Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 9, NUMBER 4

FRIDAY, OCTOBER 1, 1982

IN THIS ISSUE

Public Hearings Scheduled 395

Emergency Regulations:
Personnel 395
Agriculture 398

Amended Regulations Now in Effect:
Teachers' Retirement System 400
Board of Nursing 400
Natural Resources and Environmental Protection:
Waste Management 401
Public Service Commission 473
Human Resources:
Health Services 479
Social Servicdes 485

Amended After Hearing:
Education 487
Human Resources—Social Insurance 489

Proposed Amendments:
Board of Examiners and Registration of Architects 490
Fish and Wildlife Resources 495
Agriculture 496
Insurance 496
Housing, Buildings and Construction 497
Human Resources:
Health Services 498
Social Insurance 503

Proposed Regulations Received Through September 15:
Fish and Wildlife Resources 510
Natural Resources and Environmental Protection:
Waste Management 512
Transportation 518
University of Louisville 521
Insurance 526
Human Resources 527

Minutes of the Administrative Regulation Review Subcommittee 528

CUMULATIVE SUPPLEMENT

Locator Index—Effective Dates ..... D 2
KRS Index ..... D 6
Subject Index ..... D 8

NOTE: The October meeting of the Administrative Regulation Review Subcommittee will be a ONE-DAY meeting—WEDNESDAY, October 27, 1982, at 10 a.m., in Room 103, Capitol Annex.

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

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

The *Administrative Register of Kentucky* is the monthly advance sheets service for the 1983 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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

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

---

Administrative Register of kentucky

(ISSN 0096-1493)

© 1982 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $36 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

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

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

SENATOR JOE PRATHER, Senate President Pro Tem — Chairman — REPRESENTATIVE BOBBY H. RICHARDSON, Speaker of the House

Senate Members

DELBERT MURPHY, Assistant President Pro Tem
DOUG MOSELEY, Minority Caucus Chairman
JOE WRIGHT, Majority Floor Leader
HELEN GARRETT, Majority Whip
EUGENE P. STUART, Minority Floor Leader
CLYDE MIDDLETON, Minority Whip
DAVID K. KAREM, Majority Caucus Chairman

House Members

DAVID THOMASON, Speaker Pro Tem
WILLIAM (BILL) DONNERMEYER, Majority Caucus Chairman
JIM LEMASTER, Majority Floor Leader
HERMAN W. RATTLIFF, Minority Caucus Chairman
ARTHUR L. SCHMIDT, Minority Floor Leader
JIM DUNN, Majority Whip
WOODY ALLEN, Minority Whip

VIC HELLARD, JR., Director

SAMUEL L. HENSLEY, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

REPRESENTATIVE WILLIAM T. BRINKLEY, Chairman
SENATOR WILLIAM L. QUINLAN
SENATOR JAMES P. BUNNING
SENATOR HELEN GARRETT
REPRESENTATIVE ALBERT ROBINSON
REPRESENTATIVE JAMES E. BRUCE
REPRESENTATIVE GREGORY D. STUMBO

Staff

SUSAN C. HARDING, Regulations Compiler
JUNE Q. MABRY
SHIRLEY W. HART
O. JOSEPH HOOD, Counsel for the Subcommittee
DAN RISCH, Co-Counsel

Public Hearings Scheduled

CABINET FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Division of Air Pollution

A public hearing has been scheduled on October 28, 1982, at 10:00 a.m. in Room G-1 of the Capital Plaza Tower, Frankfort, Kentucky on the following regulations:

401 KAR 59:260. New blast furnace casthouses. [9 Ky.R. 390]
401 KAR 61:080. Steel plants using existing basic oxygen process furnaces. [9 Ky.R. 380]
401 KAR 61:170. Existing blast furnace casthouses. [9 Ky.R. 390]

Division of Waste Management

A public hearing has been scheduled on November 3, 1982, at 10:00 a.m. in the Auditorium, Capital Plaza Tower, Frankfort, Kentucky on the following regulations:

401 KAR 2:180. General planning and management provisions for solid waste. [9 Ky.R. 512]
401 KAR 2:185. Submission of area plan. [9 Ky.R. 514]
401 KAR 2:190. Designation as a solid waste management area. [9 Ky.R. 516]

DEPARTMENT OF INSURANCE

A public hearing has been scheduled on November 1, 1982, at 9:30 a.m. at 151 Elkhorn Court, Frankfort Kentucky, on the following regulation:

806 KAR 43:010. Prepaid dental plan organization agent license. [9 Ky.R. 526]

Emergency Regulations Now In Effect

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

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-721
August 26, 1982

EMERGENCY REGULATION
Department of Personnel
Personnel Board

WHEREAS, in order to implement statutory amendments enacted by the 1982 General Assembly relating to the restructuring of the Personnel Board (HB 415), additional changes are necessary in the administrative regulations relating to the classified service; and

WHEREAS, in order to implement legislation enacted by the 1982 General Assembly relating to appeals before the Personnel Board, an amendment to the current emergency administrative regulation is necessary; and

WHEREAS, in order to provide a timely decision by the Personnel Board in keeping with the ninety (90) day requirement of House Bill 415; and

WHEREAS, the Department of Personnel and the Personnel Board have determined and find that an emergency exists and that there is a necessity to provide by regulation for the implementation of this amendment and enactment; and

WHEREAS, the Commissioner of Personnel and the Personnel Board have prepared, approved and submitted proposed regulation amendments and a proposed regulation, pursuant to KRS 18A.075 and KRS 18A.110, to make these changes; and

WHEREAS, the Department of Personnel and the Personnel Board are desirous, pursuant to KRS 13.088(1), to continue the administrative regulation review process:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by Section 13.088(1) of the Kentucky Revised Statutes, here acknowledge the finding of the Department of Personnel and the Personnel Board that an emergency exists and direct that the attached regulation be effective upon being filed in the Office of the Legislative Research Commission.

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

FINANCE AND ADMINISTRATION CABINET
Department of Personnel

101 KAR 1:130E. 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]
EFFECTIVE: September 7, 1982
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 re-employment 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 *or other mechanical recording* 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 *the stenographic or mechanical record* [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. *Any mechanical recording device and procedures utilized by the board must be similar to that used by the Administrative Office of the Courts at the District Court level.* The board upon review of the findings of fact, *stenographic or mechanical recording* [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 *or mechanical recording* [record] shall be taken of this additional testimony and the *hearing officer* [presiding member-hearing examiner] shall submit to the board a *stenographic or mechanical recording* [transcript] of the evidence presented. The board shall then consider the findings of fact, *the stenographic or mechanical recording* [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 *stenographic or mechanical recording* [transcript] of the evidence presented at the hearing. Such request shall be in writing to the board. Any party requesting such *record* [transcript] shall bear the expense of preparing the copy of the *record* [transcript at the rate of ten (10) cents per page unless otherwise ordered by the Personnel Board]. Payment for the *stenographic or mechanical recording* [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, *or the board* [such] orders shall be issued by the *executive director* [commissioner] acting as secretary to the board.

DEE MAYNARD, Commissioner
ADOPTED: August 19, 1982
RECEIVED BY LRC: September 7, 1982 at 2:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 82-707
August 20, 1982

EMERGENCY REGULATIONS
Department of Agriculture
Division of Weights and Measures

WHEREAS, the Kentucky Department of Agriculture has the authority under KRS Chapter 251 to license grain storage establishments in the Commonwealth; and

WHEREAS, persons engaged in the production of grain have suffered serious economic loss as a result of grain warehouse failure; and

WHEREAS, many persons engaged in the production of grain, who store or sell grain at a licensed grain storage establishment are not sufficiently aware of their legal relationship with the storage establishment; and

WHEREAS, the Kentucky Department of Agriculture has authority to require notice of the relationship between persons who store or sell grain and the grain storage establishment; and

WHEREAS, it is necessary for the protection of persons who sell or grain at a licensed storage establishment to have in full force and effect regulations before the next harvest season;

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) of the Kentucky Revised Statutes, hereby acknowledge the finding of the Department of Agriculture and the Commissioner of Agriculture that an emergency exists and direct that the attached regulation become effective immediately upon being filed in the Office of the Legislative Research Commission.

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

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Division of Weights and Measures

302 KAR 35:060E. Contracts.

RELATES TO: KRS 251.480
PURSUANT TO: KRS 13.082, 251.420
EFFECTIVE: August 24, 1982
NECESSITY AND FUNCTION: Establishes the minimum provisions for forward pricing and storage contracts used by grain storage establishments licensed under KRS Chapter 251.

Section 1. (1) All contracts under which grain is stored or sold on a forward pricing (delayed pricing) basis shall be in writing and in a form approved by the Kentucky State Department of Agriculture, Division of Weights and Measures. Such forms shall at a minimum provide:

(a) Terms sufficient to comply with relevant requirements of KRS Chapter 355.

(b) The following language in bold type not less than twelve (12) points in size located on the face of the contract:

"In selling commodities under this agreeement, I, the seller, fully understand that I am transferring title to the undersigned buyer upon delivery, and that after delivery I am an unsecured creditor of the buyer for the market value of commodities so delivered until the price is established and settlement is completed. If the buyer defaults in his obligation for settlement I am a common (unsecured) creditor of the buyer for the value of commodities not settled for."

(2) Applicants for a grain storage establishment license or renewal of a grain storage establishment license shall submit with the application all forms of contracts used by the grain storage establishment for storage or forward pricing (delayed pricing) of grain unless the only contracts utilized for storage or forward pricing (delayed pricing) of grain are standard forms approved and supplied by the Kentucky Department of Agriculture.

(3) A grain storage establishment may store grain under a warehouse receipt as defined in KRS 355.7-101 et seq. without such prior approval of such contract or receipt.

(4) A grain storage establishment may until June 30, 1983, comply with the provisions of paragraph (b) of subsection (1) by attaching security to the statement required in paragraph (b) of subsection (1) to a preprinted contract otherwise approved by the department under the provisions of paragraph (a) of subsection (1).

(5) Forms appended hereto are approved for use in storage or forward pricing (delayed pricing) of grain and need not be submitted for approval.

ALBEN W. BARKLEY, II, Commissioner
ADOPTED: August 24, 1982
RECEIVED BY LRC: August 24, 1982 at 3:25 p.m.

(See Appendix A to 302 KAR 35:060E on following page.)

APPENDIX A

DELAYED PRICE AGREEMENT

DATE: _____ Agreement No. _____

Commodities under agreement: _____

It is hereby agreed that I, the undersigned seller, may from time to time, by my own choice, sell and deliver to the undersigned buyer, agricultural commodities as listed above, on which the price is to be established at a later date. I pledge that the commodities delivered pursuant to this agreement shall be free of any lien or encumbrance.

In selling commodities under this agreement, I, the seller, fully understand that I am transferring title to the undersigned buyer upon delivery, and that after delivery I am a creditor of the buyer for the market value of commodities so delivered until the price is established and settlement is completed. If the buyer defaults in his obligation for settlement I am a common (unsecured) creditor of the buyer for the value of commodities not settled for.

Upon demand by the seller, the buyer is obligated to pay his regular bid price upon the date of demand for the commodities being priced by the seller which have been delivered under this agreement, less any service charge which is due and payable to the buyer. The buyer shall pay the same price as he is bidding for like commodities being delivered to him for sale on that date by other sellers.

For services rendered in connection with this agreement the seller shall be liable to the buyer for delayed price charges as printed on the back of the scale ticket.

Each scale ticket, which is marked for delayed price, hereby becomes a part of this agreement.

_____	_____
Seller	Buyer
_____	_____
Address	Address
_____	_____
Authorized Signature	Authorized Signature

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Division of Weights and Measures

302 KAR 35:070E. Bookkeeping.

RELATES TO: KRS 251.480
PURSUANT TO: KRS 13.082, 251.420
EFFECTIVE: August 24, 1982
NECESSITY AND FUNCTION: The General Assembly enacted legislation in 1982 which requires all grain storage establishments to utilize the bookkeeping system approved by the Department of Agriculture. This regulation implements that law.

Section 1. All books and records of grain storage establishments located within the Commonwealth of Kentucky and licensed by the Commonwealth of Kentucky must maintain all books and records utilizing generally accepted accounting principles as determined by generally accepted auditing standards.

Section 2. The books and records of grain storage establishments maintained under these regulations shall accurately state, if any, the liens or encumbrances upon grain.

Section 3. A grain storage establishment located within and licensed by the Commonwealth of Kentucky shall furnish the Department of Agriculture, as an attachment to its application for licensure or renewal licensure, a certified financial statement accurately disclosing the financial condition of the grain storage establishment.

Section 4. A grain storage establishment located within and licensed by the Commonwealth of Kentucky, where grain is sold under a forward price (delayed pricing) contract shall post at or near any scale used to weigh grain received for purchase, a notice describing the legal rights of the seller which shall be provided by the Department of Agriculture.

ALBEN W. BARKLEY, II, Commissioner
ADOPTED: August 24, 1982
RECEIVED BY LRC: August 24, 1982 at 3:25 p.m.

Amended Regulations Now In Effect

EDUCATION AND HUMANITIES CABINET
Kentucky Teachers' Retirement System
As Amended

102 KAR 1:210. Submission of employer data.

RELATES TO: KRS 161.560
PURSUANT TO: KRS 13.082, 161.310
EFFECTIVE: September 8, 1982
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 *at an annual rate not to exceed* [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 *interest at the rate of* one percent (1%) *simple interest* of the amount of the late contribution for each month or part of a month that the contributions are late. *In no event shall the interest charge exceed twelve percent (12%) during a twelve (12) month period.* 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.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Nursing
As Amended

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
EFFECTIVE: September 8, 1982
NECESSITY AND FUNCTION: To assure that applicants for renewal of licenses meet minimum standards set forth by the board as necessary for safe practice. To provide consistency in procedures.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:
(1) Hold a valid and current license issued by the board;
(2) Submit completed application form to board office to be received or postmarked no later than the last day of the licensure period;
(3) Submit current fee; and
(4) Have met continuing education contact hour requirements, if applicable.

Section 2. Applicants for current inactive licenses and those who are renewing for the first time an original Kentucky license issued by examination or endorsement are exempt from meeting continuing education contact hour requirements.

Section 3. Continuing Education Contact Hours Required for Renewal of Current Active Registered Nurse Licenses. (1) Continuing education contract hours earned by licensure renewal applicants according to board requirements [and in excess of contact hour requirements prior to July 15, 1982,] shall [be carried forward to] meet requirements for renewal of 1983 and 1984 registered nurse licenses as applicable to the following:
(a) Ten (10) contact hours of continuing education earned during the period of January 1, 1981 through December 31, 1982 for renewal of 1983 registered nurse licenses; and
(b) Twenty-two (22) contact hours of continuing education earned during the period of January 1, 1982 through May 31, 1984 for renewal of 1984 registered nurse licenses.

(2) Beginning in 1984 and thereafter, applicants shall earn thirty (30) contact hours of continuing education during the period of June 1 through May 31 of the second succeeding year for renewal of registered nurse licenses expiring on October 31 of a current licensure period.

[(3) Beginning July 15, 1982, continuing education contact hours earned in excess of requirements for renewal of licenses shall not be carried forward.]

Section 4. Continuing Education Contact Hours Required for Renewal of Current Active Licensed Practical Nurse Licenses. (1) Continuing education contact hours earned by licensure renewal applicants according to board requirements [and in excess of contact hour requirements prior to July 15, 1982,] shall [be carried forward to] meet requirements for renewal of 1982, 1983 and 1985 licensed practical nurse licenses as applicable to the following:

(a) Five (5) contact hours of continuing education earned during the period of April 30, 1981 to April 30, 1982 for renewal of 1982 licensed practical nurse licenses;

(b) Ten (10) contact hours of continuing education earned during the period of April 30, 1981 to April 30, 1983 for renewal of 1983 licensed practical nurse licenses; and

(c) Thirty (30) contact hours of continuing education earned during the period of April 30, 1982 [3] through May 31, 1985 for renewal of 1985 licensed practical nurse licenses.

(2) Beginning in 1985 and thereafter, applicants shall earn thirty (30) contact hours of continuing education during the period of June 1 through May 31 of the second succeeding year for renewal of licensed practical nurse licenses expiring on October 31 of a current licensure period.

[(3) Beginning July 15, 1982, continuing education contact hours earned in excess of requirements for renewal of licenses shall not be carried forward.]

Section 5. Licensure Period. (1) The licensure period for current active and inactive registered nurse licenses shall be as follows:

(a) Applicants approved for renewal of 1983 licenses, shall be issued valid and current licenses for the period of May 1, 1983 through October 31, 1984.

(b) Beginning in 1984 and thereafter, applicants approved for renewal of licenses shall be issued current and valid licenses for a biennial period of November 1 through October 31.

(2) The licensure period for current active and inactive licensed practical nurse licenses shall be as follows:

(a) Applicants approved for renewal of 1982 licenses shall be issued valid and current licenses for the period of November 1, 1982 through October 31, 1983.

(b) Beginning in 1983 and thereafter, applicants approved for renewal of licenses shall be issued current and valid licenses for a biennial period of November 1 through October 31.

Section 6. Valid and current licenses issued by the board may be renewed on either an active or inactive status.

SHARON M. WEISENBECK, Executive Director
ADOPTED: June 4, 1982
RECEIVED BY LRC: July 8, 1982 at 3 p.m.

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

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)

EFFECTIVE: August 25, 1982

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 department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the United States Government Printing Office.

(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 ground-

water 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, commercial waste, institutional waste, and those sludges, industrial or special waste with specific approval from the department.

(c) "Contained landfill" means a facility for the proper disposal of solid waste including those industrial wastes, special wastes, or hazardous wastes exempted by regulation and any non-hazardous waste without case-by-case approval from the department.

(d) "Residual landfill" means a facility for the disposal of specific solid waste(s), including special waste, which is located, designed, constructed, operated, maintained and closed in conformance with the "Environmental performance standards" of 401 KAR 2:055, Section 6(1) and which receives a case-by-case design review by the department.

(e) "Landfarming facility" means a facility for land application of sludges or other residual waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(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 subject to waste management regulations, to the Department for Surface Mining Reclamation and Enforcement at sites regulated under KRS Chapter 350. Coal mining solid waste may be disposed of in the areas regulated under KRS Chapter 350 and is exempt from the permit requirements in 401 KAR 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) The general requirements of KRS Chapter 224 are maintained. [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
As Amended

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

EFFECTIVE: August 24, 1982

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 submis-

sion 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 com-

ments 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.

(d) In the case of a hazardous waste disposal site or facility, no permit shall be approved or issued by the Cabinet prior to the notification specified in KRS 224.855(5) and (6).

(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. Immediate [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 two (2) [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 two (2) [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 additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(c) If the permittee is undecided whether to cease conducting regulated activities, the 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 existing facilities, when the owner or operator proposes to rely on existing liners, a description of the installation procedures used;

7. Design details of the leachate removal system, the basis of design, and a description of the operating procedures to be used to ensure free flow from the collection system in accordance with 401 KAR 2:063, Section 19(3)(c);

8. Design plans and specifications and basis of design of any structures needed to comply with 401 KAR 2:063, Section 19(3)(e);

9. A description of the maintenance and repair procedures proposed to comply with 401 KAR 2:063, Section 19(3)(d) and Section 2(6)(c);

10. A description of the operating procedures that will ensure compliance with 401 KAR 2:063, Sections 19(8) and 19(9); and

11. A certification by a qualified engineer which complies with 401 KAR 2:063, Section 19(5)(c). The owner or operator of a new facility must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications.

(d) For facilities that store, [recycle,] or treat hazardous waste in waste piles, except as otherwise provided in 401 KAR 2:063, Section 20(1) 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 burn-

ed; 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
As Amended

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
EFFECTIVE: August 24, 1982
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 design-

ed 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 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* [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 beginning 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 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.

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.

(1) 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 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. 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 is-

suing 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. *A hazardous waste disposal site or facility shall maintain additional excess liability coverage in the amount of at least $10,000,000. 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 *demonstrate that the level of self-insurance does not exceed ten (10) percent of equity and 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 appropriate 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 can-

not 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 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 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
(To Demonstrate Assurance of
Closure or Post-Closure Care)

(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 muturity 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 parentheses 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 con-

duct 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
S02	Tank	S04	Surface impoundment
		S05	Other (specify)
2.	Treatment		
(a)	Thermal Treatment		
T06	Liquid injection incinerator	T13	Wet air oxidation
T07	Rotary kiln incinerator	T14	Calcination
T08	Fluidized bed incinerator	T15	Microwave discharge
T09	Multiple hearth incinerator	T16	Cement kiln
T10	Infrared furnace incinerator	T17	Lime kiln
T11	Molten salt destructor	T18	Other (Specify)
T12	Pyrolysis		
(b)	Chemical Treatment		
T19	Absorption mound	T27	Cyanide destruction
T20	Absorption field	T28	Degradation
T21	Chemical fixation	T29	Detoxification
T22	Chemical oxidation	T30	Ion exchange
T23	Chemical precipitation	T31	Neutralization
T24	Chemical reduction	T32	Ozonation
T25	Chlorination	T33	Photolysis
T26	Chlorinolysis	T34	Other (Specify)
(c)	Physical Treatment		
	(1) Separation of components		
T35	Centrifugation	T42	Flotation
T36	Clarification	T43	Foaming
T37	Coagulation	T44	Sedimentation
T38	Decanting	T45	Thickening
T39	Encapsulation	T46	Ultrafiltration
T40	Filtration	T47	Other (Specify)
T41	Flocculation		
	(2) Removal of Specific Components		
T48	Absorption-molecular sieve	T58	High gradient magnetic separation
T49	Activated carbon	T59	Leaching
T50	Blending	T60	Liquid ion exchange
T51	Catalysis	T61	Liquid-liquid extraction
T52	Crystallization	T62	Reverse osmosis
T53	Dialysis	T63	Solvent recovery
T54	Distillation	T64	Stripping
T55	Electrodialysis	T65	Sand filter
T56	Electrolysis	T66	Other (Specify)
T57	Evaporation		
(d)	Biological treatment		
T67	Activated sludge	T73	Spray irrigation
T68	Aerobic lagoon	T74	Thickening filter
T69	Aerobic tank	T75	Tricking filter
T70	Anaerobic lagoon	T76	Waste stabilization pond
T71	Composting	T77	Other (Specify)
T78-79	(Reserved)		
3.	Disposal		
D80	Underground injection	D84	Surface impoundment (to be closed as a landfill)
D81	Landfill		
D82	Land treatment	D85	Other (Specify)
D83	Ocean disposal		

JACKIE SWIGART, Secretary

ADOPTED: 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
As Amended

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
EFFECTIVE: August 24, 1982
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 mechanisms for closure, post-closure and sudden liability 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 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 in-

cinerators 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. The Code of Federal Regulations is available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. A copy has been filed with the Regulations Compiler of the Legislative Research Commission.*

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

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
As Amended

807 KAR 5:006. General rules.

RELATES TO: KRS Chapter 278
PURSUANT TO: KRS 13.082, 278.280(2)
EFFECTIVE: August 25, 1982
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 com-

mensurate 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 August 1 [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 Health Services
Certificate of Need and Licensure Board
As Amended

902 KAR 20:006. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

PURSUANT TO: KRS 13.082, 216B.040, 216B.075 [, 216B.080]

EFFECTIVE: September 8, 1982

NECESSITY AND FUNCTION: [KRS 216B.040 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations.] *KRS 216B.040 and* KRS 216B.075 authorize[s] the Certificate of Need and

Licensure Board to promulgate administrative regulations respecting application and review procedures. *This regulation sets forth the application and review procedures and requirements for batching, review of substantial changes in projects and cost escalations and progress reports.* [KRS 216B.080 authorizes the Certificate of Need and Licensure Board to promulgate administrative regulations establishing criteria for the issuance or denial of certificate of need and for the allowance or disallowance of exemptions.]

