) Payment during a period of disqualification;
(9) Payment to wrong claimant;
(10) Machine errors.

Section 2. "Departmental error" shall not include:
(1) Errors as a result of a false statement, misrepresentation or concealment of material information by a recipient of benefits;
(2) Overpayments as a result of a reversal of entitlement to benefits in the appeal or review process;
(3) Errors as a result of misinformation or lack of information supplied by a claimant or recipient of benefits.

JOHN CUBINE, Commissioner
ADOPTED: July 13, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: July 13, 1982 at 1:45 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June 25, 1982 Meeting

(Subject to subcommittee approval at the July meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Friday, June 25, 1982, at 10 a.m., in Room 104 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning, W. L. Quinlan, and Helen Garrett; and Representative Albert Robinson.

Guests: Carl B. Larsen, Kentucky Harness Racing Commission; James Hood, Ron Holland, Roy Butler, Ked Fitzpatrick, Sharon Perry, Danna Droz, Donna K. Smith, and Edward Crews, Department for Human Resources; Ronda Paul, Department of Banking and Securities; Patrick Watts, Department of Insurance; Ed Fossett, Frank Howard, and Fred Schultz, Department of Education; Jim Villines, Lawrence Grasch, Steve Taylor, Dennis Conniff, Rose Marie Carr, and Christina Macpherson, Department for Natural Resources and Environmental Protection; Tom Edwards and Mike Salyers, Department of Labor; Jay Barlow, Harlan County Coal Operators' Association; and James Judy, Kentucky Association of Health Care Facilities.

Staff: Susan Harding, Joseph Hood, Dan Risch, Cindy De Reamer, Shirley Hart, June Mabry, Mary Helen Miller, and Jeff Darsie.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Senator Bunning, seconded by Senator Quinlan, the minutes of the June 2 meeting were approved.

The following regulation was withdrawn at the request of the issuing agency:

TRANSPORTATION CABINET
Department of Highways
Maintenance
603 KAR 3:010. Advertising devices on interstates.

The following regulation was deferred by the subcommittee until the July meeting:

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:011. Technical eligibility requirements.

The following regulations were approved by the subcommittee and ordered filed:

CABINET FOR HUMAN RESOURCES
Department for Health Services
Controlled Substances
902 KAR 55:010. Licensing of manufacturers and wholesalers. (Senator James P. Bunning voted no.)

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining and Reclamation
Oil Shale Operations
405 KAR 30:025. Experimental practices.
405 KAR 30:035. General requirements for performance bond and liability insurance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Trade Practices and Frauds
806 KAR 12:070. Life insurance application.
Health Insurance Contracts
806 KAR 17:060. Minimum standards for Medicare supplement policies. (As amended.)
Motor Vehicle Reparation (No-Fault)
806 KAR 39:060. Stickers or emblems.
Kentucky Harness Racing Commission
Harness Racing Rules
811 KAR 1:180. Personnel to be licensed; fees.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:036. Amounts payable for skilled nursing and intermediate care facility payments. (Representative Albert Robinson voted no.)
Public Assistance
904 KAR 2:006. Technical requirements; AFDC.
904 KAR 2:016. Standards for need and amount; AFDC.
904 KAR 2:035. Right to apply and reapply.
904 KAR 2:040. Procedures for determining initial and continuing eligibility.
904 KAR 2:046. Adverse action; conditions.
904 KAR 2:050. Time and manner of payment.
904 KAR 2:055. Hearings and appeals.

The subcommittee recommended that no action be taken on the following emergency regulations:

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Department of Surface Mining and Reclamation
Primacy Regulations
405 KAR 1:005E through 405 KAR 24:040E.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Unemployment Insurance
904 KAR 5:030E. Employer contributions.

The subcommittee recommended that the following regulations be approved for filing:

DEPARTMENT OF REVENUE
General Administration
103 KAR 1:030. Repeal of 103 KAR 1:020.

DEPARTMENT OF EDUCATION
Bureau of Instruction
Teacher Education
704 KAR 15:090. Incentive loan program; mathematics and science. (As amended.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
OSHA
803 KAR 2:010. Board procedures.
803 KAR 2:020. Adoption of 29 CFR Part 1910.
803 KAR 2:027. Adoption of 29 CFR Parts 1915 to 1919; maritime employment.
803 KAR 2:030. Adoption of 29 CFR Part 1926.
803 KAR 2:032. Adoption of 29 CFR Part 1928.
Department of Banking and Securities
Securities
808 KAR 10:150. Registration exemptions. (As amended.)

CABINET FOR HUMAN RESOURCES
Department for Health Services
Alcohol, Drugs and Occupational Programs
902 KAR 3:010. Licensing procedures.
Department for Social Insurance
Public Assistance
904 KAR 2:110. Refugee assistance.
Unemployment Insurance
904 KAR 5:030. Employer contributions.

On motion of Chairman Brinkley, the meeting was adjourned at 12 noon.

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