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:

(1) "Affected persons" means the applicant; [the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area;] any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health [care] facilities within that geographic area; health [care] facilities [and health maintenance organizations (HMOs)] located in the health service area in which the project is proposed to be located which provides services similar to the services of the facility under review; health [care] facilities [and HMOs] which, prior to receipt by the agency or the proposal being reviewed, have formally indicated an intention to provide similar services in the future; *the cabinet and* third party payors who reimburse health [care] facilities for services in the health service area in which the project is proposed to be located [; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located].

(2) "Batching" means the *formal* review *in the same review cycle* and comparative consideration of all filed applications *(other than those given non-substantive review pursuant to KRS 216B.095)* pertaining to similar types of services, facilities or equipment affecting the same health service area.

(3) "Board" means the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(4) "Capital expenditure authorized" means the amount of the capital expenditure approved by the board to implement a proposal.

(5) "Certificate of need" means an authorization by the board to proceed to acquire, to establish, to offer, to substantially change the bed capacity or to substantially change a health service as covered by KRS Chapter 216B.

[(5) "Complete application" means an application in which all questions have been answered and all information and documentation required has been provided.]

(6) "Cabinet" means the Cabinet for Human Resources.

(7) "Executive director" means the executive director of the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board.

(8) "Formal review process" means the ninety (90) day certificate of need review conducted by the board.

[(6) "Date of public notice" means the date on which the first notice appears in a newspaper of general circulation in the health service area affected by the proposal.]

(9) [(7)] "Health service" means clinically related services [within a health facility,] provided within the Commonwealth to two (2) or more persons, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

(10) "Local health planning agency" means a health planning agency organized for a particular geographical area of the Commonwealth and designated by the governor.

(11) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095.

(12) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record.

(13) "Public information channels" means the office of communications and council affairs in the Cabinet for Human Resources.

[(8) "Planning subarea" means area development district as defined in KRS 147A.050.]

[(9) "Special purpose emergency care ambulance service" means an ambulance licensed pursuant to 902 KAR 20:115 which is owned and operated by industrial enterprises solely for the emergency transportation of their employees.]

[(10) "Substantial change in health service" means:]

[(a) The addition of a health service not provided in or through the health facility within the previous twelve (12) months which requires a capital expenditure of any amount or which entails an annual operating cost of at least $75,000; or]

[(b) The termination of a health service; or]

[(c) The addition or replacement of a health facility or health service which requires a license under KRS 216B.105.]

[(11) "To obligate" means:]

[(a) To enter any enforceable contract for the construction, acquistion, lease, or financing of a capital asset. A contract shall be considered enforceable when all contigencies and conditions in such contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; or]

[(b) The taking of formal action by a governing body of a health care facility to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or]

[(c) To accept a donation of property. In the case of donated property an obligation shall be deemed incurred on the date on which the gift is completed under applicable state law.]

Section 2. Criteria. [All decisions of the board to issue a certificate of need shall be consistent with the state health plan, except in emergency circumstances that pose an imminent threat to public health.] In determining whether to issue or deny a certificate of need, the board *and the cabinet* shall utilize the following criteria [and considerations]:

(1) Consistency with plans. The proposal should be consistent with *the state health plan* [appropriately established plans for the development of health facilities and services in the state and in the applicable health service area]. *Consideration should be given to the other applicable appropriately adopted plans developed by local health planning agencies. In case of inconsistency between the state health plan and other plans considered, the state health plan shall prevail.* The fact that the [plans adopted by a health systems agency or the] state health plan *does* [do] not address the specific type of proposal being reviewed does not constitute grounds for disapproval of the proposal. To determine conformance with this criterion the applicant *and the cabinet* shall address and the board shall consider the relationship of the proposal to:

(a) The state health plan;
(b) The applicable *appropriately adopted plans developed by local health planning agencies* [health systems plan and annual implementation plan];
[(c) The long-range development plan, if any, of the applicant.]
(2) Need and accessibility. The proposal should meet an identified need in a defined geographic[al] area and be accessible to all residents of the area. To determine conformance with this criterion the applicant shall address and the board *and the cabinet* shall consider:
(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups are likely to have access to those services.
(b) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service; the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements; and the effect of the reduction, elimination, or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups to obtain needed health care.
(c) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons), particularly those needs identified in the applicable *appropriately adopted plans developed by local health planning agencies* [health systems plan, annual implementation plan,] and *the* state health plan as deserving of priority. In this regard, the board *and the cabinet* shall consider:
1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved;
2. The past performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance (including the existence of any civil rights access complaints against the applicant);
3. The extent to which physicians with admitting privileges at the applicant's facility admit Medicare and Medicaid patients; and
4. The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).
(d) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
(e) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.
(f) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical or other health professions schools, multidisciplinary clinics and specialty centers.
(g) The special needs and circumstances of biomedical-behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.
(3) Interrelationships and linkages. The proposal should serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state accompanied by assurance of effort to achieve comprehensive care, proper utilization of services and efficient functioning of the health care system. To determine conformance with this criterion the applicant shall address and the board *and the cabinet* shall consider:
(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.
(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.
(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.
(4) Costs, economic feasibility, and resource availability. The proposal when measured against the cost of alternatives for meeting needs, is judged to be an effective and economical use of resources, not only in terms of capital investment, but also in terms of ongoing requirements for health manpower and operational financing. To determine conformance with this criterion the applicant shall address and the board *and the cabinet* shall consider:
(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.
(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal *on* [or] the cost of and charges for providing health services by the person proposing the service.
(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.
(d) In the case of construction projects:
1. The costs and methods of the proposed construction, including the costs and methods of energy provision; and
2. The probable impact of the construction project reviewed on the costs of providing health services by the persons proposing the construction project and on the costs and charges to the public of providing health services by other persons.
(e) The special circumstances of health care facilities with respect to the need for conserving energy.
(f) The factors which affect the effect of competition on the supply of the health services being reviewed.
(g) Improvements or innovations in the financing and delivery of health services which foster competition, and serve to promote quality assurance and cost effectiveness.
(5) Quality of services. The applicant should be prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements assuring the provision of quality health care services. To determine conformance with this criterion the applicant shall address and the board *and the cabinet* shall consider the quality *of* care provided by the applicant in the past.

(6) Special needs and circumstances of health maintenance organizations. In the case of a health maintenance organization (HMO) or an ambulatory care facility or health care facility controlled[,] directly or indirectly by an HMO, the proposal should be consistent with the special need and circumstances of HMOs. The applicant shall address and the board *and the cabinet* shall [only] consider *only*:

(a) The needs of enrolled members and reasonably anticipated new members of the health maintenance organizations for the health services proposed to be provided by the organization; and

(b) The availability of the new health services from non-health maintenance organization providers or other health maintenance organizations in a reasonable and cost effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services the board *and the cabinet* shall consider only whether the services from these providers:

1. Would be available under a contract of at least five (5) years duration;

2. Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization[.] (*e.g.*, [For example—]whether physicians associated with the health maintenance organization have or will have full staff privileges in a non-health maintenance organization hospital.);

3. Would cost no more than if the services were provided by the health maintenance organization; and

4. Would be available in a manner which is administratively feasible to the health maintenance organization.

Section 3. Required Approvals *for HMOs.* [(1)] Nothwithstanding the general review criteria established in Section 2, if an HMO or a health [care] facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the board shall approve the application if it finds, in accordance with the criterion set out in Section 2(6) that:

(1) [(a)] Approval of the application is required to meet the needs of the members of the HMO and the new members which the HMO can reasonably be expected to enroll; and

(2) [(b)] The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

[(2) Code, licensure, or certification deficiencies. Applications proposing capital expenditures required to correct code, licensure or certification deficiencies shall be approved if the proposal meets the requirements of KRS 216B.095(3) and Section 7(3).]

[Section 4. No person shall acquire major medical equipment; offer a new institutional health service; or make a substantial expenditure in preparation for the acquisition of such equipment or the offering of such service; or make or obligate a capital expenditure without first obtaining a certificate of need for such equipment, service or expenditure from the board.]

Section *4.* [5.] Exemptions. (1) A certificate of need shall not be required for any project which meets the applicable requirements of KRS 216B.065, [or] 216B.070, *or Section 14 of the 1982 Act.* If a person acquires major medical equipment not located in a health [care] facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a hospital, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a hospital only on a temporary basis in the case of *an emergency,* a natural disaster, a major accident, or *an* equipment failure. For the purposes of this section "temporary basis" means *on an occasional and irregular basis or* until the applicant's proposal for permanent acquisition *or regular use by a hospital* is reviewed under the *formal* [substantive] or non-substantive review process.

Section *5. Formal* [6. Substantive] Review. (1) At least thirty (30) days prior to submitting a certificate of need application *for a construction project,* a letter of intent shall be filed with the executive director [of the board]. No letter of intent is required when an applicant proposes to alter an outstanding certificate of need *for a construction project.* The letter of intent shall be filed on a form provided by the board.

(2) A letter of intent is valid for a period of one (1) year.

(3) [(2)] The executive director [of the board] shall [send the health systems agency a copy of the letter of intent,] acknowledge receipt of the letter of intent, *send a copy to the respective local health planning agency, if any,* and send appropriate forms and instruction sheets to the applicant.

[(3) A certificate of need application may not be submitted more than one (1) year after receipt of the letter of intent.]

(4) *The original* [One (1) copy of the] certificate of need application *and one (1) copy* shall be submitted to the executive director [of the board] and two (2) copies shall be submitted to the *respective local* health *planning* [systems] agency, *if any.*

(5) *Within fifteen (15) days of receipt of the application* the executive director [of the board] shall acknowledge receipt [of the application] in writing to the applicant and the *respective local* health *planning* systems agency, *if any,* and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the executive director that he elects for the application to be processed as originally submitted.

(7) [(6)] All applications shall be deemed filed upon *the determination of completeness by the executive director, upon receipt of the requested additional information by the executive director, or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted* [receipt of a complete application].

(8) [(7)] Applications not filed within a year from the date the application was received shall not be retained by the board.

(9) [(8)] The executive director [of the board] shall notify the applicant of the date the appliation was filed and the date public notice has been given of the commencement of the review process. Applications must be filed at least six (6) working days prior to the date of public notice in order to be included in such notice.

(10) [(9)] The executive director shall give written notice to affected persons of the beginning of a review. The notice

shall include the schedule for the review[,] and the period within which a public hearing may be requested by affected persons. The review notice to members of the public and third party payors shall be provided through *public information channels* [newspapers of general circulation in the health service area affected by the proposal]. Notice to all other affected persons shall be by mail.

(11) [(10)] The review period shell commence on the date of public notice. *No review shall take longer than ninety (90) days from the commencement of the review unless the applicant agrees to a deferral of action.* [The date of public notice shall be at least ninety (90) days prior to the board meeting.] Applications proposing the same or similar types of services, equipment, or facilities *affecting the same health service area* shall be batched in the review cycles so they can be *given comparative review, if applicable* [considered in relation to each other]. Batching review cycles for *formal* [substantive] reviews shall be as follows:

Type of Proposal	Month of public notice, ninety (90) days prior *to* meeting date	Month of certificate of need board meeting, Third Wednesday of:
(a) Hospital facilities and services including: general medical, surgical, psychiatric, obstetric and pediatric beds; primary care *centers*, renal disease *facilities*, [out-patient clinics] and ambulatory care *clinics*, ambulatory surgical centers, and rural health clinic*s* [facilities and services].	October, February, June	January, May September
(b) Long term care facilities and services including: skilled nursing, intermediate care, personal care, *and* nursing home*s* [and family care]; and proposals for home health services, [emergency care ambulance services,] and any other type *of* proposal not listed in paragraph (a) of this subsection. [;]	December, April, August	March, July, November

[(11) All applications filed after the first public notice following the effective date of this regulation shall be reviewed according to the batching cycles in subsection (10) of this section. Upon request, the timetable of batching cycles shall be available from the executive director of the board.]

[(12) All reviews shall be completed within ninety (90) days from the date of public notification unless action on the application is deferred with the written consent of the applicant.]

(12) [(13)] Any person directly affected by the proposal may request a public hearing within thirty (30) days of the date of public notice.

(13) [(14)] The *local* health *planning* [systems] agency shall notify the executive director [of the board] of its recommendation for approval or disapproval within sixty (60) days from the date of public notice. The recommendation shall set forth the basis for the recommendation and findings with respect to the criteria. In the event that no recommendation is received from the *local* health *planning* [systems] agency, the board shall proceed without a recommendation.

(14) [(15)] The executive director of the board shall notify the applicant, the *local* health *planning* [systems] agency and any *party to the proceeding* [person directly affected who appears on record at the public hearing] of the board's final action on a certificate of need application.

(a) If the application is approved, the written notification shall include:

1. Verification that criteria for determining need have been met and that the current accessibility of the facility as a whole has been taken into account, if applicable, as specified in the federal certificate of need regulation, except in the following cases:

a. Where the application is approved pursuant to the requirements of Section 2(6). In such case, the written findings shall verify that the conditions for required approvals under Section 3 have been met; or

[b. Where the application is approved pursuant to Section 7(3); or]

b. [c.] Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment.

2. Amount of capital expenditure authorized, where applicable.

(b) If the application is disapproved, the written notification shall include:

1. The [written] decision of the board.

2. Notice of appeal rights.

(c) If the board's action on a certificate of need application is inconsistent with a recommendation made by the *local* health *planning* [systems] agency, [the goals of the applicable health systems plan, or the priorities of the applicable annual implementation plan,] the executive director [of the board] shall submit to the *local* health *planning* [systems] agency and to the applicant a written detailed statement of the reasons for the inconsistency.

Section *6.* [7.] Nonsubstantive Review. (1) *An applicant* [The board] may waive the procedures for *formal* [a substantive] review of an application for a certificate of need and *request* [substitute] a nonsubstantive review. *In addition to the projects specified in KRS 216B.095(3)(a-f), nonsubstantive review status will be granted to an application to change the location of a proposed health service, so long as the application to change the location is submitted no later than one (1) year after the issuance of the original certificate of need. If a change of location of a proposed health facility is requested more than one (1) year after the certificate of need was issued, a formal review shall be required.*

[(2) In emergency circumstances that pose a threat to public health, projects which would normally be subject to substantive review shall be assigned nonsubstantive review status although the proposed project involves capital expenditures or modifications of health facilities or services. Emergency circumstances shall include acts of God, fire, vandalism, structural and/or mechanical failure and other similar situations which if not promptly acted upon would pose a threat to public health. Any applicant acting under this section must file an application for a nonsubstantive review with the executive director of the board within thirty (30) days of such an occurrence.]

[(3) Unless the board finds the facility or service with respect to which a capital expenditure is proposed is not needed or unless obligation of the capital expenditure is not consistent with the state health plan, applications proposing capital expenditures required for the purposes listed

below shall be granted nonsubstantive review status and, notwithstanding the criteria adopted by the board, shall be approved if the proposed capital expenditure is required:]

[(a) To eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations; or]

[(b) To comply with licensure standards; or]

[(c) To comply with accreditation or certification standards, compliance with which is required to receive reimbursements under Title XVIII of the social security act or payments under a state plan for medical assistance approved under Title XIX of such act.]

[(4) Applications proposing capital expenditures required for the purposes listed below shall be granted nonsubstantive review status and shall be reviewed using the criteria adopted by the board for substantive review if the capital expenditure is required:]

[(a) To replace or repair worn equipment provided such equipment has been used by the applicant in a health facility for five years or more and provided that the replacement does not result in a substantial change in the health services offered by the applicant.]

[(b) To make repairs, alterations, or improvements to a health facility which do not result in a substantial change in beds or a substantial change in health services offered by the applicant. In no event shall repairs, alterations or improvements be construed to mean replacement of a health facility.]

(2) [(5)] Procedures. Procedures for nonsubstantive review shall be as follows:

(a) *The original certificate of need application and* one (1) copy [of the certificate of need application], with a request for nonsubstantive review shall be submitted to the executive director [of the board] and two (2) copies of the application shall be submitted to the *respective local* health *planning* [systems] agency, *if any.*

(b) *Within fifteen (15) days of the receipt of the application* the executive director [of the board] shall acknowledge receipt of the application in writing to the applicant and the *local* health *planning* [systems] agency, *if any,* and *shall* notify the applicant whether or not the application is complete.

(c) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the executive director that he elects for the application to be processed as originally submitted.

(d) [(c)] All applications shall be deemed filed upon the *determination of completeness by the executive director, upon receipt of the requested additional information by the executive director, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted* [receipt of a complete application].

(e) [(d)] Within fifteen (15) days after the application is filed, the executive director *functioning as the representative of the cabinet* [of the board] shall determine whether the application meets the criteria for nonsubstantive review and shall notify affected persons of the decision to grant or deny nonsubstantive review status. The notice to members of the public and third party payors shall be provided through *public information channels* [newspapers of general circulation in the health service area affected by the proposal]. Notice to all other affected persons shall be by mail. [A schedule of public notice dates and board meeting dates shall be available upon request from the executive director of the board.]

(f) [(e)] *Within fifteen (15) days of the cabinet's notice to conduct a nonsubstantive review* any affected person *other than the applicant* may request a public hearing *before the cabinet* on an application granted nonsubstantive review status.

(g) [(f)] The *local* health *planning* [systems] agency, *if any,* shall recommend approval or disapproval of applications granted nonsubstantive review status *within thirty (30) days of the date of public notice* [prior to the applicable board meeting]. In the event that no recommendation is received from the *local* health *planning* [systems] agency, the *cabinet* [board] shall proceed without a recommendation.

(h) [(g)] The cabinet [board] shall approve or disapprove applications for [a] certificates of need within forty-five (45) days from the *date of public notice to conduct a* [determination of] nonsubstantive review [status].

(i) [(h)] If the applicant's proposed project is denied nonsubstantive review status *the application will automatically be placed in the next appropriate batching cycle of the formal review process* [or is denied a certificate of need following a nonsubstantive review, the applicant may apply for a certificate of need under the substantive review procedure. In such a case, the application which was granted nonsubstantive review status shall be considered a letter of intent and an application for the purpose of substantive review].

(j) If a certificate of need is denied following a nonsubstantive review, the applicant may request that the application be placed in the next appropriate batching cycle of the formal review process or may pursue a judicial appeal. If a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section *7.* [8.] Conditions Relative to a Certificate of Need. (1) *No person shall transfer an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need. All other certificates of need* [A certificate of need which was issued for modification of an existing health facility or service] may be transferred to the new owner of the facility or service if a change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need issued for *establishment of a new health facility or the replacement of an existing* [construction of a new health] facility [is not transferable] and is issued only [to the person and] for the location stated on the certificate.

(3) [(2)] Cost escalations. *(a)* A certificate of need shall not be required for *an* escalation[s] *of* [in] the capital expenditure authorized [, where the escalation does not exceed twenty percent (20%) or $100,000, whichever is greater,] provided that the scope of the project as approved is not altered and the amount of the escalation does not exceed: [$1,000,000.]

1. Twenty percent (20%) of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

2. Twenty percent (20%) of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

3. Ten percent (10%) of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

4. Five percent (5%) of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a

capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

5. Two percent (2%) of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(b) The certificate of need holder shall submit, to the executive director, a standardized escalation form approved by the Board which includes the amount of the escalation, the factors pertaining to the escalation, and information to assure that the scope of the project as approved originally by the Board has not changed. The executive director shall review the form submitted and within thirty (30) days of receipt shall notify the certificate of need holder whether the proposed escalation meets the requirements *of subsection (a)* of this section. Capital expenditures for escalations within the limits prescribed in this section shall not be obligated until the certificate of need holder has received this notice. A certificate of need shall be required for escalations in the capital expenditure authorized which exceeds the limits prescribed in this section or entails a change in the scope of the proposal which was originally approved.

(c) The certificate of need holder shall, prior to obligating any escalation of the capital expenditure authorized, submit to the executive director any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135.

Section *8.* [9.] Progress Reports. (1) As one of the conditions of a certificate of need, the *certificate of need holder* [applicant] shall submit a report of progress [toward the completion of the project] every six (6) months or more frequently if required by the board *until the project is complete.*

(2) All *certificate of need holders* [applicants] shall be notified in writing that certificates of need will be revoked by the board if satisfactory evidence towards the implementation of a proposal is not made within the time limits set by this regulation. The applicant shall provide the necessary evidence on forms provided by the executive director [of the board every six (6) months or as specified by the board until the project is complete]. The board may revoke the certificate of need for failure to submit progress reports as required.

(3) Procedures for submission of progress reports:

(a) The executive director [of the board] shall send notice to the *certificate of need holder* [applicant] specifying the date *each* [the] progress report is due. The first six-month report shall be due six (6) months from the date the certificate was issued.

(b) The applicant shall send one (1) copy of the six-month progress report form to the board and two (2) copies to the *local* health *planning* [systems] agency, *if any.*

(4) Criteria for review of progress:

(a) The first six-month progress report shall include the following:

1. On all projects for purchase of equipment only, a copy of the purchase order.

2. For all construction projects, a copy of the deed or the option to acquire the site.

(b) In the event [that] the *certificate of need holder* [applicant] wishes to change the location of the project from the site specified on the certificate of need, the *certificate of need holder* [applicant] shall note the proposed change of location on the first progress report form and shall submit a certificate of need application for nonsubstantive review. [A copy of the option or deed of purchase of the new site must be included with the application, as well as updated financial information.]

(c) Within one (1) year after a certificate of need *is* [has been] issued, the second six-month report shall include *documentation that* [the following]:

1. All projects for conversion of beds *are* [shall be] complete[d] (ready for licensure);

2. All projects for addition of new services, not involving construction, *are* [shall be] complete[d];

[3. All construction projects shall include evidence of the following:]

3. [a. Submission of] schematic plans *have been submitted* to the Department of Housing, Buildings and Construction and the *Cabinet* [Department] for Human Resources *for construction projects. The second six-month report for all construction projects shall also include:*

a. [b.] Schedule for project completion with projected dates;

b. [c.] Evidence of preliminary negotiation with financial agent;

c. [d.] Evidence of preliminary negotiation with contractors.

(d) Within eighteen (18) months after a certificate of need has been issued, the third six-month report shall include the following information regarding all construction projects:

1. Copy of deed or lease of land;

2. Evidence that applicant has sufficient capital obligated to complete the project. If the source of capital is to be a financing agreement, the applicant must have evidence that a final enforceable agreement or note has been executed;

3. *Documentation that* [Submission of] final plans *have been submitted* to the Department of Housing, Buildings and Construction and the *Cabinet* [Department] for Human Resources;

4. Enforceable contract with construction contractor;

(e) [5.] On all projects for purchase of equipment only, evidence that equipment has been installed.

(f) [(e)] Within two (2) years after a certificate of need has been issued, the fourth six-month report shall verify that all construction projects have the walls and roof up and plumbing roughed in.

[(f) No change in location shall be considered one (1) year or more after a certificate of need has been issued for a proposal. A new application must be submitted.]

FRANK W. BURKE, SR., Chairman
ADOPTED: May 19, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 11, 1982 at 4:30 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
As Amended

905 KAR 5:010. Standards.

RELATES TO: KRS 209.030(1), 209.160, House Bill 295, §52d of the 1982 General Assembly
PURSUANT TO: KRS 13.082, 194.050
EFFECTIVE: September 8, 1982
NECESSITY AND FUNCTION: House Bill 295, §52d of the 1982 General Assembly authorizes the Cabinet for

Human Resources to establish, by administrative regulations, reasonable performance standards for qualifying applicants for state appropriated funds related to spouse abuse shelters and crisis centers, and KRS 209.160 authorizes additional funds from marriage licenses to be used for spouse abuse shelters. There are no licensing requirements for spouse abuse shelters or crisis centers.

Section 1. Definitions. (1) "Challenging grant formula" means the formula authorized to allocate state funds appropriated under House Bill 295, §52d to spouse abuse shelters and crisis centers. *Beginning in fiscal year 1982-83 for new applicants (agencies which have not received state funding support prior to July 1, 1982), and in fiscal year 1983-84 for all applicants* the formula shall allocate, to the extent appropriated funds permit, one dollar ($1) for each dollar raised by qualifying applicants from non-state resources up to a maximum of fifty percent (50%) of the proposed annual budget, such percentage to decline in each subsequent year of application following fiscal year 1983 by five percent (5%) to a minimum floor of twenty-five percent (25%) state funding support.

(2) "Cabinet" means Cabinet for Human Resources.

(3) "Crisis center" means counseling and domestic violence crisis intervention services for abused spouses and their children.

(4) "Department" means Department for Social Services.

(5) "Non-state resources" means cash, certified expenditures or in-kind contributions used in the programs that are derived from other than state funds.

(6) "Qualified applicant" means any public or non-profit incorporated agency.

(7) "Spouse abuse shelter" means a home-like facility which provides temporary or emergency shelter, food, counseling, and information and referral for abused spouses and their children.

Section 2. Staff. (1) In all spouse abuse shelters or crisis centers one (1) staff person shall be designated as director.

(2) The facility shall maintain and/or assure the provision of such competent staff to provide services at the center or shelter. Staff and volunteers are to be at least eighteen (18) years of age unless under the direct supervision of an adult, have education, training or experience to perform their particular job, and a willingness to work with others, including people under stress, and to share responsibilities.

(3) The facility shall have written personnel policies.

(4) The facility shall maintain written job descriptions for each job category for all staff.

(5) The facility shall submit to the department a staffing pattern and indicate areas of responsibility, as well as lines of authority and supervision.

(6) The facility shall provide and/or secure orientation and in-service training for staff and volunteers responsbile for services under this contract.

Section 3. Physical Facilities. (1) The facility shall comply with applicable local, state and federal building, fire and health codes.

(2) Bedrooms shall be equipped with a bed or, when necessary as a result of overcrowding, a *mat of reasonable comfort* [two (2) inch thick mat].

[(3) Bed linen shall be kept clean.]

(3) [(4)] Each facility shall maintain a security system to provide for the physical safety of the client.

(4) [(5)] The facility shall comply with the grievance and complaint procedures established by the cabinet and the department.

Section 4. Medical and Dental. The facility shall assure emergency medical and dental services are available by referral.

Section 5. Meals. The facility shall provide all clients with three (3) meals per day, each including foods from the four (4) basic food groups.

Section 6. Services. (1) The spouse abuse shelter or crisis center shall maintain and provide services on a continuing basis and for such hours as are necessary to meet the needs of eligible persons.

(2) Staff of the facility are to apprise clients of resources available through the facility or by referrals which may assist them in the solution of their problems.

(3) Upon entrance into the spouse abuse shelter or crisis center, a written record shall be made which shall include identification of the reason for intake, and a summary of services available to assist the client through the facility. Each record maintained by the shelter or center shall contain, at a minimum, the information set forth in Section 7 of this regulation.

(4) The facility shall maintain records of services provided the client by the facility. In the event social services are provided by referral, a copy of the referral, together with the records of services provided by the agency or organization to the client, shall be maintained by the spouse abuse shelter or crisis center. In the event the state Department for Social Services provides assistance, copies of those records may be provided the spouse abuse shelter or crisis center only upon the affirmative showing in writing of a tangible or legitimate interest in the matter.

Section 7. Records. (1) Client records are to be maintained on each individual or family unit residing in the shelter or center during the time wherein that client or family unit is in residence at the facility.

(2) The client record is to maintain, at a minimum:

(a) The information set forth in Section 6, subsection (3) of this regulation.

(b) Name, age, sex, address and marital status of the individual.

(c) The names and ages of any accompanying dependents.

(d) Identification of any physical unjury and any medical attention to be obtained.

(e) Identification of any physical condition or ailment which may impact upon the services to be offered the client.

(f) Referrals of the client for services outside the shelter or center, identifying the agency by name and address.

(g) Any prior contacts with spouse abuse shelters or centers by the client specifying the date and reason for the contact.

(3) Records of the spouse abuse shelter or crisis center shall be maintained as confidential and shall not be shared without the prior written authorization of the client. Any records of the Cabinet for Human Resources, Department for Social Services, in the possession of the spouse abuse shelter or crisis center are strictly confidential and shall be shared with other agencies, individuals, or organizations only as provided in KRS 209.140 and KRS 194.060 and with the prior written permission of the Department for Social Services.

(4) The Cabinet for Human Resources, Department for

Social Services, shall have access to the records of the spouse abuse shelter or crisis center, including financial records for the purpose of audit, in order to determine compliance with the provisions of these regulations.

Section 8. Budget. (1) Prior to the disbursement of any funds to the shelter or center, the facility is to provide the department with a proposed budget indicating sources of income and amounts therefrom, together with the proposed use of funds received.

(2) During the fiscal year, the facility is to maintain financial records to document income and expenditures.

Section 9. (1) Daily program activities shall be offered with emphasis upon the client's physical, intellectual and social needs.

(2) No client shall maintain in his/her possession any weapon, alcohol or drug while in the facility.

(3) In no instance shall harsh, cruel or unusual punishment be used.

SUZANNE TURNER, Commissioner
ADOPTED: June 15, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: June 15, 1982 at 4 p.m.

Amended After Hearing

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

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
Amended After Hearing

702 KAR 1:025. Extended employment.

RELATES TO: KRS 157.390
PURSUANT TO: KRS 13.082, 156.070
NECESSITY AND FUNCTION: KRS 157.390 provides that the amount to be paid through the Minimum Foundation Program for teachers' salaries for certain units be increased proportionately if the personnel for such units are employed for longer than the regular school term and such employment is approved by the Superintendent of Public Instruction under regulations of the State Board of Education. This regulation implements that function by providing for approved employment beyond the regular school term for funding purposes under the Minimum Foundation Program, for personnel staffing the statutorily permissible units for administrative and special instructional services, supervisors of instruction, directors of pupil personnel, vocational education and superintendents.

Section 1. School districts to be alloted teachers salaries for more than 185 days by the Minimum Foundation Program in accordance with KRS 157.390(2)(a) for those foundation program units alloted under the provisions of KRS 157.360(5), (7), (8), (9) and (11) shall be allotted days of extended employment based on the categories of employment and positions enumerated in Sections 4 and 9 of this regulation. Allotments shall be limited to the lesser of:

(1) The number of days of employment in the position beyond 185 days; or

(2) The maximum number of days beyond the 185 day term approved by the Superintendent of Public Instruction in the plan submitted by the local district board of education.

Section 2. The board of education of each local school district shall, on or before March 15, on forms provided by the State Department of Education, submit a plan for the use of extended employment based upon a tentative allocation of extended employment days for each category of extended employment provided by the Superintendent of Public Instruction which may include, but not be limited to, program objectives to be achieved, calendars showing the days worked beyond the 185 day school term, and the execution of such *reporting* [evaluation] instruments as are necessary to appraise the efficiency of the extended employment program.

Section 3. On or before April 15 of each year the Superintendent of Public Instruction shall advise the local districts of the maximum number of days of extended employment funded in the Foundation Program appropriation for the subsequent school year which will be available to the local school district for the categories of employment specified in Sections 4 and 9 of this regulation as calculated in Sections 6, 7 and 9 of this regulation.

Section 4. For the purposes of allotting extended employment in accordance with Sections 6 and 7 of this regulation, eligible positions will be categorized as follows:

(1) Central Based Adminstration:
(a) Assistant Superintendent;
(b) Finance Officer;
(c) School Business Administrator;
(d) District Director of Vocational Education; and
(e) Director, Coordinator, or Manager of district-wide services as coded on the Professional Staff Data Form, *including, but not limited to, Director of School Food Service and Director of Special Education.*

(2) Central Based Supervision of Instruction and Student Activities:
(a) Supervisor of Instruction; and
(b) Director of Pupil Personnel.

(3) School Based Administration and Supervision:
(a) Principal;
(b) Assistant Principal; and
(c) Vocational School Director.

(4) Librarian.

(5) Guidance Counselor.

(6) District-Employed Vocational Teacher:
(a) Agri-Business;
(b) Business and Office;
(c) Marketing and Distributive Education;

(d) Health and Personal Services;
(e) Home Economics;
(f) Public Service;
(g) Special Vocational Programs; and
(h) Industrial Education Level III.
Properly certified full-time or part-time personnel performing eligible extended employment duties of the above-listed positions on a part-time basis shall be eligible for extended employment on a pro rata basis.

Section 5. The days of extended employment calculated in accordance with Section 6 and allotted to the categories of extended employment as specified in Section 4 may be transferred to meet program priorities in the following manner:

(1) The days of extended employment in subsection (1) of Section 4 may be transferred to subsection (2) of Section 4.

(2) The days of extended employment in subsections (1) and (2) may be transferred to subsections (3), (4), (5) and (6).

(3) The days of extended employment in subsections (4), (5) and (6) may be transferred among those subsections.

Each school district with an existing approved vocational agriculture program shall maintain the equivalent of at least one (1) full-time teacher of agriculture for fifty-five (55) days for supervision of students for work experience and other related functions.

Section 6. The days calculated for each category enumerated in Section 4, subsections (1) through (5) for each school district shall be the state total days allotted for the prior year in each such category divided by the sum of the state total units allotted for the prior year for basic, exceptional children, district-employed vocational, plus kindergarten times the sum of the units allotted the prior year in each district for basic, exceptional children, district-employed vocational plus kindergarten.

Section 7. The days calculated for the category enumerated in subsection (6) of Section 4 shall be the state total days allotted for the prior year district-employed vocational units divided by the state total units allotted for the prior year for the types of district-employed vocational units approved for the subsection (6), Section 4 category times the units allotted the prior year in each district for the types of district-employed vocational units approved for such category.

Section 8. Days allotted for extended employment for each category of extended employment for each school district shall be adjusted annually to a level not to exceed the appropriation contained in the biennial budget.

Section 9. In addition to the extended employment allotted to the categories of employment specified in Section 4, each school district will be allotted fifty-five (55) days of extended employment for the superintendent of that district and each contract vocational education teacher employed in a state operated school may be allotted up to twenty (20) days of extended employment provided a work program for that position has been approved by the Superintendent of Public Instruction.

Section 10. This regulation shall be effective for the 1983-84 school year and any preparatory steps in anticipation thereof enumerated herein, and school years thereafter, and to such extent supersedes 702 KAR 1:020.

Section 11. 702 KAR 1:020 is hereby rescinded effective June 30, 1983.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Administration and Finance
Amended After Hearing

702 KAR 3:030. Insurance requirements [on mortgaged buildings].

RELATES TO: KRS *160.105* [162.140, 162.300]
PURSUANT TO: KRS 13.082, 156.070[, 156.130, 156.160]
NECESSITY AND FUNCTION: *KRS 160.105 directs the State Board of Education to require by regulation that each school district provide for fire and extended insurance coverage on non-surplus buildings, at replacement cost but allowing for co-insurance and deductible features. This regulation implements that function by providing for a level of insurance coverage on school district buildings and/or structures sufficient to protect both the local school districts and any school revenue bond holders, as their interests may appear.* [To provide protection to holders of school building revenue bonds.]

Section 1. Each local board of education shall report annually to the Superintendent of Public Instruction on the Annual Financial Report, Department of Education, Form F-55, *a schedule of values which reflects the estimated replacement cost, actual cash values, and* the amount of *fire and extended* insurance provided for each building *and its contents owned by the local board of education which is not surplus to its needs as shown by the approved facilities plan. Each such building and its contents shall be insured for an amount equal to 100 percent of the replacement cost thereof as verified by an appraisal of the building by the insurance carrier.* [which has been mortgaged for the security of outstanding revenue bonds.] The amount of insurance coverage provided for each mortgaged building shall be at least an amount equal to the amount of the revenue bonds outstanding against the school building.

Section 2. Insurance on property specified in Section 1 shall be provided by carriers licensed to do business in the State of Kentucky and shall have features that [at least] provide for a minimum of eighty percent (80%) co-insurance, a per occurrence deductible on all 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. Such a self-insurance pool must be adequately reinsured by a carrier(s) approved to do business in the state of Kentucky and must provide facilities for insuring all of the property of an individual district to which this regulation applies.

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: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
Amended After Hearing

904 KAR 1:013. Payments for hospital inpatient services

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *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 hospital inpatient services.

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

Section 2. *Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet [department] in setting payment rates are specified in the cabinet's [department's] "Inpatient Hospital Reimbursement Manual" which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet [department] will apply the Medicare standards and principles described in 42 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).* [Determination of Reasonable Cost. The department shall determine reasonable cost in the following manner: (1) To determine the reasonable cost for each hospital participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the department shall apply the same standards, cost reporting period, cost reimbursement principles, and the method of cost apportionment currently applicable to such hospitals under Title XVIII; however, the inpatient routine service costs for medical assistance recipients shall be determined subsequent to the application of the Title XVIII method of apportionment and the calculation shall exclude the applicable Title XVIII inpatient routine service charges under the departmental method or patient days under the combination methods as well as Title XVIII inpatient routine service costs (including any nursing salary cost differential).]

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

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

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

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

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

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

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

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

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

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

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

(8) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended and indexed separately.

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

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

JOHN CUBINE, Commissioner
ADOPTED: August 17, 1982
APPROVED: W. GRADY STUMBO, Secretary
RECEIVED BY LRC: August 17, 1982 at 3 p.m.

Proposed Amendments

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
(Proposed Amendment)

201 KAR 19:025. Application for examination.

RELATES TO: KRS 323.050, 323.215
PURSUANT TO: KRS 323.210
NECESSITY AND FUNCTION: To clarify the procedure for making application for admission to the examinations.

Section 1. Application for Examination and Registration. All applications must be made upon the printed forms issued by the board and in strict accordance with the instructions to applicants submitted therewith. Otherwise they will not be accepted or considered.

Section 2. When to Submit Applications. Applications for examination will be received at all times but must be received at the board's office *at least ninety (90) days before the date of the scheduled examinations which the applicant wishes to take. This allows time for completion of the applicant's record prior to the board's pre-examination meeting which is held several weeks before the examination. At that meeting the board will determine whether the applicant is eligible for admission to the examination.* [not later than August 1 for applicants for the December professional examination part B and not later than February 1 for applicants for the June qualifying test and/or design test, professional examination part A. This allows time for completion of the applicant's record prior to the board's pre-examination meeting which is held several weeks before each examination. At that meeting the board will determine whether or not he is eligible to take the examination he wishes to enter.]

Section 3. Time and Place of Examinations. *The actual dates and locations for the administration of the examination will be determined by the board. Applicants will be notified well in advance to allow for preparation.* [The qualifying test and design test, professional examination part A will be administered in June of each year. The professional examination part B will be administered in December of each year. Actual dates and locations for the administration of the examinations will be determined by the board.]

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
(Proposed Amendment)

201 KAR 19:030. Examination; general provisions.

RELATES TO: KRS 323.050, 323.210
PURSUANT TO: KRS 323.210
NECESSITY AND FUNCTION: This regulation defines the general provisions in taking the examinations.

Section 1. Reporting for Written Examination. All candidates taking the full examination shall present themselves promptly on the morning of the first day of the examination at the time and place designated by the board. Any candidate who does not appear at the time and place prescribed will not be permitted to enter the examination; except that those candidates taking only certain parts of the [qualifying] examination shall present themselves in accordance with the instructions of the board.

Section 2. Materials Required for Written Examinations. *Candidates will be notified as to reference material permitted and equipment necessary for the examination.* [Candidates for the qualifying examination shall bring all necessary drawing instruments, T-Squares, triangles, scales, erasers and pencils. Also reference books where permitted. Candidates for the professional examination shall bring the mission statement and resource material, pencils and erasers.]

Section 3. Fairness in Grading: In order to preserve the anonymity of the candidate until the examining committee has rated the papers and exhibits, each candidate shall be directed to draw a number which he will place in an envelope and seal. He shall use this number to mark all papers and exhibits.

Section 4. Language Provisions: All examinations shall be held in the English language, without the use of an interpreter and under such auspices and environment as will insure their proper conduct under dignified surroundings.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
(Proposed Amendment)

201 KAR 19:035. Qualifications for examination.

RELATES TO: KRS 323.050, 323.060
PURSUANT TO: KRS 323.210
NECESSITY AND FUNCTION: To further define eligibility of applicants for admission to the examinations.

Section 1. Eligibility to Take the State Board Examination. (1) Any person who possesses the qualifications prescribed in KRS 323.050, and as further defined in other sections of these regulations, shall be eligible to take the examinations.

(2) It should be understood, however, that the education and experience required are more than mere vehicles to admission. These requirements and the examination are two (2) distinct exercises on the road to registration. Each supplements and sustains the other, but neither can replace the other as a vital part of professional training.

Section 2. General Requirements for Examination. Applicants for examination must meet the following requirements: (1) Must be a graduate of an accredited school of architecture, or the equivalent thereof; as determined by board regulations, with such additional experience as the board may prescribe and approve.

(2) Be a legal resident of the Commonwealth of Kentucky unless specifically exempted by the board therefrom for a justifiable reason.

(3) Be at least twenty-five (25) years of age.

(4) Be of good moral character. One (1) or more of the following may be sufficient to prevent an applicant from being considered to be of "good moral character:"

(a) Conviction of a felony.

(b) Chronic alcoholism, persistent drug abuse, or any such acts of behavior which would, if he were licensed, jeopardize or impair his judgment to meet his professsional responsibility as an architect to the public welfare and safety.

(c) Submitting a misstatement or misrepresentation of facts in an application or in supplementary information.

(d) Violating any provision of KRS Chapter 323 or board rules and regulations either before or after admission to examination.

(e) Violating the registration law of any other state, territory, or country.

(5) The board will review and evaluate the candidate's record of education, employment, experience, personal character, professional affiliations, and civic activities.

(6) The applicant may, at the board's discretion, be asked to appear for a personal audience so that the board may have the opportunity to judge his general qualifications for the practice of architecture, his ethical precepts, his resourcefulness, initiative and purpose in seeking a career in architecture and his general talents therefor.

(7) The candidate must demonstrate to the board that his qualifications and preparation for examination are adequate.

Section 3. Experience Required and Equivalancies Allowed. (1) A graduate from an accredited school of architecture shall, in addition thereto, have at least three (3) years of architectural experience satisfactory to the board. In general, an applicant who does not hold a degree from an accredited school of architecture will be required to have two (2) additional years of satisfactory experience for each calendar year of deficiency in architectural education, or a total of twelve (12) years.

(2) To be eligible for examination an applicant must present authentic evidence, by means of college transcripts and letters from employers, architects and other that he has met all the requirements noted in other sections and that he has had well diversified and satisfactory training in the many areas of architectural practice.

(3) In order to give the applicant a better understanding of the time and nature of the required experience, including related types of work which may be applied

thereto, the board has adopted the NCARB "Table of Equivalents for Education, Training and Experience" as a guide. A copy is included with each request for application forms, or may be obtained individually from the board office. The current edition shall apply.

(4) Training and experience acquired up *to one (1) month prior to the month of the examinations* [through April for non-graduates and through October for graduates] if supported by supplementary documentation may be counted as credit.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
(Proposed Amendment)

201 KAR 19:040. Types of examinations required.

RELATES TO: KRS 323.050, 323.215
PURSUANT TO: KRS 323.210
NECESSITY AND FUNCTION: To state the eligibility of candidates for examinations as to education requirements and nature of examinations.

Section 1. *Examination Required. (1) The Architect Registration Examination (ARE) is required to be taken and passed by all applicants for license.*

(2) Applicants who have entered the examination process prior to January 1, 1983 may transition from previous examination models to the ARE and will be required to take and pass only those sections and/or subsections of the ARE that equate to previous examination sections failed. Applicants making transition to the ARE will retain credit for equivalent sections or parts passed from previous examinations. [Types of Examinations Required. (1) The qualifying test and the professional examination part A (design test) are required to be taken by all applicants not holding a professional degree from a program of architecture accredited by the National Architectural Accrediting Board (NAAB) and by all applicants holding a degree from an accredited program in architecture who have not been admitted to the December professional examination part B prior to January 1, 1980.]

[(a) Applicants not holding a degree must pass the qualifying test and the design test (professional examination part A) before admission to the December professional examination part B.]

[(b) Applicants holding a degree from an accredited program in architecture may take the qualifying test and the design test (professional examination part A) at any time offered after obtaining the degree, but may be admitted to the December professional examination when eligible before passing the qualifying test and the design test (professional examination part A).]

[(2) The December professional examination part B is required to be taken and passed by all applicants for license.]

[(a) Applicants holding a degree from an accredited program in architecture and subsequently admitted to the December professional examination part B prior to January 1, 1980 shall not be required to pass the qualifying test and the design test (professional examination part A) before being granted license.]

[(b) Candidates who have failed to pass the professional examination within the three (3) year period of eligibility shall be required to pass both the qualifying and the professional examinations before being granted registration.]

Section 2. Description of Examinations; *Grading. (1) The Architect Registration Examination (ARE) is prepared by the cooperative effort of all state boards through the auspices of the National Council of Architectural Registration Boards and is administered in all states. The examination, its sections and supporting documents are available only to the state registration boards and cannot be viewed, copied or studied by other persons.*

(a) The Architect Registration Examination (ARE) is designed to evaluate the applicant's competence so as to protect the public health, safety and welfare by demonstrating the applicant's ability to provide architectural services of pre-design, site design, building design, building systems and construction documents and services, as these relate to the social/cultural aspects of the built environment, natural and physical forces, the design process, methods and materials and other external constraints.

(b) The ARE is divided into several sections and subsections each testing for minimum competence in the several areas of architectural expertise. Content and format is as determined by the board through its participating membership in the National Council of Architectural Registration Boards. Details of the examination subject matter of the several sections and subsections along with a schedule of the time permitted for each and dates of administration will be given to each active applicant well in advance of the examination dates.

(2) The grading and determination of the pass/fail scores for each section and subsection of the ARE shall be as established by the board in cooperation with all state boards through its participating membership in the National Council of Architectural Registration Boards and with advisory reports of its examination consultants.

(a) Those sections and subsections of the ARE which have multiple choice selections of answers or other methods of written simulation are machine graded.

(b) The sections and subsections of the ARE which have graphic or drawing solutions to the test problems are evaluated and graded independently by professionally qualified and trained graders under controlled conditions organized and authorized by all state boards through the National Council of Architectural Registration Boards or its regional subdivisions.

(3) The applicant will receive credit as determined by the board for those sections or subsections of the ARE which he/she has passed and must only retake those sections or subsections which he/she has failed.

[(1) The qualifying test and the professional examination, parts A and B, are prepared annually by the cooperative effort of all state boards through the auspices of the National Council of Architectural Registration Boards and are identically administered in all states. The tests and supporting documents are available only to the state registration boards and cannot be viewed, copied or studied by other persons.]

[(2) The qualifying test is designed to determine if the applicant has the knowledge and skill normally acquired in an accredited school of architecture.]

[(a) The qualifying test is a multiple choice written examination and each of the four (4) sections are machine graded. The grading of each part shall be as determined by the board in cooperation with all state boards through the auspices of the National Council of Architectural Registration Boards and its examination consultants.]

[(b) A candidate who fails to pass all sections of the qualifying test will retain credit for those sections passed and will be required to repeat only those sections failed.]

[(3) (a) The professional examination part A is to test a candidate's ability to apply the principals, theories and determinants of architectural design and site planning in the development of a graphic solution to a specific architectural problem.]

[(b) The professional examination part A is evaluated and graded independently by professionally qualified and trained graders under controlled conditions organized and authorized by all the state boards through the National Council of Architectural Registration Boards or its regional subdivisions. Grades awarded are either pass or fail.]

[(4) The professional examination part B is designed to place a candidate in areas relating to actual architectural situations whereby his/her ability to exercise competent value judgments will be tested and evaluated.]

[(a) The examination is a multiple choice written examination and each of the four (4) parts is machine graded. The grading of each part shall be as determined by the board in cooperation with all state boards through the auspices of the National Council of Architectural Registration Boards and its examination consultants.]

[(b) Credit allowed for any of the parts passed shall be as determined by the board for each administration of the examination.]

Section 3. Notification. (1) Candidates will be notified well ahead of the date of the examination to which they have been admitted and must advise the board promptly if they will appear at that time.

(2) A statement from a candidate that he will appear must be accompanied by a check made out to the State Treasurer of Kentucky covering the actual cost to the board of the sets of questions required.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
(Proposed Amendment)

201 KAR 19:050. Re-examination; reconsideration.

RELATES TO: KRS 323.090, 323.210
PURSUANT TO: KRS 323.210
NECESSITY AND FUNCTION: This regulation is necessary to define the period of eligibility for re-examination and reconsideration of applicants denied admission to examination.

Section 1. Three Year Period of Eligibility Defined. (1) If a candidate fails to pass all parts of the first examination to which he is admitted, then the three (3) year period during which he may retake the examinations failed, by payment for the examination questions at the time prescribed by the board, shall be from the last day of the month in which his first examination was given.

(2) If an applicant fails to attend the first examination to which he is admitted, then the three (3) year period during which he may take the entire examination or parts thereof, by payment for examination questions at the time prescribed by the board, shall be from the last day of the month in which the examination he failed to attend was given.

(3) Provided, however, that the board may, in its discretion, grant extensions of time if examinations are cancelled or changed during that period or if illness or other reasonable circumstances prevent the candidate from attending any regular examination.

(4) At the end of the three (3) year period of eligibility, the candidate must submit a new application, containing pertinent supplemental information, in order to continue taking the examinations, but a candidate [in the qualifying examination] may retain credit for those *sections or subsections* [parts] of the examination he has previously passed.

Section 2. Reconsideration of Applicants Who Were Denied Admission to Examination. (1) An applicant whose original application for admission to the examination was denied may request reconsideration by letter to the board with evidence that he has made up the deficiencies which caused the denial. No formal application or application fees will be required for such a request if made within a period of three (3) years from the date denied.

(2) After three (3) years a new application must be submitted containing relative information on training and experience subsequent to the original application.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.

DEPARTMENT FOR ADMINISTRATION
Division of Occupations and Professions
Board of Examiners and Registration of Architects
(Proposed Amendment)

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110
PURSUANT TO: KRS 323.210
NECESSITY AND FUNCTION: To define the basis of fees and fee payments.

Section 1. Annual Renewal Fee. (1) The annual renewal fee shall be due and paid before the first day of July each year. Anyone failing to pay the annual fee on or before the 30th day of August, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his license is automatically revoked.

(2) Licenses granted on July 1 and thereafter through December 31 shall be first renewed before the first day of July following. Licenses granted January 1 and thereafter through June 30 following shall be first renewed before the first day of July in the year following. This rule shall also apply to licenses restored or reinstated.

(3) During a period of active military duty an architect in the service may, upon written application to the board, be excused from paying the annual fee until such time as his military service is terminated and he wishes to resume practice. An identification card or renewal certificate will be issued upon notification of his return from duty and payment of the current annual renewal fee.

(4) An architect whose license has been revoked for failure to pay the annual renewal fee, who wishes to have his license reinstated, shall make a written request therefor, giving the reason why he neither surrendered his registration nor paid the fee within the time prescribed by law and thereafter bide by the Board's decisions and follow its instructions in applying for reinstatement.

Section 2. Examination Applications. *(1) An application for admission to the Architect Registration Examination (ARE) must be accompanied by a total fee of fifty dollars ($50). Upon successful completion of the examination, the applicant shall pay a fee of twenty-five dollars ($25) to obtain the license certificate.*

(2) (a) Applicants who either fail to pass the entire examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period must submit another application, updated to the time of submission with supplemental information. These applicants will be required to pay an additional fifty dollar ($50) examination fee.

(b) Applicants receiving credit from the previous full examination sequence will not be required to pay additional examination fees during their three (3) year period of eligibility.

(3) Applicants who have applied for the previous partial examination (Qualifying Test and/or Design Test with payment of twenty dollars ($20) fee) may convert to the ARE by payment of the additional fee of thirty dollars ($30) as balance of fee for administration of the examination.

[(1) An application for the administration of the qualifying test and/or professional examination part A (design test) to graduates of accredited programs in architecture shall be accompanied by a twenty dollar ($20) fee. An application for admission to the professional examination part B must be accompanied by a total fee of fifty-five dollars ($55). (Thirty dollars ($30) for administration of the examination and twenty-five dollars ($25) for license certificate.) An application for admission to the qualifying test, professional examinations A and B sequence must be accompanied by a total fee of seventy-five dollars ($75). (Fifty dollars ($50) for administration of the examinations and twenty-five dollars ($25) for license certificate.)]

[(2) Applicants who fail to pass the examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period, must submit another application, updated to the time of submission, with supplemental information. Applicants will be required to pay only the examination fee, however, and not another fee for license cerificate.]

Section 3. Fee Schedule. (1) Application for admission to, and administration of the *Architect Registration Examination* *$50*
[qualifying test and/or professional examination part A (graduates) ..... $20]

(2) *Re-application for admission to and administration of the Architect Registration Examination after original application has expired* *$50*
[Application for admission to, and administration of, the professional examination part B ..... $30]

(3) Application for admission to, and administration of *the Architect Registration Examination by converting from previous partial examinations (Qualifying Test and/or Design Test)* *$30*
[the qualifying test and the professional examination parts A and B sequence for non-graduates ..... $50]

(4) Application for a license certificate $25

(5) Application for a license by reciprocity $75

(6) Application for restoration of a voluntarily surrendered license $50

(7) Application for reinstatement of license revoked for failure to pay renewal fee: renewal fees from date of revocation plus application as directed plus $50

(8) Annual renewal fee: determined each year by board. Not to exceed $35

(9) No fee shall be refunded in whole or in part. All payments must be by check made payable to "State Treasurer of Kentucky." All must be certified except those for the annual renewal fee, [administration of qualifying test and/or professional examination part A (graduates),] and examination questions.

Section 4. Charges for Examination Questions. Candidates will be charged, at actual cost to the board, for the use of each set of examination questions required. Payment must be made when the board is notified by the candidate that he intends to appear. Such charges will be made each time the examinations are taken and will not be refunded.

L. WAYNE TUNE, Executive Director
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. Wayne Tune, Executive Director, State Board of Examiners and Registration of Architects, P.O. Box 22097, Lexington, Kentucky 40522.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:015. Boats and outboard motors; size limits.

RELATES TO: KRS 150.025, 150.090, 150.620, 150.625
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: It is necessary to regulate the size of outboard motors and boats on state-owned lakes to minimize the conflict with the primary purposes of the lakes which are the perpetuation of fish or game populations and the associated sports. *This amendment is necessary to provide regulation of boats and motors on Pan Bowl Lake.* [The Commissioner, with the concurrence of the Commission, finds it necessary to change the size limit restrictions on centerline length to accommodate modern boats.]

Section 1. No boat will be permitted on any of the herein named lakes with a centerline exceeding eighteen (18) feet six (6) inches in length as measured on deck or from bow to stern, except canoes which have no length limit and float boats which may have pontoons and decking no longer than twenty-two (22) feet. On Lake Malone and Lake Beshear only float boats can have pontoons and decking up to thirty (30) feet in length.

Section 2. No houseboats of any description will be permitted on any of the herein named lakes.

Section 3. No motor of any type is permitted on the following lakes:
(1) Lake Chumley, Lincoln County,
(2) Dennis Gooch Lake, Pulaski County,
(3) Martin County Lake, Martin County,
(4) Kingdom Come Lake, Harlan County.

Section 4. Electric motors only may be used on the following lakes:
(1) Carter Caves Lake, Carter County,
(2) Spurlington Lake, Taylor County,
(3) Marion County Lake, Marion County,
(4) Elliott County Sportsmen's Lake, Elliott County,
(5) Lake Washburn, Ohio County,
(6) Bert Combs Lake, Clay County,
(7) McNeely Lake, Jefferson County,
(8) Lake Mauzy, Union County,
(9) Carpenter Lake and Kingfisher Lakes, Daviess County,
(10) Metcalfe County Lake, Metcalfe County,
(11) Briggs Lake, Logan County.

Section 5. Electric motors only may be used on the following lakes located in Ballard County. These lakes are closed 15 October to 15 March, annually:
(1) Big Turner,
(2) Little Turner,
(3) Shelby,
(4) Mitchell,
(5) Happy Hollow,
(6) Burnt Slough,
(7) Butler.

Section 6. No motor larger than seven and one-half (7½) hp. may be used on Greenbo Lake located in Greenup County.

Section 7. No motor larger than ten (10) hp. (inboard or outboard) may be used on the following state-owned lakes; however, slow speeds which cause no disturbance or interference with fishing must be exercised at:
(1) Shanty Hollow Lake, Warren County,
(2) Bullock Pen Lake, Grant County,
(3) Lake Boltz, Grant County,
(4) Falmouth Lake, Pendleton County,
(5) Elmer Davis Lake, Owen County,
(6) Beaver Creek Lake, Anderson County,
(7) Herb Smith Lake, Harlan County,
(8) Corinth Lake, Grant County,
(9) Wilgreen Lake, Madison County,
(10) Pan Bowl Lake, Breathitt County.

Section 8. No boat motor larger than 150 hp. may be used, and all boat motors used must have an underwater exhaust on the following state-owned lakes:
(1) Guist Creek Lake, Shelby County,
(2) Lake Malone, Todd, Muhlenberg and Logan Counties,
(3) Lake Beshear, Christian and Caldwell Counties.

Section 9. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this regulation. Failure to comply with the rules and specifications set forth in this regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

CARL E. KAYS, Commissioner
ADOPTED: August 30, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: September 14, 1982 at 1:30 p.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.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 1:055. Angling; limits and seasons.

RELATES TO: KRS *150.010,* 150.025, 150.470, 150.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: In order to perpetuate and protect the size and well being of fish populations, it is necessary to govern the size and numbers fishermen can harvest. [The Commissioner, with the concurrence of the Commission, finds it consistent with established fish management practices to include hybrids under game fish protection.] This amendment is necessary to achieve management objectives for specific waters.

Section 1. The statewide season, creel limits and size limits for taking fish by angling shall be as follows except as specified in Section 2 of this regulation for *specific bodies of water*:

Species	Daily Creel Limits	Pos-session Limits	Size Limits Inches
Black bass (largemouth, smallmouth, Kentucky and Coosa bass)	10	20	12
Rock bass (known as goggle-eye or redeye)	15	30	None
Walleye and hybrids	10	20	15
Sauger	10	20	None
Muskellunge and hybrids	2	2	30
Northern pike	5	10	None
Chain pickerel	5	10	None
White bass and yellow bass	60	60	None
Rockfish and hybrids	5	5	15
Crappie	60	60	None
Trout (all species)	8	8	None
Bull frogs	15	30	None

Seasons for all species, except bull frogs, is year round. Bull frog season is May 15 to October 31, annually.

Section 2. The following special limits apply: (1) *The impounded waters of* Grayson Lake [only]:

Species	Daily Creel Limits	Pos-session Limits	Size Limits Inches
Black bass (largemouth, smallmouth, Kentucky & Coosa bass)	10	20	15
Crappie	None	None	None

(2) *The impounded waters of* Herrington Lake [only] *and Dix River and their tributary streams upstream from Dix Dam:*

Species	Daily Creel Limits	Pos-session Limits	Size Limits Inches
White bass, rockfish, and hybrids	20	40	See (a)

(a) No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) The impounded waters of Taylorsville Lake:

Species	*Daily Creel Limits*	*Pos-session Limits*	*Size Limits Inches*
Black bass (largemouth, smallmouth, Kentucky & Coosa bass)	*10*	*20*	*15*

All other angling limits and seasons apply as set forth in Section 1 of this regulation.

Section 3. All fish must be measured from the terminal end of the lower jaw to the tip of the longest tail fin. All fish caught that are smaller than those prescribed minimum lengths must be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above named fish while in the field and before he has completed fishing for the day.

CARL E. KAYS, Commissioner
ADOPTED: August 30, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: September 14, 1982 at 1:30 p.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.

COMMERCE CABINET
Department of Agriculture
Milk Marketing and Antimonopoly Commission
(Proposed Amendment)

302 KAR 25:045. Stamps, coupons and redemption certificates.

RELATES TO: KRS 260.675 to 260.760
PURSUANT TO: KRS 13.082, 260.715
NECESSITY AND FUNCTION: This regulation is designed to set forth with clarity prohibited practices relative to bonus stamps, coupons, redeemable certificates and any other thing of value with the sale of milk, cottage cheese or frozen dairy products.

Section 1. No processor, distributor, dealer, handler, producer-handler or store, either directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder, employee, partner, agent or representative thereof shall:
(1) Attach to or print on any bottle, jug, carton or package of fluid milk, cottage cheese or frozen dairy products, a stamp, coupon or label of any redeemable value.
(2) Give or advertise to give any stamps, bonus stamps, coupons, or redeemable certificates with the sale of fluid milk, cottage cheese or frozen dairy products where such stamps, bonus stamps, coupons, or redeemable certificates are given or advertised to be given away with specific relation to said sale or connected therewith specifically. The giving of trading stamps, based on total over-the-counter dollar or portion of dollar sales, is not prohibited even in such instances where the trading stamps are given as the result of the accumulated value of the sale including fluid milk, cottage cheese and frozen dairy products.

Section 2. Any person mentioned in Section 1 found violating this regulation shall be subject to the penalty provided for in KRS 260.991.

Section 3. The face value of a cents-off coupon shall be considered a direct cost to the particular dairy product unit to which the coupon is applied for the purpose of determining compliance with the below cost standards set forth in Chapter 260 of the Kentucky Revised Statutes.

NIELS O. EWING, Vice Chairman
ADOPTED: September 14, 1982
RECEIVED BY LRC: September 15, 1982 at 2:10 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James E. Claycomb, Executive Secretary, Milk Marketing and Antimonopoly Commission, 106 West Second Street, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 38:020. Agents' licenses.

RELATES TO: KRS 304.38-110
PURSUANT TO: KRS 13.082, 304.38-110
NECESSITY AND FUNCTION: KRS 304.38-110 provides that the commissioner shall promulgate rules and

regulations necessary for licensure of a health maintenance organization agent. This regulation sets forth basic procedures to acquire and to keep an agents' license.

Section 1. (1) An "agent" means any person directly or indirectly associated with such organization who engages for profit or pecuniary gain in the solicitation or enrollment of persons in a health maintenance organization.

(2) "Profit or pecuniary gain" as used in this section means any type of compensation that a person receives from the health maintenance organization for which the solicitation or enrollment of members is made.

Section 2. To qualify for an agent's license, an applicant shall: (1) Be above the age of eighteen (18) years;

(2) Be a bona fide resident of and actually reside in this state;

(3) Be competent, trustworthy, financially responsible, and of good reputation;

(4) Pass any written examination required for the license under KRS Chapter 304, Subtitle 38;

(5) Be appointed as an agent by one (1) or more corporations subject to the provisions of KRS Chapter 304, Subtitle 38;

(6) Make application to the commissioner in the manner and form prescribed by him. As a part or in connection with any application, the applicant shall furnish information concerning his identity, personal history, experience, business record, purposes, and any other information the commissioner may reasonably require; and

(7) Pay the fee provided in KRS *304.4-010* [304.38-160].

Section 3. Agents' licenses shall expire as of 12:01 a.m. on the first day of April, *1983, and biennially thereafter,* [next following date of issuance] unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for continuation of license [for an ensuing twelve (12) month period]. The request must be accompanied by payment of the renewal fee as provided in KRS *304.4-010* [304.38-160]. *However, any request for continuation received by the commissioner after such April 1 and prior to the next following June 30 may be accepted and effectuated by the commissioner if accompanied by a penalty as provided in KRS 304.99-100.*

Section 4. (1) Each corporation qualified under KRS Chapter 304, Subtitle 38 appointing an agent shall notify the commissioner by filing written notice in duplicate with the commissioner on forms prescribed and furnished by him, and shall pay the fee as provided in KRS *304.4-010* [304.38-160]. If the agent is then licensed, or as soon as licensed, the commissioner shall mail the appointment certificate to the corporation.

(2) Each appointment shall continue in force until:

(a) The commissioner notifies the corporation that the agent's license is *suspended* [terminated] or revoked;

(b) The appointment is *terminated* [revoked] by the corporation by written notice of *termination* [revocation] filed with the commissioner; or

(c) The corporation fails to renew the appointment.

Section 5. The commissioner may suspend, revoke, or refuse to renew any license issued under this regulation, for any of the following causes:

(1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(2) If the licensee wilfully violates or knowingly participates in the violation of any provision of KRS Chapter 304, Subtitle 38 or this regulation;

(3) If the licensee obtains or attempts to obtain a license through wilful misrepresentation or fraud, or fails to pass any examination required under KRS Chapter 304, Subtitle 38;

[(4) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any membership contract, or has engaged or is about to engage in any fraudulent transaction;]

[(5) If the licensee has been guilty of misrepresenting or of rebating, as defined in KRS Chapter 304, Subtitle 12;]

(4) [(6)] If the licensee has been convicted, by final judgment, of a felony *involving moral turpitude*;

(5) [(7)] If in the conduct of his affairs under the license, the licensee has shown himself to be, and is deemed by the commissioner to be, incompetent or untrustworthy;

(6) [(8)] If the licensee exercises powers outside the scope of his license;

(7) If the licensee commits any violation of the provisions of KRS Chapter 304 or any regulation of the commissioner as made applicable to him.

[(9) If the licensee misappropriates or converts to his own use or illegally withholds monies received in the conduct of business under the license, belonging to enrollees, members, the health maintenance organization or others.]

DANIEL D. BRISCOE, Commissioner
ADOPTED: September 10, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Daniel D. Briscoe, Commissioner of Insurance, P. O. Box 517, Frankfort, Kentucky 40602.

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

815 KAR 7:012. Departmental plan review fees.

RELATES TO: KRS Chapter 198B
PURSUANT TO: KRS 198B.050(5), 198B.060(10)
NECESSITY AND FUNCTION: KRS 198B.050(5) authorizes the Board of Housing, Buildings and Construction to issue regulations which are necessary to implement the Kentucky Building Code, and KRS 198B.060(10) authorizes the Department to create a schedule of fees to fully cover the cost of the services performed under the code. This regulation establishes the departmental fee for plan review under the Kentucky Building Code.

Section 1. Submission of Plans and Fees. (1) All plans and specifications required to be submitted to the department under the Kentucky Building Code shall be accompanied by the applicable fee as set forth in this regulation, rounded to the nearest dollar.

(2) All fees required herein shall be in check form payable to the Kentucky State Treasurer.

(3) No approval for construction shall be issued by the department until all required fees have been paid.

(4) The plan review fees required by this regulation are intended to cover the cost of corresponding inspections for compliance with such plans.

Section 2. New Construction. (1) Departmental plan review fees for new buildings shall be calculated by multiplying [.001 times] the *total square footage times the* [construction] cost *per square foot* of each occupancy type as listed in the following table. *Total square footage will be determined by the outside dimensions of the building. Minimum fee for review of plans under this section will be fifty dollars ($50).* [:]

OCCUPANCY *TYPE*	*COST* PER SQUARE FOOT
Residential (excluding single family dwellings and duplexes)	*2 cents* [$20]
Assembly Occupancies	
Nightclub/restaurants	*3.5 cents* [35]
All other assembly	*3 cents* [30]
Educational	*2 cents* [20]
Day care centers	*2 cents* [20]
Business	*2 cents* [20]
Mercantile	*2 cents* [20]
Industrial factories	*2 cents* [20]
Warehouses	*1.5 cents* [11]
Institutional	*2.5 cents* [25]
Frozen food plants	*2 cents* [20]
High Hazard	*3 cents* [30]
All other non-residential	*2 cents* [20]

(2) Plan review fees for additions to existing buildings, which do not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with subsection (1) by the measurement of the square footage of the addition, only, *as determined by the outside dimensions of the addition. Minimum fee for review of plans under this section will be fifty dollars ($50).*

(3) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with subsection (1) by using the total square footage of the entire building or structure under the new occupancy type *as determined by the outside dimensions. Minimum fee for review of plans under this section will be fifty dollars ($50).*

(4) Plan review fees for alterations and repairs not otherwise covered by this section shall be calculated by multiplying the [contractor's] cost for the repairs by .001.

Section 3. Specialized Fees. In addition to the fees required by Section 2, the following fees must be paid for the specialized plan reviews listed:

(1) Sprinkler fees:

AUTOMATIC SPRINKLER REVIEW FEE TABLE

Sprinkler Heads	Plan Review Fee
4 [1]—200	$ 50
201—300	60
301—400	80
401—750	100
over 750	$100 plus 10 cents per sprinkler over 750

(2) Fire detection system review fee: $10 per 5,000 square feet up to 70,000 square feet; over 70,000 square feet—$140 plus $15 per each additional 20,000 square feet.

(3) Standpipe plan review fee: $30 (Combination standpipe and riser plans will be reviewed under automatic sprinkler review fee schedule.).

(4) Carbon dioxide suppression system review fee: 1 to *200* [175] pounds of agent—*$50* [$35]; over *200* [175] pounds of agent—*$50* [$35] plus *2* [20]cents per pound in excess of *200* [175] pounds.

(5) Halon [1301] suppression system review fee: Up to 35 pounds of agent—*$50* [$35]; over 35 pounds—*$50* [$35] plus *5* [50] cents per pound in excess of 35 pounds.

(6) Foam suppression system review fee: *$1 per gallon* [$35 per 50 gallons] of foam concentrate. *The fee for review of plans under this section shall not be less than $50 or more than $1,000.*

(7) *Commercial* range hood[s] review fee: $20 per hood.

(8) Dry chemical systems review fee (except range hoods): 1 to 30 pounds of agent—$30; over 30 pounds of agent—$30 plus 20 cents per pound in excess of 30 pounds.

(9) [(8)] *Flammable liquid or pressure tank fee* [Tanks installation plan review fee]: $25 for the first tank and $5 for each additional tank.

CHARLES A. COTTON, Commissioner
ADOPTED: September 15, 1982
APPROVED: NEIL J. WELCH, Secretary
RECEIVED BY LRC: September 15, 1982 at 3:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 11:010. Application for licensure; fee.

RELATES TO: KRS Chapter 333
PURSUANT TO: KRS 13.082, 194.050, *333.070*
NECESSITY AND FUNCTION: KRS Chapter 333 empowers the *Cabinet* [Department] for Human Resources to license and regulate medical laboratories in Kentucky including applications for licenses and the setting of reasonable license fees. The function of this regulation is to establish application procedures for licensure and to establish reasonable licensure fees.

Section 1. Licenses. (1) Except as otherwise provided by KRS 333.040 no person shall operate any medical laboratory in this Commonwealth without first obtaining the appropriate license therefor.

(2) All applications for licensure shall be filed with the *Cabinet* [Department] for Human Resources, *Office of Inspector General* [Bureau for Administration and Operations], Division for Licensing and Regulation, Frankfort, Kentucky *40621* [40601].

(3) All applicants for licenses shall, as a condition precedent to licensure, be in compliance with the applicable regulations relating to the particular medical laboratory.

(4) All licenses shall expire on December 31 following the date of issuance.

(5) Licenses may be renewed upon payment of the prescribed fee provided the medical laboratory is in compliance with the applicable provisions of KRS Chapter 333 and the regulations of the *cabinet* [department].

Section 2. Fee Schedule. The initial application fee for a license *shall be $100.* [and] The annual renewal thereof for

each medical laboratory shall be *fifty dollars ($50)* [twenty-five dollars ($25)].

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

902 KAR 12:020. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B
PURSUANT TO: KRS 13.082, 194.050, *202A.191* [202A.180], 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt rules and regulations which insure proper admnistration and enforcement of these chapters. The function of this regulation is to *describe* [prescribe] the rights of mentally ill and mentally retarded patients and to establish rules for the use of seclusion, [and] restraint, *and treatment under emergency situations,* in the treatment of such patients.

Section 1. Title. This regulation may be cited as the "Kentucky Mental Patients' Bill of Rights."

Section 2. Right to be Adequately Informed. (1) Each patient shall be adequately informed as to his individual treatment plan.

(a) A written individual treatment plan shall be prepared and entered into the medical record of each patient. Such treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(b) Each patient *and his or her authorized representative* shall have access to a written copy of his individual treatment plan;

(c) Upon written request, each patient *and his or her authorized representative* shall also be provided access to his entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(d) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if such persons can be located.

(2) For purposes of this regulation, the following definitions shall apply:

(a) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:

1. A statement of the diagnosis of the patient;
2. The short and long-range objectives of care and treatment;
3. The methods of treatment to be employed;
4. The names of persons responsible for preparing and implementing the plan.

(b) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

1. Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless such changes involve introduction of new classes of medication including anti-psychotic or anti-convulsant drugs;
2. Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless such changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(c) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

1. Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that such other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;
2. Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.

(d) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the introvenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(e) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

(f) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 3. Right to assist in Treatment Plan. Each patient shall have the right to assist in the planning of his treatment program.

(1) Each patient shall be informed of the contents of his individual treatment plan and his verbal, written or behavorial responses to this information shall be entered in the medical records. Whenever possible, the responses of a patient to his treatment plan shall be used to review and

modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if such persons can be located.

Section 4. Right to Refuse Treatment. (1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. Such refusal shall be clearly documented in the medical records.

(a) In the case of voluntary patients and patients who are minors admitted with the consent of their parents or guardian, treatment plans may be implemented or continued until such time as the patient or his parents or guardian request the discharge of the patient *or requests the review of the treatment plan*;

(b) In the case of mentally ill or mentally retarded patients involuntarily admitted without a court order [under KRS 202A.030, 202A.040], or pursuant to a hearing [under KRS 202A.050], treatment in accordance with the initial or revised treatment plan may be implemented or continued until such time as a formal application for further hospitalization is submitted and a hearing held on the matter.

[1.]In the event that a hearing for further hospitalization is requested, the attorney for the respondent and the judge shall be informed prior to the time of the hearing of the current individual treatment plan and recent use of medication which might affect the ability of the respondent to communicate with his attorney or the judge;

[2. In order to obtain a court order implementing the treatment plan most likely to benefit the patient, a formal application for further hospitalization made at the time of the hearing shall contain sufficient reference to those areas of refusal and shall further document reasons why the refusal should be waived.]

[(c)If an involuntary patient is transferred to voluntary status, his current treatment plan may be continued without his written consent until he refuses treatment or his parents or guardian request his discharge.]

(c) [(d) In all other instances where] *If* no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, such treatment may be implemented or continued only in the event of an emergency situation documented in the medical records of the patient.

[(2)Each patient shall have the right, under certain circumstances, to seek relief from participating in any separate and individual treatment activity provided for in his treatment plan.]

(2) [(a) Such] Refusal *to participate in the treatment plan* shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) [(b)] In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which he has at the time of his refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon his participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the Treatment Review Committee shall be informed and the committee shall proceed according to law.

Section 5. Right to Personal Effects. (1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that such rules and regulations shall be waived when possession of such item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of such items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors. (1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that such right may be waived if such meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during non-visitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where such work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any and all work except activities of immediate and direct benefit to the patient and his personal comfort.

Section 8. Right to Refuse Intrusive Treatment. All patients shall have the right to refuse intrusive treatments including electroshock therapy or psychosurgery, subject to the following limitation[s]:

[(1)] Any patients committed on an involuntary basis or who are minors, *or who have been declared disabled pur-*

suant to KRS Chapter 387, may *only* be provided electroshock therapy or psychosurgery pursuant to a court order with a determination that such treatment is in the best interest of the patient as providing him the optimal opportunity to reasonably benefit from care and treatment in the hospital or residential treatment center. [;]

[(2)Notwithstanding the provisions of subsection (1) of this section, in instances in which a serious suicidal danger is present which cannot be controlled or relieved by other forms of treatment, electroshock treatments may be provided prior to a court hearing. In such cases, outside consultation from at least two (2) physicians not otherwise regularly employed on a full-time basis by the hospital or residential treatment center must be secured and a finding made that no other available form of treatment other than seclusion, removal of all personal possessions, or placement in a maximum security facility are likely to relieve the threat of suicide.]

[Section 9. Rights of Minor Patients. Patients who are minors and who are voluntarily admitted to the hospital or residential treatment center on the consent of their parents or guardians have additional personal rights independent of the wishes, desires, or demands of their parents or guardian.]

[(1) Patients who are minors shall have the right to seek relief from actions for or against hospitalization and discharge approved by their parents or guardian;]

[(2) In the absence of an appropriate court order requiring hospitalization or placement in a residential treatment center, minors shall be provided an adequate opportunity to seek independent counsel and to request a hearing regarding further hospitalization. This requirement may be satisfied by means of any of the following procedures:]

[(a) The hospital or residential treatment center shall obtain the written or verbal consent of the minor to the individual treatment plan including admission to the hospital or residential treatment center.]

[1. Such consent shall be obtained in the presence of an adult witness who is not employed by the hospital or residential treatment center to which the minor was admitted;]

[2. If the minor subsequently withdraws his consent, further hospitalization or retention in a residential treatment facility shall be in accordance with procedures applicable to an adult voluntarily admitted.]

[(b) The hospital or residential treatment center shall provide each minor the opportunity for a court hearing and final decision within twenty-one (21) days after admission; or]

[(c)The hospital or residential treatment center shall appoint a patient's rights review officer in the facility who actively represents the interest of the minor by insuring him of an opportunity to seek legal counsel, to receive independent psychiatric and psychological consultation, to communicate with the secretary, and to fully afford minor patients due process available to patients who are involuntarily committed. To assist in setting standards regarding the needs for hospitalization and the appropriateness of individual treatment plans, the patient's rights review officer may establish a patient's rights advisory committee.]

Section *9.* [10.] Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residental treatment facilities shall be limited and shall be carried out only with appropriate precautions.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in the event of an emergency situation.

(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions which prevail at the time of the use of such treatments and shall include the order of a licensed physician prescribing or justifying such treatment;

[(b)Seclusion or restraint based upon an emergency situation must be reviewed, confirmed, and documented by a physician responsible for the care of the patient at least every seventy-two (72) hours;]

(b) [(c)] Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

(c) [(d)] The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after such treatment is implemented, and must be renewed if such treatment continues to be necessary, except where such treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder*; provided that any renewal order shall state the necessity for such continued treatment.*

(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless such treatment has received a review and approval by the court.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

902 KAR 12:030. Care and treatment of inmates of penal institutions.

RELATES TO: KRS *202A.201* [202A.190]
PURSUANT TO: KRS 13.082, 194.050, *202A.191* [202A.180], 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt rules and regulations to effectuate the purposes of that chapter, including, but not limited to, the transfer of men-

tal patients and alternate methods for involuntary hospitalization. The function of this regulation is to prescribe the procedure to be employed in the hospitalization, care and treatment of an inmate of a penal institution who has been transferred to a hospital, forensic psychiatric facility or residential treatment center.

Section 1. Care and Treatment of Inmates. In the event that an inmate of any penal or correctional institution is transferred to a hospital, forensic psychiatric facility or residential treatment center pursuant to KRS *202A.201* [202A.190], the following rules shall apply:

(1) If the inmate voluntarily agrees to receive treatment in accordance with the individual treatment plan, such treatment may be provided until such time as it is determined that treatment is no longer necessary or until the patient refuses continued treatment;

(2) If the inmate refuses to receive treatment, proceedings for involuntary hospitalization may be instituted in accordance with the provisions of KRS Chapters 202A and 202B.

(3) Patients in a forensic psychiatric facility shall have the same rights as set forth in 902 KAR 12:010; provided, however, that locking patients in their cells for sleeping or census count purposes and restraints used for transportation or prevention of escape shall not be considered as seclusion or restraint as defined in the patient's bill of rights.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

902 KAR 12:040. Convalescent patient status.

RELATES TO: KRS *202A.181* [202A.130]
PURSUANT TO: KRS 13.082, 194.050, *202A.191* [202A.180], 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill or mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt rules and regulations relating to the release of patients to less restrictive alternative modes of treatment on convalescent status. The function of this regulation is to establish standards to be employed in determining whether a person should be released on or committed directly to convalescent status.

Section 1. Release on Convalescent Status. An authorized staff physician may release from a hospital an involuntarily committed mentally ill person on convalescent status, or an authorized staff person may release from a residential treatment center an involuntarily committed mentally retarded person on convalescent status, if the staff member concludes that such person would not present an immediate danger or immediate threat of danger to self or others if provided continued medical supervision in a less confining environment. While on convalescent status the patient shall remain the responsibility of the hospital or residential treatment center from which he was released.

Section 2. Direct Committment to Convalescent Status. A person may be committed by a court directly to a designated treatment center on convalescent status as an alternate mode of treatment by the use of the procedures contained in the seven (7), sixty (60) or 360-day involuntary committments upon a finding by the court that although such person meets all the other criteria for such involuntary hospitalization, admission to a hospital or residential treatment center would constitute an excessively restrictive mode of treatment. The convalescent status commitment shall only be used when a written opinion by a court-appointed physician indicates that there are alternate care and treatment facilities available and adequate financial resources to provide treatment which is likely to benefit the patient.

Section 3. Rights of Patients on Convalescent Status. Patients on convalescent status shall enjoy all the rights and privileges afforded to an involuntarily committed patient except that patients on convalescent status who have been directly committed to convalescent status under Section 2 may be involuntarily admitted to a hospital or residential treatment center only upon a further court hearing and order [or consistent with the procedures specified in KRS 202A.040].

Section 4. Termination of Convalescent Status. The convalescent status of a patient shall terminate upon the cessation of care and treatment or when the court order governing the patient's hospital admission or placement in convalescent status expires or is terminated.

Section 5. Definition. For purposes of this regulation, the term "less confining environment" shall include, but not be limited to, a personal residence, a skilled nursing facility, an intermediate care or personal care facility or any other facility providing a supervised residential living situation.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

902 KAR 12:050. Transfer of patients to other facilities.

RELATES TO: KRS Chapters 202A, 202B
PURSUANT TO: KRS 13.082, 194.050, *202A.191* [202A.180], 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the *Cabinet* [Department] for Human Resources shall adopt

rules and regulations relating to the transfer of mental patients. The function of this regulation is to prescribe the standards to be used in determining whether a patient should be transferred to another hospital, forensic pyschiatric facility or residential treatment center.

Section 1. Transfer of Patients. A patient may be transferred between hospitals, between hospitals and forensic psychiatric facilities, between hospitals and residential treatment centers or between residential treatment centers upon the mutual agreement of the administrative officer, his designated representative or an authorized staff physician of each facility, provided such agreement is based upon one (1) of the following findings by the officers, representatives or physicians:

(1) That the transfer will improve the opportunities of the patient to receive care and treatment most likely to be of benefit to him; or

(2) That the transfer will permit the patient to receive care and treatment in the least confining environment, considering the degree of immediate danger or immediate threat of danger to self or others which the patient presents; or

(3) That the transfer is part of an individual treatment plan which has been reviewed and approved by a court.

DAVID T. ALLEN, M.D., Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

904 KAR 1:026. Dental 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(3) 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 dental services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-Hospital Services. Payment for services is limited to those procedures listed in the *cabinet's* [department's] Dental Benefit Schedule which are included in the following categories:

(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Orthodontics;
(6) Prosthetics;
(7) [(5)] Operative;
(8) [(6)] Crown; and
(9) [(7)] Other services.

Section 2. Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):

(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.

(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.

(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.

(4) The following orthodontic procedures are limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance.

(5) The following prosthetic procedures are limited as specified for the individual procedure:

(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, is limited to one (1) per twelve (12) month period, per patient;

(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, is limited to one (1) per twelve (12) month period, per patient;

(c) Repair of fracture of transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(e) Repairing broken complete denture with no teeth damaged is limited to three (3) per twelve (12) month period, per patient; and

(f) Repairing broken complete denture and replacing one (1) broken tooth is limited to three (3) per twelve (12) month period, per patient.

(g) Relining upper denture (flask cured only) is limited to one (1) per twelve (12) month period per patient.

(h) Relining lower denture (flask cured only) is limited to one (1) twelve (12) month period per patient.

Section 3. Limitations by Age Group. Payment for the following procedures shall be limited to recipients of medical assistance who are under age twenty-one (21): [extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.]

(1) Extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.

(2) All orthodontics procedures.

(3) All prosthetics procedures.

Section 4. Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons.

(2) Payment for services rendered by general dentists for hospital inpatient care for patients termed to be "medically a high risk," defined as:

(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
(e) Other, e.g., car accident, high temperature, massive infection.

Section 5. Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982.

(1) Oral surgery, as follows:

(a) Extraction, uncomplicated, single tooth, with local anesthetic and including routine post-operative care; and

(b) Extraction, uncomplicated, each additional tooth, with local anesthetic and including routine post-operative care.

(2) Operative, as follows:

(a) Amalgam filling for one (1) surface cavity;

(b) Amalgam filling for two (2) surface cavity;

(c) Amalgam filling for cavity involving three (3) or more surfaces;

(d) Silicate cement filling; and

(e) Acrylic, plastic, or composite filling.

(3) Diagnostic services, as follows:

(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;

(b) Intraoral periapical radiograph, single view; and

(c) Full mouth radiograph, single panaramic film limited to one (1) per patient per every two (2) years per dentist.

(4) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 6. The services expansion authorized by this regulation shall be implemented as of February 1, 1982.

JOHN CUBINE, Commissioner
ADOPTED: September 3, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 7, 1982 at 12 noon
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 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2),(3)
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, hereinafter referred to as AFDC, in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support activities and potential entitlement for other programs for eligibility for AFDC.

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

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

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

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

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

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

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

(3) Adoptive parents as well as the natural and other

legally adopted children and other relatives of such parents.

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

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

[(6)Prior to July 1, 1982, a child placed in foster care is not required to be living in the home of a relative to be eligible to receive AFDC-FC in his/her foster home.]

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program prior to or during the month of their nineteenth birthday. Full and part-time is defined in [Title] 904 *KAR 2:016,* [regulations pertaining to] standards for need and amount; AFDC. A child is considered in regular attendance in months in which he/she is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he/she has indicated an intention not to re-enter school.

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

Section 6. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

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

Section 7. Work Registration. (1) Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he/she refuses to register for the Work Incentive Program, (WIN) or if registered, refuses to participate without good cause. Participation in a strike shall not constitute good cause.

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

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

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

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

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

(e) An individual age sixty-five (65) or over;

(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined to be precluded from self-care and for whom alternate care arrangements are not feasible;

(g) A parent or other relative who cares for a child under six (6), and who personally provides full-time care of the child with only very brief and infrequent absences from the child;

(h) A person so far remote from a work incentive project that his/her effective participation is precluded;

(i) An individual who is employed not less than thirty (30) hours per week, in unsubsidized employment expected to last a minimum of thirty (30) days, except when there is a temporary break in such employment expected to last longer than ten (10) days.

Section 8. Cooperation in Child Support Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his/her cooperation in child support activities pursuant to 45 CFR 232.40 and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he/she is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) Pursuant to 45 CFR Part 232.40, the *Cabinet* [Department] for Human Resources will provide written notice to the applicant or recipient that he/she may claim good cause for refusing to cooperate.

(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticapted to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself/herself to such an extent that it would reduce his/her capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicants's/recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him/her for adoption and discussion has not gone on for more than three (3) months and the *cabinet* [department] believes it would be detrimental to the child to require the applicant's/recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

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

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

Section 11. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the *Cabinet* [Department] for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

[Section 12. Eligibility Criteria for Foster Care. To be eligible for foster care, the child must meet the technical requirements of the regular AFDC program as set forth in this regulation. In addition, the child must have been:]

[(1)Removed from the home after April 30, 1961; and]

[(2)Committed to the department by a judicial determination under the authority of KRS 208.200 or 208.080 specifying that the child is delinquent, neglected, needy, or dependent (as stated in KRS 208.020), or if prior to June 1976, KRS 205.430, that continuance in or return to the home of a relative would be contrary to his/her welfare; and]

[(3)Receiving AFDC as of the month in which court action was initiated, or if not, would have received AFDC if application had been made; or if not living with a relative at the time of court action, did live with such relative within six (6) months prior to the month of initiation of court action and was eligible or would have been eligible for AFDC if application had been made.]

[(4)Provisions of this section shall apply only to the period prior to July 1, 1982.]

JOHN CUBINE, Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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 2:050. Time and manner of payment.

RELATES TO: KRS 205.220(1)
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The *Cabinet* [Department] for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer money payment programs under Title IV-A of the Social Security Act and a state funded program of money payments to those aged, blind and disabled individuals disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. In addition KRS 205.245 provides for money payments to certain other aged, blind or disabled individuals. This regulation sets forth the time and the manner in which payments are made and the persons to whom payments may be made as required by KRS 205.220(1).

Section 1. Manner and Time of Payment: (1) All assistance payments are made by check issued monthly.

(2) The effective date of *initial* payment *for new approvals* shall be the *date an* [first day of the month of] application *is filed* if all eligibility factors were met as of that *date* [month].

(3) Payment is made for an entire month during any part of which eligibility factors are met, *except for initial month's benefits for new approvals which shall not be made for any period prior to the date of application.*

(4) For AFDC, payments shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten dollars ($10). Any individual who is denied a payment for this reason shall be deemed a receipient of AFDC for all other purposes.

(5) Supplemental payments shall be made if, due to administrative deadlines, changes in circumstances cannot be recognized in the month such change is reported; or, for AFDC, [beginning July 1, 1982,] cannot be recognized in the time frames required in retrospective budgeting.

(6) Supplemental payments to correct underpayments due to administrative errors shall be made for a period of up to twelve (12) months preceding the month of error correction if the error existed in the preceding months.

Section 2. Inalienability of Payment: Money payments are unconditional and are exempt from any remedy for the collection of debts, liens and encumbrances; however, [beginning July 1, 1982,] the *cabinet* [department] may initiate recoupment to recover overpayment of AFDC benefits.

Section 3. Eligible Payees: Money payments are issued in the name of the eligible applicant, except that:

(1) In the Aid to Families with Dependent Children Program, a protective payment may be made to a third party payee when:

(a) A determination has been made that poor money management is contributing to the unsuitability of the home for a needy child; or

(b) The parent payee has refused without good cause to pariticipate in the Work Incentive Program or the Child Support Program.

(2) Payment for the month of death may be made to the parent or other specified relative of the deceased child, or the duly appointed administrator of the estate or other qualified executor of the will of the deceased.

JOHN CUBINE, Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

904 KAR 3:050. Additional provisions.

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 additional provisions used by the *cabinet* [department] in the administration of the Food Stamp Program.

Section 1. Civil Rights Compliance. The *cabinet* [department] insures that no applicant or participant shall be discriminated against in any aspect of program administration for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. Benefits shall be restored to households as specified in 7 CFR Part 273.17, when such household has lost benefits due to an error by the *cabinet* [department].

Section 3. Program Informational Activities. Low-income or disadvantaged households shall be informed of the availability of the program and program rights and responsibilities through program informational activities as required by 7 CFR Part 272.6.

Section 4. Claims Against Households. The *cabinet* [department] shall establish a claim against households that receive more coupons than *they are* [it is] entitled to receive. Claims shall be classified as:
(1) Non-fraud which shall be processed as specified in 7 CFR Part 273.18(b).
(2) Fraud claims which shall be processed as specified in 7 CFR Part 273.18(c).

Section 5. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, or with other federal or federally aided, means-tested assistance programs such as Titles IV-A (AFDC), XIX (Medicaid), or XVI (SSI). Regulations, plans of operation, state manuals, and federal procedures which affect the public shall be maintained in the central and local office as well as in FNS national and regional offices for examination by members of the public on regular workdays during regular office hours. Copies of regulations, plans of operation, state manuals and federal procedures may be obtained from FNS or the *cabinet* [department].

[Section 6. Sixty (60) Day Continuation of Certification. Certification of a household moving from one (1) food stamp county to another, whether within Kentucky or between states, shall remain under certain circumstances valid for a period of sixty (60) days after the date of the move without regard to change in income or resources.]

Section *6.* [7.] Retention of Records. The *cabinet* [department] shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record. The *cabinet* [department] shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section *7.* [8.] Disaster Certification. The *cabinet* [department] shall distribute emergency coupon allotments to households within a food stamp county determined to be a disaster area only when so authorized by the Food and Nutrition Service.
(1) In accordance with the Disaster Relief Act, emergency food stamp assistance may be authorized by the Food and Nutrition Service of the United States Department of Agriculture as a result of a major disaster which is determined as such by the President of the United States.
(2) In accordance with the Food Stamp Act, emergency food stamp assistance may be authorized by the Food and Nutrition Service as a result of a lesser disaster, even if the affected area has not been declared a major disaster, if the emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution and the Food Stamp Program is operational.

JOHN CUBINE, Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 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
(Proposed Amendment)

904 KAR 3:060. Administrative fraud hearings.

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 Progam as prescribed by the Food Stamp Act of 1977, as amended and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the procedures used by the *cabinet* [department] to disqualify food stamp recipients who have committed fraud.

[Section 1. Fraud Disqualification Penalties. Individuals found through an administrative fraud hearing to have committed fraud shall be ineligible to participate for three (3) months beginning with the periods specified in 7 CFR Part 273.16(b)(8). Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than six (6) months and not more than twenty-four (24) months as determined by the court. If the court fails to specify or address a dis-

qualification period for the fraudulent act, the department shall impose a six (6) month disqualification period unless it is contrary to the court order. The department shall disqualify only the individual convicted of fraud and not the entire household. If the individual fails to agree to make restitution, the period of disqualification shall continue until the individual agrees to make restitution. Individuals or the remaining household members shall be permitted to make restitution during the period of disqualification in accordance with established procedures for cash repayment or allotment reduction. The department shall inform the household in writing of the disqualification penalties for committing fraud at each time it applies for benefits.]

Section *1.* [2.] Definition of Fraud. For purposes of determining at an administrative fraud hearing whether or not fraud was committed, fraud shall consist of any action by an individual to knowingly, willfully, and with deceitful intent:

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

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

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

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

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

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

Section *2.* [3.] Administrative *Fraud Hearings* [Disqualification]. An administrative fraud hearing should be initiated by the *cabinet* [department] whenever *it* [the department] has documented evidence to prove that a [currently certified] household member has committed fraud. The *cabinet* [department] may initiate an administrative fraud hearing regardless of the current eligibility of the individual. The disqualification period for nonparticipants at the time of the final hearing decision shall be deferred until the individual applies for and is determined eligible for program benefits. Fraud hearings shall not be conducted if the amount the *cabinet* [department] suspects has been fraudulently obtained is less than thirty-five dollars ($35) or if ineligible items have been purchased with food stamps valued at less than thirty-five dollars ($35). The burden of proving fraud is on the *cabinet* [department].

Section *3.* [4.] Fraud Hearing Procedures. The *cabinet* [department] will provide administrative fraud hearings at the state level. The conduct of an administrative fraud hearing will be similar to that of a fair hearing. Administrative fraud hearings will be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case; who was not directly involved in the initial determination that the household member had committed fraud; and was not the immediate supervisor of the eligibility worker who took the action.

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

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

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

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

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

Section *4.* [5.] Advance Notice of Hearing. The *cabinet* [department] shall provide written notice to the household member suspected of fraud at least thirty (30) days in advance of the date an administrative fraud hearing initiated by the *cabinet* [department] has been scheduled. The notice shall be sent certified mail, return receipt requested and shall contain:

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

(2) The charge(s) against the household member;

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

(4) A warning that the decision will be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

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

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

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

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

Section *5.* [6.] Scheduling the Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of fraud. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the *cabinet* [department] without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if fraud was committed based on clear and convincing evidence. If the household member is found to have committed fraud but a hearing official later determined that the household member or representative had good cause as defined in 904 KAR 3:070, Section 9, for not appearing, the previous decision shall no longer remain valid and the *cabinet* [department] shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has ten (10) days from receipt of the notice of the fraud decision to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

Section *6.* [7.] Participation While Awaiting a Hearing. A pending fraud hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the *cabinet* [department] cannot disqualify a household member for fraud until the hearing official finds that the individual has committed fraud, the *cabinet* [department] shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.

Section 7. [8.] Fraud Hearing Decision. The hearing official shall base the determination of fraud on clear and convincing evidence which demonstrates that the household member knowingly, willfully, and with deceitful intent committed fraud as defined in Section 2. Decisions of the hearing official shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent handbook section and corresponding FNS regulation and respond to reasoned arguments made by the household member or representative. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the *cabinet* [department]. This record shall also be available to the household or its representative during work hours for copying and inspection.

[Section 9. Appeal Rights of the Household. After a household member has been found to have committed fraud by a hearing official, the household member shall be disqualified for three (3) months beginning with the first month which follows the date the household member has received the state level hearing notice. No further administrative appeal procedure exists after an adverse administrative fraud hearing. The determination of fraud made by a fraud hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay or other injunctive remedy.]

Section 8. [10.] Notification of Fraud Hearing Decisions. The *cabinet* [department] shall notify a household member in writing of fraud hearing decisions as specified below:

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

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

Section 9. Fraud Disqualification Penalties. Individuals found through an administrative fraud hearing to have committed fraud shall be ineligible to participate for three (3) months. Court ordered disqualifications may be imposed separate and apart from any action taken by the cabinet to disqualify the individual through an administrative fraud hearing. In cases where the determination of fraud is reversed by a court, the cabinet shall reinstate the individual, if eligible, and restore any benefits that were lost as a result of the disqualification. Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court. If the court fails to specify or address a disqualification period for the fraudulent act, the cabinet shall impose a six (6) month disqualification period unless it is contrary to the court order. The cabinet shall disqualify only the individual convicted of fraud and not the entire household. If the individual fails to agree to make restitution, the period of disqualification shall continue until the individual agrees to make restitution. Individuals or the remaining household members shall be permitted to make restitution during the period of disqualification in accordance with established procedures for cash repayment or allotment reduction. The cabinet shall inform the household in writing of the disqualification penalties for committing fraud at each time it applies for benefits.

Section 10. Appeal Rights of the Household. After a household member has been found to have committed fraud by a hearing official, the household member shall be disqualified for three (3) months beginning with the first month which follows the date the household member has received the state level hearing notice. No further administrative appeal procedure exists after an adverse administrative fraud hearing. The determination of fraud made by a fraud hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay or other injunctive remedy.

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

JOHN CUBINE, Commissioner
ADOPTED: September 15, 1982
APPROVED: BUDDY ADAMS, Secretary
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

COMMERCE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:087. Migratory birds; limits and seasons for taking.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.235, 150.305, 150.330, 150.340, 150.360, 150.600
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the bag limits, possession limits, and seasons for the taking of certain migratory birds, including waterfowl. In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The framework of this regulation falls within the seasons and bag limits dictated by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply.

Section 1. Seasons for Gun and Archery. (1) Ducks, Coots and Mergansers: December 2 through January 20.
(2) Geese: November 12 through January 20, except in the area west of the following boundary where the season is December 12 through January 20: Starting at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I-24, east on I-24 to U.S. 641, northerly on U.S. 641 to U.S. 60, northeasterly on U.S. 60 to U.S. 41 and then northerly on U.S. 41 to the Kentucky-Indiana border.
(3) Sora and Virginia Rails and Gallinules: November 12 through January 20.

Section 2. Limits for Gun and Archery. (1) Ducks, Coots and Mergansers:
(a) Bag limits. A point system bag limit is in effect. Point values for species and sexes taken are as follows for either sex unless specified:
1. Canvasback: 100 points;
2. Hen mallard, black duck, wood duck, hooded merganser and redhead: 70 points;
3. Pintail, blue-winged teal, cinnamon teal, green-winged teal, widgeon, gadwall, shoveler, scaup and mergansers except hooded merganser: 10 points;
4. Drake mallard and all other species of ducks not mentioned above: 25 points;
5. Coots, but limited to fifteen (15) daily and thirty (30) in possession: 0 points.
(b) The daily bag limit is reached when the point value of the last duck taken, added to the total of the point values of the other ducks already taken during that day, reaches or exceeds 100 points.
(c) Possession limits. The possession limit is the maximum number of ducks of those species and sexes which could have legally been taken in two (2) days.
(2) Geese:
(a) Bag limits, statewide. Five (5) with no more than two (2) Canada and two (2) white-fronted geese.
(b) Possession limits, statewide. Ten (10) in any combination of Canada, blue, snow or white-fronted geese, not to include more than four (4) Canada and four (4) white-fronted.
(3) Others:

Species	Bag Limit	Possession Limit
(a) Sora and Virginia Rails	25 singly or in the aggregate	25 singly or in the aggregate
(b) Gallinules	15	30

Section 3. Shooting Hours. The shooting hours for ducks, geese, coots, mergansers, rails and gallinules shall be one-half (½) hour before sunrise to sunset.

Section 4. Shot Size Restrictions. No shot larger than BBs may be in possession while hunting the species listed in Section 1.

Section 5. Seasons for Falconry. All species listed in Section 1 may be taken by means of falconry by licensed falconers. The falconry season begins on November 1 and extends through January 20.

Section 6. Limits for Falconry. Daily bag and possession limits shall not exceed three (3) and six (6) birds, respectively, of any species listed in Section 1, singly or in combination, during both the regular gun and archery hunting season or the extended falconry season.

Section 7. Hunting Hours for Falconry. The hunting hours will conform with those stated in Sections 3 and 9.

Section 8. Migratory Bird Shipping and Transporting Restrictions. Geese taken in the counties of Ballard, Hickman, Fulton and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of any licensed waterfowl hunter, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese.

Section 9. Exceptions for Specified Wildlife Management Areas and Counties. Unless otherwise specified in this section, stipulations of preceding sections of this regulation apply.
(1) Ballard County Wildlife Management Area, except the Miller Tract, located in Ballard County.
(a) Species and seasons. The season for ducks, coots, mergansers, and geese is December 15 through January 20. No hunting on Sundays and Christmas Day.
(b) There will be a ten (10) shell limit per hunter when hunting geese. This does not apply when hunting ducks from pothole blinds or pits as separated from goose hunting areas. Shooting ducks is permitted in goose hunting areas but shooting geese in duck areas is prohibited. Any hunter under the age of eighteen (18) years must be accompanied by an adult. Any person whose transportation to and from pits and blinds is furnished by the Department of Fish and Wildlife Resources must have his gun encased.
(c) Shooting hours. The shooting hours are one-half (½) hour before sunrise to twelve (12) o'clock noon.
(2) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Waterfowl hunting in accordance with statewide seasons and regulations is permitted from the Kentucky-Tennessee state line to Barkley Canal except Smith Bay, Energy Lake, and Long Creek Pond which are indicated by

signs and are closed to hunting. Duncan Bay is closed to all activity. The Environmental Education Center is closed to waterfowl hunting. An annual LBL hunting permit is required for waterfowl hunting on all shoreline and inland areas.

(b) Shoreline areas are defined as all LBL areas along Kentucky and Barkley Lakes from the waters edge to twenty-five (25) yards above elevation 359 feet. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to Lake Barkley Wildlife Management Area regulations.

(c) Inland areas are defined as all areas above shoreline areas. No waterfowl hunting is permitted on inland areas during quota gun deer hunt days. Permanent pits and blinds are not permitted on inland areas nor along Kentucky Lake shoreline area. Temporary blinds and decoys may be used, but they must be removed at the end of each hunting day.

(3) Lake Barkley Wildlife Management Area.

(a) Refuge areas will be closed to all hunting, fishing, boating and molesting of waterfowl during the dates designated in this subsection and designated on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, Fulton Bay will remain closed until March 15 and Honker Bay until March 1, or later if marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15. Recreation areas and access points are closed to hunting.

(b) Permanent blinds or pits must be registered on a permit issued by the Corps of Engineers. Applicants for blind or pit permits must show a current Kentucky hunting license to the registration clerk before a permit will be issued. Registration will be conducted at the Lake Barkley Maintenance Shop located at Barkley Dam off U.S. Highway 641-62 on October 4 from 8:00 a.m. to 9:00 a.m. Applicants for permanent blinds or pits will take part in a special drawing to determine the order of blind registration. The drawing, which will close promptly at 9:00 a.m., will be followed by registration in which hunters with the lowest numbers will receive first choice of locations. Hunters who miss the special October 4 drawing will be registered on a first come-first served basis at the Resource Manager's Office from 8:00 a.m. to 3:00 p.m. weekdays, except federal holidays, from October 6 through November 11. A permit will be issued for each permanent blind or pit and only one (1) permit will be issued per hunter. No unregistered permanent pit or blind is allowed. Any blind remaining in a location over twenty-four (24) hours is considered permanent. Blind or pit permittees will have priority over their registered blinds or pits and may claim ownership by showing their permit. Permits are not transferable to other hunters. Permanent registered blinds or pits must not be locked to exclude other waterfowl hunters when not occupied. All blinds or pits must be erected or installed no later than the day before the opening of the goose hunting season. All pits and blinds must be 200 yards apart and 200 yards from any refuge as designated by signs. Permanent blinds or pits must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources. Any extension must be approved by the Lake Barkley Resource Manager.

(4) Barren Lake Wildlife Management Area, located in Barren, Allen and Monroe Counties. All recreation areas, operational areas and islands, except Mason Island, are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration and a drawing for permanent blinds will be conducted at the Barren Lake Resource Manager's Office located near the dam off Kentucky Highway 252, on October 5 from 7:00 a.m. to 9:00 a.m. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(5) Green River Wildlife Management Area. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration for a drawing for blind permits will be conducted on October 2 from 8 a.m. to 10 a.m. at the Resource Manager's office located off Highway 55 between Campbellsville and Columbia. The drawing will be conducted at 10 a.m. Registrants must have a valid Kentucky hunting license. No more than one (1) blind permit will be issued per immediate family.

(6) Nolin, Rough River, and Buckhorn Wildlife Management Areas. All recreation and park areas are closed to waterfowl hunting. Permanent blinds must be registered and a blind permit issued by the Corps of Engineers. Registration will be conducted at each of the Resource Managers' offices located at or near the dam sites, from October 5 through December 31 during weekdays only, excluding federal holidays. A permit will be issued for each permanent blind and only one (1) permit will be issued per hunter. All blinds must be 100 yards apart. Permanent blinds must be removed no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(7) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Waterfowl hunting is permitted only from permanent pits or blinds registered by the Department of Fish and Wildlife Resources.

(b) Jenny Hole-Highland Creek Unit. Waterfowl hunting will be allowed from permanent pit or blind sites registered by the Department of Fish and Wildlife Resources and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties.

(c) Shooting hours. The shooting hours on the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek Units shall be one-half (½) hour before sunrise until 2 p.m.

(d) Pit or blind registration. Applicants for a permanent pit or blind must show a current Kentucky hunting license before a permit will be issued. The drawing for blind registration order will occur September 28, from 6:00 p.m. until 8:00 p.m. at the Henderson Community and Youth Center in Atkinson Park, Henderson. The drawing will be followed by registration in which hunters with the lowest numbers will receive first choice of pit or blind locations. A hunter may designate one (1) other person as a partner for registration. Two (2) nontransferable permits will be issued for each permanent pit or blind and only one (1) permit per hunter will be issued. Either of the permittees for a location will have priority over other users of their registered

pits or blinds and may claim ownership by showing their permit. Registered pits or blinds must not be locked to exclude other hunters when not occupied by the permittee. Any waterfowl hunter may occupy any unoccupied pit or blind until claimed by the permittee. Only four (4) persons may occupy a pit or blind at one (1) time. All blinds and pits must be 200 yards apart and at the designated locations. Permit holders who have not constructed their pit or blind at the designated location by November 30 will lose their location and the site may be assigned to another hunter. Blinds or pits and all construction materials must be removed from the area no later than thirty (30) days after the close of the waterfowl season or they become the property of the Department of Fish and Wildlife Resources.

(e) When the Ohio River reaches a level that requires boat access to the units, hunting will be allowed from boats spaced 200 yards apart, without regard to the registered pits or blinds.

(f) Sauerheber Unit of the Sloughs Wildlife Management Area located in Henderson County will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. This area includes all state-owned land north and south of Kentucky Highway 268 and privately-owned land south of Kentucky Highway 268 as designated by yellow waterfowl refuge signs. Hunting waterfowl is also prohibited from Kentucky Highway 268 and thirty (30) feet on either side on the center line where it lies adjacent to the refuge.

(8) Ohio River Islands Wildlife Management Area. This area consists of Twin Sisters, Pryor and Rondeau Islands and the mainland marsh area between Twin Sisters and Pryor Islands. Only temporary waterfowl blinds are permitted and they must be removed at the end of each day's hunting. All blinds must be 200 yards apart and only four (4) persons may occupy a blind at one (1) time.

(9) Ohio River Waterfowl Refuge located in Livingston County will be closed to all hunting and molesting of waterfowl from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and including Stewart Island.

(10) Dewey Lake Wildlife Management Area located in Floyd County is closed to all waterfowl hunting.

(11) Grayson Lake Wildlife Management Area located in Carter and Elliott Counties is closed to all waterfowl hunting.

(12) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shoreline portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(13) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties is closed to all waterfowl hunting.

(14) Cane Creek Wildlife Management Area located in Laurel County is closed to all waterfowl hunting.

(15) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all waterfowl hunting.

(16) Redbird Wildlife Management Area located in Leslie and Clay Counties is closed to all waterfowl hunting.

(17) Mill Creek Wildlife Management Area located in Jackson County is closed to all waterfowl hunting.

Section 10. 301 KAR 2:086, Seasons and limits for migratory birds, is hereby repealed.

CARL E. KAYS, Commissioner
ADOPTED: August 30, 1982
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: September 14, 1982 at 1:30 p.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.

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

401 KAR 2:180. General planning and management provisions for solid waste.

RELATES TO: KRS 224.255, 224.880, 224.887, 224.888
PURSUANT TO: KRS 13.082, 109.190, 224.005(37), 224.033, 224.886, 224.887
NECESSITY AND FUNCTION: KRS 224.033(24), 224.886, and 224.887 require the Natural Resources and Environmental Protection Cabinet to adopt regulations for counties, combinations of counties and waste management districts in creating solid waste management areas for the purpose of planning for solid waste management and recovery activities. This regulation defines essential terms and sets forth general provisions which apply to all counties, combinations of counties and waste management districts seeking designation as solid waste management areas.

Section 1. Applicability. The solid waste management planning regulations shall apply to all counties, combinations of counties, urban-county governments and waste management districts.

Section 2. Definitions. Unless otherwise defined in this section, the definitions in 401 KAR 2:050 shall apply. Whenever the following terms appear in the Solid Waste Management Planning Regulations (401 KAR 2:180 to 2:190) unless context requires otherwise, they shall have the meanings given in this section.

(1) "Action of the fiscal court" means any action or deed, including but not limited to a resolution or ordinance, which legally binds a fiscal court or, in the case of an urban-county government, the body in which chief legislative power is vested.

(2) "Agreement" means a legally binding document or contract evidenced by a writing which establishes a waste management district or a proposed solid waste management area. The agreement may be between a single county, or two (2) or more counties, and an agency or office which has been assigned responsibility for area plan development by a fiscal court.

(3) "Area solid waste management plan" or "area plan" means the plan required by KRS 224.888 which sets forth a comprehensive program of solid waste manage-

ment developed for implementation at the local government level.

(4) "Designation as a solid waste management area" or "designation" means the approval from the cabinet of the application for designation as a solid waste management area as specified in 401 KAR 2:190.

(5) "Implementation" means the actual performance of planned activities.

(6) "Kentucky Waste Management Plan" means the comprehensive, statewide solid waste management plan submitted to and approved by the U.S. Environmental Protection Agency.

(7) "Planning periods" means the intervals of time designated for the accomplishment of area solid waste management planning goals:

(a) "Short-term" means the planning period from the first through the fifth year after the most recent plan revision.

(b) "Mid-term" means the planning period from the sixth through the tenth year after the most recent plan revision.

(c) "Long-term" means the planning period from the eleventh through the twentieth year after the most recent plan revision.

(8) "Regional" means of or pertaining to more than one (1) county.

(9) "Revision" means an amendment to any part of an application for area designation, including the approved area plan, required by the cabinet. The cabinet shall require a revision upon determining that deficiencies exist in the application for area designation or the area plan or upon finding that the approved area plan is not being implemented.

(10) "Solid waste activity" or "activity(ies)" means any manner of solid waste management including collection, source separation, storage, transportation, transfer, processing, treatment and disposal.

(11) "Substantial revision" means a revision to an application for area designation which will significantly affect the plan, including but not limited to changes to local laws and regulations; delays in implementation; reordering or other changes to established, approved priorities; changes to the acquisition schedule for solid waste management activities or facilities; or changes in budgeting that will delay or prohibit implementation of the area plan.

Section 3. Notification of Intent to Apply for Area Designation. (1) Identification of lead agency. Application for designation as a solid waste management area must conform to the requirements in 401 KAR 2:190, Designation as a solid waste management area. After a county decides to join with another county or counties or to independently submit an area plan, the fiscal court(s), board of directors or, in the case of an urban-county government, the body in which chief legislative power is vested, or such other office or agency responsible for area plan submittal shall notify the cabinet in writing within forty-five (45) days of the effective date of this regulation of the intent to apply for area designation. The cabinet will transmit copies of the notification to all counties in Kentucky contiguous to the proposed solid waste management area. The notification shall state:

(a) Whether the county or counties are acting independently, jointly or as a waste management district;

(b) The agency which will have primary responsibility for plan development;

(c) The name and title of a designated contact person; and

(d) The name and title of each person who is on the fiscal court(s), board of directors or, in the case of an urban-county government, the body in which chief legislative power is vested or such other agency or office assigned responsibility for plan development.

(2) Changes to information submitted. Should a county, counties or waste management district decide to enter into a new agreement or amend, modify, or dissolve an existing agreement, the cabinet shall be notified in writing within thirty (30) days of such decision. The cabinet shall transmit copies of the notification to all counties in Kentucky contiguous to the proposed solid waste management area.

Section 4. Establishment of Waste Management Districts. (1) Garbage and refuse districts. Garbage and refuse districts established pursuant to KRS Chapter 109 prior to June 17, 1978 shall be deemed waste management districts by the cabinet pursuant to KRS 109.190. Garbage and refuse districts which elect to be considered waste management districts shall petition the cabinet by submitting the information required in Section 3 of this regulation. Upon approval of the petition by the cabinet, the name of the garbage and refuse district will be changed to reflect the new status as a waste management district. An existing garbage and refuse district may dissolve the district to apply for designation as a solid waste management area independently or in conjunction with any county.

(2) Formation of waste management districts. A single county or two (2) or more counties which elect to become a waste management district under KRS 109.071 shall notify the cabinet. In addition to the notification required by Section 3 of this regulation, the waste management district shall submit:

(a) The agreement which establishes the district;

(b) The rules, regulations, by-laws or other documents which govern the actions of the board of directors; and

(c) A list of the members of the board of directors and their official titles.

The cabinet will confirm receipt of the notification in writing to the individual identified as the contact person.

Section 5. Requests for Information. (1) Documents provided by the cabinet. A county, group of counties or waste management district may request copies of documents prepared by the cabinet to assist local governments in preparing the area plan. The cabinet will provide at no charge one (1) copy of each document listed in subsection (2) of this section to the fiscal court of each county, board of directors or other duly authorized office or agency. Additional copies will be provided upon request, at cost.

(2) Documents available. The following documents may be requested:

(a) Kentucky Solid Waste Management Regulations;

(b) Kentucky Solid Waste Management Planning Regulations;

(c) Guidelines for Landspreading;

(d) Kentucky Waste Management Plan; and

(e) Kentucky Solid Waste Management Plan-Executive Summary for the Area Development District which contains the county or two (2) or more counties joined by agreement or which contains a solid waste management district.

(3) Additional information available.

(a) The cabinet may provide access to computerized data on solid waste management in each county at cost to the fiscal court of each county, the waste management district or the office or agency assigned responsible for area plan

development. A request for data services shall be in writing on a form provided by the cabinet. Processing of data requests will be subject to the discretion of the cabinet.

(b) The cabinet will provide, upon request by any person, agency or office, copies of the documents listed in subsection (2) of this section at cost. A request for documents shall be submitted in writing to the cabinet.

JACKIE SWIGART, Secretary

ADOPTED: September 15, 1982

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

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

See public hearings scheduled on page 395.

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

401 KAR 2:185. Submission of area plan.

RELATES TO: KRS 224.255, 224.880, 224.887, 224.888

PURSUANT TO: KRS 13.082, 109.012(11), 224.031, 224.033, 224.887

NECESSITY AND FUNCTION: KRS 224.887 authorizes the cabinet to promulgate regulations consistent with the statewide plan and KRS 109.011(11) requires waste managment districts and solid waste management areas to comply with standards set by regulations promulgated by the cabinet. This regulation identifies the criteria for area plans and establishes submission requirements.

Section 1. Applicability. Each county is responsible for preparing, adopting, maintaining, updating and implementing a comprehensive, coordinated area solid waste management plan. A county, counties, urban-county government or waste management district shall prepare the area plan in accordance with the requirements of this regulation. The area plan and certification of its adoption by the fiscal court and each of the applicable political subdivisions shall accompany the application for designation as a solid waste management area as required by 401 KAR 2:190.

Section 2. Scope of the Area Solid Waste Management Plan. (1) The area plan shall address all solid waste management issues in the proposed area that may cause potential adverse effects on health or the environment or provide opportunity for resource conservation or resource recovery. It is not intended that detailed engineering design of specific activities or facilities be integrated into the plan, rather the plan shall provide sufficient analysis to evaluate alternate means of managing the proposed area's solid waste in accordance with all applicable laws and regulations.

(2) The area plan shall include all incorporated and unincorporated areas in each county and shall identify and reference solid waste management activities and plans already being implemented by cities within the proposed area.

(3) The area plan shall establish and justify priorities and timetables for actions. These priorities shall be based on the current level of solid waste management planning and implementation within the proposed area; the identification and extent of the solid waste management deficiencies; the health, environmental and economic impacts of such deficiencies; and the resources and management approaches available.

(4) The area plan shall establish an orderly procedure for achieving the objectives of KRS Chapters 109 and 224, meeting the requirements of the solid waste management regulations, and demonstrating conformance with the Kentucky Waste Management Plan. This procedure shall specifically describe the activities to be undertaken, including detailed schedules and milestones in accordance with Section 4(5) and (6) of this regulation.

(5) The area plan shall cover a minimum of twenty (20) years from the date submitted to the cabinet for approval.

(6) The area plan shall identify existing legal authority for solid waste management within the proposed area, and shall identify modifications or additions to existing legal authority necessary to meet the requirements of this regulation.

Section 3. Facility Planning and Implementation. (1) Requirements for assessing needs. The area plan shall provide for resource conservation and recovery, storage, treatment and disposal activities and facilities necessary to dispose of solid waste in compliance with all applicable laws and regulations.

(a) In meeting the requirement for resource conservation and recovery, storage, treatment and disposal activities and facilities, the area plan shall provide for an assessment of the adequacy of existing activities and facilities and the need for new, improved or expanded activities and facilities.

(b) The needs assessment shall be projected for a minimum of twenty (20) years, and shall be developed according to the following planning periods:

1. Short-term shall contain measures specific enough for implementation on an annual basis;
2. Mid-term shall contain objectives and measures sufficiently detailed to show feasibility; and
3. Long-term shall contain objectives and measures which shall be general and goal-oriented.

(c) The needs assessment shall include the requirements of KRS 224.888(2), (4) and (6).

(2) Recommendations for assuring facility development.

(a) The proposed solid waste management area shall survey the solid waste management activities and facilities within its boundaries and prepare a plan consistent with the Kentucky Waste Management Plan. This survey shall include all existing solid waste management activities and facilities, taking into consideration projected population growth, existing and projected solid waste generation, existing land development regulations and overall activities management including organization, financing and regulatory capabilities. The area plan should address facility planning and acquisition for all areas which are determined to have insufficient resource recovery, storage, treatment and disposal capacity.

(b) Where facilities or activities are determined to be inadequate or unnecessary, the area plan shall provide for adequate and necessary activities or facilities to be developed.

(c) The area plan shall reflect compliance schedules which shall eliminate all existing open dumps by July 15, 1985, as required by KRS 224.255.

(d) The area plan shall provide for procedures to determine which facilities shall be given priority for technical, financial, or other assistance or other changes or modifications. Highest priority shall be given to facilities developed to replace or upgrade open dumps.

Section 4. Contents of Area Plan. The area plan shall document these policy decisions made by the solid waste management area, and any revision or update should address itself to the following information elements:

(1) A demographic study showing current and projected population density of the county or counties in the plan area. The study shall use current, published data from the Urban Studies Center, University of Louisville, including:

(a) Current and projected population centers for five (5), ten (10), and twenty (20) year periods; and

(b) Identification of current and projected centers of waste generation, including industrial wastes, for five (5), ten (10), and twenty (20) year periods.

(2) An estimate of the future needs for solid waste management activities and facilities in the proposed solid waste management area. The estimate of future needs shall include projections of the sources, types and quantities of solid waste generated within the proposed solid waste management area through the short-term, mid-term and long-term planning periods. Types of solid waste to be addressed include:

(a) Residential and commercial wastes;

(b) Institutional wastes, such as school and hospital wastes;

(c) Industrial wastes;

(d) Problem wastes, such as tires, automobiles, appliances, liquids and semi-liquids;

(e) Construction and demolition debris.

(3) An inventory and description of all existing solid waste management activities and facilities including administrative practices, fees and charges, and the identity, location, size and life expectancy of all existing facilities in the proposed area. The inventory and description shall:

(a) Address each of the following aspects of solid waste management:

1. Resource conservation;
2. Source separation;
3. Collection;
4. Transportation;
5. Storage;
6. Transfer;
7. Processing (including resource recovery);
8. Treatment; and
9. Disposal.

(b) Include an inventory of deficiencies, if any, of each activity or facility in meeting the existing short-term, mid-term and long-term solid waste management needs within the plan area.

(4) A statement of the ability of existing solid waste management activities to comply with all applicable laws and regulations.

(5) The plan shall state the short-term, mid-term, and long-term solid waste management objectives and priorities for the area. Such objectives shall be consistent with state policy and based on an analysis of deficiencies in the existing waste management activities and facilities; need for new activities and facilities to handle projected waste volumes; and the ability to comply with all applicable laws and regulations. Short-term objectives shall be specific enough for implementation on an annual basis through the first five (5) years. Mid-term objectives shall show feasibility; long-term objectives may be more general.

(6) A detailed schedule and description of activities to be undertaken.

(a) Description of activities. The description of activities to be undertaken shall address short-term, mid-term and long-term objectives identified in subsection (5) of this section. Descriptions shall include an evaluation of alternative strategies and an explanation of the selection process. The description of actitivies shall contain:

1. A description of the storage and collection system, including:
   a. A description of waste storage containers;
   b. A description of collection services;
   c. A map of service area boundaries and an indication of the number of people served; and
   d. The level of service, charge and fees for each identified service area.
2. A description of the transportation system and ultimate destination of collected wastes, including:
   a. Collection and transportation equipment used;
   b. The capacity and location of temporary storage areas; and
   c. The number and location of transfer stations.
3. A description of all proposed solid waste processing or treatment facilities including:
   a. Material recovery;
   b. Energy recovery;
   c. Incineration;
   d. Pulping;
   e. Shredder/baler operations;
   f. Compaction;
   g. Any other facility.
4. A description of all proposed solid waste disposal facilities including for each facility:
   a. Type of facility;
   b. Estimated sources and quantities of waste to be managed;
   c. Estimated site acreage and classification;
   d. Estimated capacity of the facility in years and yards, where applicable; and
   e. Approximate location.
5. A description of the relationship between the proposed area and those waste management activities currently being implemented by cities within the proposed area.

(b) Detailed schedule. A detailed description of actions to be implemented through the short-term planning period shall be provided. A schedule shall be provided indicating those actions to be implemented on an annual basis. Actions include, but are not limited to:

1. Administrative programs;
2. Purchase of equipment or land;
3. Obtaining required state and federal permits;
4. Modifications or additions to local laws and regulations;
5. Commencement of new of expanded activities; and
6. Selection of sites for facilities.

(c) Financing plan. A detailed description of the short-term costs of the plan, including a capital construction budget, shall be provided. The plan shall indicate the means by which the plan will be financed.

(7) A description of any proposed resource recovery plan or activity. It is the goal of the Comonwealth to reduce the amount of wastes disposed at landfills and max-

imize resource recovery. The plan shall give a high priority to the recovery of resources through recycling, source separation or energy recovery. The plan shall include:

(a) An analysis of the feasibility for new, improved or expanded materials or energy recovery activities or facilities. Current and projected per ton costs associated with collection and disposal activities shall be compared to per ton costs of alternative resource recovery activities; and

(b) Specific analysis to support the conclusion, where resource recovery and source separation activities are not adopted.

(8) A description of the comprehensive land use plan of the county or counties, if such a plan exists, and a description of the relationship of the area plan to the comprehensive land use plan.

(9) Identification of modifications or additions to local laws and regulations necessary to implement the area plan. This identification shall include evaluating legal authority for conformance with the Kentucky solid waste management regulations and identifying how local regulations will be enforced.

Section 5. Preliminary Review. Prior to approval by the fiscal court(s) or, in the case of an urban-county government, the body in which chief legislative power is vested, a draft area plan shall be submitted to the cabinet for preliminary review. A preliminary review shall be conducted to determine the plan's compliance with the Kentucky Waste Management Plan and all applicable laws and regulations.

(1) Preliminary approval of the draft area plan. Upon finding that the draft area plan is in compliance with the Kentucky Waste Management Plan and all applicable laws and regulations, the cabinet shall issue a written preliminary approval of the draft area plan. The preliminary approval shall state that the cabinet has reviewed the plan and finds the plan acceptable. The preliminary approval may condition final approval of the area plan and designation as a solid waste management area upon corrections or amendments to the draft area plan. Upon receipt of preliminary approval of the draft area plan, the draft area plan shall be approved by the fiscal court(s) or, in the case of an urban-county government, the body in which chief legislative power is vested prior to submittal of the application for designation as a solid waste management area.

(2) Request for revisions to the draft area plan. Upon finding that the draft area plan is not in compliance with the Kentucky Waste Management Plan and all applicable laws and regulations, the cabinet will notify the fiscal court(s), board of directors or, in the case of an urban-county government, the body in which chief legislative power is vested, or the assigned office or agency, of the plan deficiencies. If the deficiencies in the draft area plan are substantial or significant, the cabinet may, in lieu of a list of deficiencies, present a course of action to the fiscal court(s), board of directors or, in the case of an urban-county government, the body in which chief legislative power is vested or the office or agency which could expedite the submission of an acceptable area plan.

JACKIE SWIGART, Secretary

ADOPTED: September 15, 1982

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

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

See public hearings scheduled on page 395.

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

401 KAR 2:190. Designation as a solid waste management area.

RELATES TO: KRS 224.255, 224.880, 224.887, 224.888

PURSUANT TO: KRS 13.082, 109.012(11), 224.031, 224.033, 224.887

NECESSITY AND FUNCTION: KRS 224.887 requires the cabinet to promulgate regulations for counties and waste management districts in creating solid waste management areas. This regulation identifies the criteria for receiving designation as a solid waste management area.

Section 1. Application for Designation as a Solid Waste Management Area. All counties shall apply to the cabinet for designation as a solid waste management area. The application may be made by a single county, two (2) or more counties or a waste management district and shall be on a form provided by the cabinet. The application shall include:

(1) Name of the proposed area;

(2) Name and address of the primary agency responsible for area plan development;

(3) Name, address and telephone number of the individual identified as the contact person for the primary agency;

(4) Copies of actions of each fiscal court establishing the proposed solid waste management area, modifying local legal authority or significantly affecting solid waste management planning;

(5) The agreement or contract establishing the proposed area, if applicable;

(6) The proposed rules, regulations or by-laws governing the proposed area;

(7) A list of the members of the fiscal court(s) or board of directors, or, in the case of an urban-county government, the body in which chief legislative power is vested, and their titles, if appropriate;

(8) A map of the proposed area drawn to scale of at least 1:125,000;

(9) A listing of the political subdivisions within, and the boundaries of, the proposed solid waste management area;

(10) A copy of the public notice required under Section 4(1) of this regulation for area plan adoption;

(11) A description of the administrative process to implement the plan which shall include budgeting, enforcement, planning, public information, management and operation of the waste management activities or facilities proposed; and

(12) The area plan prepared in accordance with 401 KAR 2:185; Submission of area plan.

Section 2. Designation as a Solid Waste Management Area. (1) Approval of the application. The cabinet shall review the information submitted pursuant to Section 1 of this regulation to determine whether the application and area plan are consistent with the Kentucky Waste Management Plan and in compliance with all applicable state laws and regulations. If the information is in compliance, the cabinet will approve the application in writing within thirty (30) days.

(2) Rejection of the application. Rejection of the application shall be in writing and accompanied by a list of

deficiencies which, if corrected, would justify approval of a revised area plan. If the deficiencies in the area plan are substantial or significant, the cabinet may, in lieu of a list of deficiencies, present a suggested course of action to the fiscal court(s), board of directors, or, in the case of an urban-county government, the body in which chief legislative power is vested or the assigned office or agency, which could assist in development of an acceptable area plan.

Section 3. Duration of Designation. Unless otherwise specified as a condition for designation as a solid waste management area, designation as a solid waste management area will be for a term not to exceed twenty (20) years. Redesignation as a solid waste management area shall be based upon the review conducted in accordance with Section 5 of 401 KAR 2:185 and Section 2 of this regulation, or upon a revision to the area plan in accordance with Section 4 of this regulation. If the county, counties or waste management district(s) of a designated area amends, modifies, or dissolves the agreement establishing the area, the cabinet shall be notified in writing no later than thirty (30) days after such action. Each county or counties from a dissolved solid waste management area shall submit a revised proposed area plan, approved by the fiscal court of the county or counties within the proposed area or, in the case of an urban-county government, the body in which chief legislative power is vested, within six (6) months of the date of dissolution of the area. The cabinet will review the notification of amendment or modification of an agreement and make a written determination as to whether the county or counties shall submit a revised area plan. Failure to comply with the provisions of this section regarding revision of the area plan may be grounds for revocation of area designation.

Section 4. Area Plan Adoption and Revision. Prior to applying for designation as a solid waste management area, the fiscal court of each county in the proposed area or, in the case of an urban-county government, the body in which chief legislative power is vested, shall hold a public hearing or meeting to approve the application for designation as a solid waste management area and the proposed area plan.

(1) Public hearings or meetings. The fiscal court of each county in the proposed area shall hold at least one (1) public hearing or meeting prior to adopting or approving the application for designation as a solid waste management area, area plan or a substantial revision to the area plan. Each comment received shall be evaluated and a written response prepared. A transcript or a summary of the comments received and the consideration of comments shall be made available to the members of the fiscal court of each county in the proposed area and the board of directors, if applicable, prior to adoption or approval of the application for designation as a solid waste management area or area plan. Copies of the comments and the consideration of comments shall be made available to the public through public libraries, public offices, individual copies, or any similar means, and shall be available to the cabinet upon request.

(2) Approval by the county. The fiscal court of each county in the proposed area or, in the case of an urban-county government, the body in which chief legislative power is vested, shall approve the application for designation as a solid waste management area and the area plan. Approval shall not take place prior to a public hearing or meeting on the application for designation as a solid waste management area, the proposed area plan or substantial revision as required by subsection (1) of this section. Approval of an application for designation as a solid waste management area, proposed area plan or revision shall be by resolution and shall state concurrence with the following:

(a) The objectives set forth in the area plan;

(b) The method and/or organization for implementation of the program;

(c) Procedures for financing the recommended program; and

(d) The duties and responsibilities of the county identified in the area plan.

(3) Updates and revisions to the area plan. Updates and revisions shall be made:

(a) If the cabinet determines that the approved area plan or any part thereof is inadequate based on new or revised information, conditions or circumstances. The cabinet will notify the solid waste management area in writing that an amendment or revision to the area plan is required.

(b) If a solid waste management area determines that the approved plan or any part thereof is inadequate based on new or revised information, conditions or circumstances. The area may amend, modify or revise the approved plan and the revised plan shall be approved by the fiscal court of each county within the area or, in the case of an urban-county government, the body in which chief legislative power is vested, and submitted to the cabinet for review and approval.

(c) All area plans shall be updated and readopted in accordance with the provisions of this section at least every four (4) years. The updated plan shall use current data and shall assure compliance with the Kentucky Waste Management Plan and all applicable laws and regulations.

Section 5. City Government Role in Solid Waste Management. (1) No city shall have the power or authority to prepare an area plan or apply for designation as a solid waste management area unless the fiscal court(s) or board of directors of the county(ies) delegate responsibility for area plan development to the city. Area plans prepared by a city must address solid waste management problems and activities at both the city and county(ies) levels.

(2) If a county fails to submit an area plan by January 1, 1984, a city may provide solid waste services and shall have all the powers and restrictions set forth for counties in KRS 109.041, 109.062, 109.180, and 109.250.

(3) A solid waste management area may require the use of any solid waste management facility meeting the approval of the cabinet, by all persons situated within its geographic boundary. An exception to this rule are those cities which own and operate solid waste facilities, other than sanitary landfills, which were in existence prior to July 17, 1978. Area plans that include use of city-financed solid waste management facilities shall include provisions for insuring sufficient revenues to the city to retire any debt on said system. Area plans that include provisions for solid waste management services to a city shall provide the city with written notice at least one (1) year prior to the date it intends to provide such service to the city.

Section 6. Implementation Reports. The solid waste management area shall submit annual reports to the cabinet, in accordance with a schedule established by the cabinet upon plan approval, describing the progress made

on area plan implementation. The implementation report shall be on a form provided by the cabinet and contain:

(1) An identification of solid waste management activities and facilities currently in use;

(2) An estimate of the population served by each existing activity or facility;

(3) An assessment of conformance with the detailed schedule contained in the approved plan and required by 401 KAR 2:185, Section 4(6).

Section 7. Area Submission. (1) Submission date. The application for designation as a solid waste management area and area plan shall be submitted to the cabinet by July 1, 1983. A six (6) month extension may be granted by the cabinet, if the county, counties, or waste management district has demonstrated, in the cabinet's judgment, a good faith effort to develop an area plan. Should a county, counties or waste management district find a six (6) month extension necessary, the fiscal court(s), board of directors, or, in the case of an urban-county government, the body in which chief legislative authority is vested, or other duly delegated office or agency shall submit a request in writing to the cabinet which details the extent of plan development accomplished and cites the need for an extension of the deadline date.

(2) Copies required. The county, counties or waste management district shall submit one (1) copy of the application for designation as a solid waste management area and at least three (3) copies of the area plan. Copies must be eight and one-half (8½) inches by eleven (11) inches and each page shall be securely bound in a notebook, folder or a similar means designed to keep pages in order. Pages shall be numbered and a table of contents provided. A title sheet or transmittal letter identifying the plan and the agency or office which developed the plan shall be placed at the beginning of the area plan package.

Section 8. Enforcement. (1) Citizen petition. If a fiscal court or, in the case of an urban-county government, the body in which chief legislative authority is vested, fails to establish a solid waste management plan by January 1, 1984, the citizens of the county may petition the county judge/executive or, in the case of an urban-county government, the official in whom chief executive power is vested, to request preparation of an area plan. The petition shall be signed by a number of citizens equal to ten percent (10%) of the votes cast in the county for the office receiving the greatest total votes in the last general election. The petition shall be filed with the county judge/executive or, in the case of an urban-county government, the official in whom chief executive power is vested, asking that the proposition whether to develop a plan be placed on the ballot of the next general election. The cabinet will develop and maintain a list of counties which have received designation as solid waste management areas and the status of those counties which have not received area designation. This list will be made available to the public. Upon determination by the cabinet that no substantial progress is being made by a county in area plan preparation by January 1, 1984, the cabinet may hold a public meeting in those counties to discuss the need for an alternative approach to plan preparation.

(2) Implementation deficiencies. If the cabinet determines that an area solid waste management plan is not being implemented as approved, it will notify the solid waste management area in writing of implementation deficiencies. The solid waste management area shall within forty-five (45) days respond in writing demonstrating the action(s) taken or planned to correct the implementation deficiencies, or request a revision to the approved plan in accordance with Section 4 of this regulation. If amendments or revisions to the plan are not made, the cabinet may conduct a public hearing or meeting to determine whether the approved plan should be revised or revoked. If the cabinet determines that a plan is not capable of being implemented, the plan shall be revoked and the cabinet shall require the county or counties to submit a new proposed area plan. Designation of a county, counties, urban-county government or waste management district as a solid waste management area shall also be revoked until such time as a new plan is approved.

(3) Permit application and compliance with area plan. Two (2) years after the effective date of these regulations or subsequent to the cabinet's approval of an area plan, whichever occurs first, a permit shall not be issued for a new solid waste management site or facility to accept those solid wastes affected by this regulation unless that facility complies and is consistent with an approved area solid waste management plan. Where facilities are proposed in areas with approved plans, the cabinet will review the area plan to insure that the proposed facility complies and is consistent with the area plan before a permit is issued. In reviewing the application for a new facility, the cabinet will consult with the solid waste management area to insure that the proposed facility complies with the approved area solid waste management plan. If a proposed facility is not consistent or not in compliance with the approved area solid waste management plan, then the applicant shall request that the solid waste management area amend the plan.

JACKIE SWIGART, Secretary

ADOPTED: September 15, 1982

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

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

See public hearings scheduled on page 395.

TRANSPORTATION CABINET
Department of Financial and Legal Affairs

603 KAR 4:035. Advertising devices; placement along limited access roadways of four (4) or more lanes.

RELATES TO: KRS 177.830 to 177.890

PURSUANT TO: KRS 13.082, 177.860, 177.865

NECESSITY AND FUNCTION: KRS 177.860 authorized the Commissioner of Highways to prescribe by regulations reasonable standards for the placement of advertising devices along specified roadways. This regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related services are available.

Section 1. Definitions. The following terms when used in the regulation shall have the following meaning:

(1) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD," "LODGING," or "CAMPING," or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.

(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the brand name or trademark of qualified motorist services available on the crossroad near the interchange.
(3) "Business location" means a place of business where more than one (1) motorist service is available.
(4) "Logo" means a distinctive symbol or sign used by a motorist service business as a means of identification of its products or business.
(5) "Single exit interchange" means a grade separated crossing of roadways having one (1) mainline off-ramp to provide access to the crossroad.
(6) "Double exit interchange" means a grade separated crossing of roadways having two (2) mainline off-ramps to provide access to the crossroad.
(7) "Intersection" means a junction of two (2) roads at the same grade level.
(8) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.
(9) "Primary motorist service" means a business location which gives precedence to one (1) motorist service over any other motorist service available at that business location.
(10) "Secondary or incidental motorist service" means one (1) or more motorist service available at a business location which are subordinate to the primary motorist service.

Section 2. General Provisions. The Commissioner, Department of Highways, shall authorize the placement of specific motorist service information panels with business signs within the right-of-way of limited access highways of four (4) or more travel lanes in conformance with the Federal Highway Administration's (FHWA's) adopted standards as contained in FHPM 6-8-3-8. The Department of Highways shall control the erection and maintenance of said panels and signs in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the following criteria:
(1) A specific information panel bearing separately attached business signs shall be erected between the previous interchange and 800 feet in advance of the exit direction sign at the interchange where motorist services are available. Spacing between each specific information panel shall also be a minimum of 800 feet and shall not conflict or interfere with other highway guide signs.
(2) Business signs separately attached on a specific information panel shall show the logo, name, brand, and/or trademark of motorist services conveniently accessible from the interchange. All business signs shall be furnished to the Department of Highways by the business at no cost to the Department and shall be manufactured to the standard specifications of the Department.
(3) No specific information panels may be erected at an interchange or intersection which intersects another limited access facility nor at any interchange or intersection which does not have a convenient re-entry in the desired direction of travel. No more than one (1) specific information panel for "GAS," "FOOD," "LODGING," or "CAMPING" shall be erected in each direction for an interchange or intersection. In the direction of travel, the successive panels shall be for "CAMPING," "LODGING," "FOOD," and "GAS," in that order.
(4) Specific information panels may be permitted inside urban areas where interchange spacing is a minimum of two (2) miles and where the roadside development or terrain is such that motorist services are not readily identifiable from the traveled way for a reasonable distance in advance of an exit.
(5) For single exit interchanges, a standard full-size panel shall accommodate a maximum of six (6) business signs for "GAS" and four (4) business signs for "FOOD," "LODGING," and "CAMPING." In instances when the number of businesses does not warrant a full-size panel, a half-size panel may be used. Where service facilities are not visible from a ramp terminal, supplemental "GAS," "FOOD," "LODGING," or "CAMPING" logos shall be placed along the ramp or at the ramp terminal with a directional arrow and mileage to the service.
(6) For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base. The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit. This panel shall accommodate a maximum of three (3) business signs for "GAS" and two (2) business signs for "FOOD," "LODGING," and "CAMPING" per exit. Where a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information sign may be omitted or a single exit interchange sign may be used.
(7) Criteria for installation of specific information panels with intersections at grade is significantly different. Provisions of distance from the crossroad, size of information panels and business signs, number of business signs per panel, distance between panels, and selection of businesses for qualification for business signs shall conform to standards and specifications as described in FHPM 6-8-3-8 and the state MUTCD.
(8) If a business ceases to exist or is not in operation for any reason, in accordance with the standards under which a business sign was placed on a specific information panel, the business sign shall be covered or removed as circumstances of each closing or cessation of business dictate.
(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. Businesses of this type shall notify the Department of Highways in writing thirty (30) days before such opening and closing occurs.
(10) Only one (1) business sign pertaining to a business location shall be permitted in each direction of travel in advance of an interchange or intersection; except that in the absence of adequate motorist service business signs to fill a specific information panel with primary service signs, secondary or incidental motorist service business signs may be allowed on those unfilled panels.
(11) At a business location where more than one (1) motorist service is available, only the primary motorist service shall be considered for the purpose of permitting business signs on a specific information panel; except that if a space is not available for the primary motorist service, a secondary or incidental motorist service may be considered if space is available on a specific information panel for that type service sign.
(12) Secondary or incidental motorist services shall not be considered until all businesses with a primary motorist service have been allowed an opportunity to have their business signs placed on the specific information panel pertaining to that type motorist service.
(13) In selecting secondary or incidental services, the same criteria as required for primary motorist services shall be used to determine their qualification for a business sign.
(14) Only those businesses within a three (3) mile limit, in each direction from the point of distance measurement of a four (4) lane limited access road, shall be eligible to place signs on information panels, except that the Commissioner of Highways may extend the three (3) mile limit for any motorist service if he determines that such extension is necessary and desirable in order to provide necessary

motorist service information to the traveling public.

(15) In the absence of exit number guide signs, the words "Next Right/Left" shall be used.

(16) A business with one (1) or more signs in violation of KRS 177.830 thru 177.890 on any route controlled by this statute and regulations pertaining thereto, shall not be eligible to qualify for a business sign until all violations have been removed.

(17) Descriptive advertising phrases or slogans shall not be allowed on a business sign; i.e., "Biggest Little . . . ," "We're No. 1," "Trying Harder," etc.

(18) Directional business signs may be erected on crossroads if the motorist service is at a distance or in a location which requires extended direction.

Section 3. Requirements for Obtaining Business Signs. A motorist service business located at, or conveniently accessible from, an interchange or intersection shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(1) Each business shall offer written assurance that it conforms with all applicable laws concerning the provision of public accommodations with regard to race, religion, color, sex, age, handicap, or national origin.

(2) To qualify for a "GAS" business sign, a business must be in operation seven (7) days a week, sixteen (16) hours a day, and, as a minimum, have fuel, oil, restroom facilities, and telephone available.

(3) To qualify for a "FOOD" business sign, a business must be licensed or approved by the appropriate state and/or local regulatory agency, and, as a minimum, be in operation seven (7) days a week, sixteen (16) hours a day to serve three (3) meals a day beginning no later than 7:00 a.m., and have a reasonable seating capacity for sit-down, eat-in service.

(4) To qualify for a "LODGING" business sign, a facility must be licensed or approved by the appropriate state and/or local regulatory agency, have adequate sleeping accommodations, and have a public telephone.

(5) To qualify for a "CAMPING" business sign, a facility must be licensed or approved by the appropriate state and/or local regulatory agency, have adequate parking accommodations, modern sanitary facilities, and drinking water.

(6) Qualifying businesses nearest to the interchange or intersection shall receive preference in the selection process. If a new qualifying business comes into existence nearer the interchange or intersection than one which already has a business sign displayed on a fully utilized panel, the new business may have its business sign displayed and the business farthest from the interchange will have its business sign removed at the end of the contract year.

(7) The qualifying business shall pay to the Department an annual fee of $600, in advance, for each mainline business sign for gas, food, and lodging and $300 for camping. The annual fee for the first year must accompany the initial application. The yearly renewal fee shall be due thirty (30) days prior to the annual renewal date. The payment of this fee guarantees that the business sign will be displayed for one (1) contract year as long as the business violates no part of their agreement with the Department of Highways.

(8) If a business sign must be removed for any reason, a fee of $100 shall be charged for the reinstallation of a sign for the same business.

(9) Business sign logos shall be delivered to the appropriate Highway General Manager within sixty (60) days of notification of approval by the Division of Roadside Regulation Director. Failure to deliver the business sign within this specified time period may result in the forfeiture of the fee, and another business or businesses may be given the opportunity to qualify for the vacated space.

(10) The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs. No business sign shall be displayed which will misinform the traveling public or which is unsightly, badly faded, or in a state of delapidation. In such instances the business shall provide a new or renovated business sign.

Section 4. Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the outer edges of the main traveled way of a four (4) lane limited access road and the center line of a non-limited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular motorist service.

Section 5. Application forms, criteria for selection of businesses with motorist services, standards of quality of business logos and any other information relative to the activities and functions necessary and authorized by KRS 177.860, 177.865 and this regulation, to implement and administer such law and regulations may be obtained by writing the Division of Roadside Regulation, Room 224, State Office Building Annex, Frankfort, Kentucky 40622.

Section 6. Revocation of Business Sign Contract. Failure to comply with any of the regulations set forth herein shall be cause for the revocation of a business sign contract. In such instances the Department of Highways shall notify the business in writing of the violation(s). If the business fails to comply within fifteen (15) days after receiving such notification, the Department of Highways shall take immediate action to remove, replace, or cover any such business signs.

Section 7. Appeal of Revocation Action. Any business or person aggrieved by the action taken by the Department of Highways in administering these rules and regulations may request a formal hearing before the Commissioner of the Department of Highways. The request for the formal hearing shall be filed in writing and shall set forth the nature of the complaint and the grounds for the appeal.

FRANK R. METTS, Secretary

ADOPTED: September 14, 1982

RECEIVED BY LRC: September 15, 1982 at 11:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Stephen Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, Frankfort, Kentucky 40622.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:010. Acquisition and disbursement of funds.

RELATES TO: KRS 164A.560, 164A.595
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.560 and 164A.565 at the University of Louisville.

Section 1. The Board of Trustees of the University of Louisville elects to receive, deposit, collect, retain, invest, disburse, and account for all funds received or due from any source including, but not limited to, state and federal appropriations for the support or maintenance of the general operations or special purpose activities of the University of Louisville.

(1) The treasurer of the university shall deposit, on a timely basis, all tuition fees, fees for room and board, incidental fees, contributions, gifts, donations, devices, state and federal appropriations, monies received from sales and services, admittance fees, and all other monies received from any source, in a depository bank or banks designated by the Board of Trustees.

(2) All disbursements shall be limited to the amounts and for the purposes for which state appropriations have been made, or for which other monies have been received. All disbursements shall be recorded in a system of accounts as set forth in this regulation. The treasurer of the university shall prescribe forms to be used with the system of accounts, and no official shall approve any disbursement document unless he determines that the disbursement is to satisfy a liability of the institution incurred for authorized purposes and that the disbursement is to be made from the unexpended balance of a proper allotment.

(3) These functions of the treasurer may be carried out by the Vice President for Administration and such assistants, controllers, accountants, and cashiers as the president may authorize in writing in accord with sound business practices.

Section 2. The accounting system of the University of Louisville shall be an accrual basis accounting system conforming with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants. The accounting system shall include, but not be limited to, the following fund structure:

(1) An operating fund group (unrestricted current funds), consisting of all monies not otherwise restricted, available for general operations including state appropriations, federal funds, and unrestricted institutional receipts. Separate accounting fund groups may be established for auxiliary enterprises, athletics, hospitals, and other similar operations.

(2) A restricted fund group consisting of appropriations and other receipts restricted as to purpose which shall not be included in the operating fund.

(3) A loan fund group consisting of gifts, grants, and other funds provided and available for loans to students.

(4) An endowment fund group consisting of funds the principal of which is not currently expendable.

(5) An agency fund group consisting of resources held by the institutions as custodian or fiscal agent for individual students, faculty, staff members and organizations.

(6) A plant fund group consisting of:

(a) Unexpended plant funds to be used for the acquisition of long-lived assets for institutional purposes (capital construction funds);

(b) Funds for renewal, maintenance, and replacement of institutional buildings, equipment and other properties; and

(c) Funds set aside for debt service charges and retirement of indebtedness on institutional plant.

Section 3. A record of each general fund appropriation shall be maintained so as to identify the institutional budgets to which such funds are allotted. Any uncommitted state general funds remaining after the close of business on the last day of the fiscal year shall lapse and be returned to the treasury of the Commonwealth. Each appropriation shall be used for the intended purpose and where questions of intent arise subject to the provisions of KRS 45.750 and 45.800 in the case of capital construction projects and major items of equipment as defined by these sections, the decision of the Secretary of Finance, based upon budget work papers, shall be final.

Section 4. A separate account showing sources of revenue and all expenditures shall be maintained for each capital construction project. At the end of each fiscal year, a report containing a listing of all capital construction projects, with sources of funds, expenditures and current status for each, shall be submitted to the Capital Construction and Equipment Purchase Oversight Committee.

Section 5. State general funds appropriated by the General Assembly for capital construction projects and equipment purchases as defined in KRS 45.750 through 45.800 shall not lapse at the end of a fiscal year. They shall be carried forward until the project is completed. Any such unexpended funds remaining after acceptance of the project as complete shall be returned to a surplus account of the capital construction fund for investment until appropriated and allotted as provided in KRS 45.750 through 45.800.

Section 6. Long-lived assets of the institution, including land, buildings, and capital equipment, shall be accounted for in the plant fund group.

Section 7. The president shall prepare such information as is necessary for the Board of Trustees of the University of Louisville to make an annual report of the financial activity to the Council on Higher Education. The report shall meet the requirements of the council's system of uniform financial reporting for institutions of higher education.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:020. Annual audit.

RELATES TO: KRS 164A.570
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of each public institution of higher education to elect to perform financial management functions per KRS 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.570 at the University of Louisville.

Section 1. Upon recommendation of the president based upon appropriate procurement procedure, the Board of Trustees of the University of Louisville shall engage a qualified firm of certified public accountants experienced in the auditing of institutions to conduct an annual examination of the institution's financial statements in accordance with generally accepted auditing standards for the purpose of submitting an independent opinion, and preparing a report of findings and recommendations concerning internal accounting controls and procedures, and compliance with KRS 164A.555 to 164A.630. The Secretary of Finance may prescribe the minimum scope of any such audit. The opinion, with the findings and recommendations, shall be forwarded to the governor, the Secretary of the Finance and Administration Cabinet, the Auditor of Public Accounts, the Director of the Legislative Research Commission, the Executive Director of the Council on Higher Education, and members of the Board of Trustees.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:030. Purchasing; inventories; sales of surplus property; bidding procedures.

RELATES TO: KRS 164A.560
PURSUANT TO: KRS 164A.575
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.575 at the University of Louisville.

Section 1. The President of the University of Louisville, on behalf of the Board of Trustees, is authorized to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, in accord with procedures based upon the principles of KRS Chapter 45A, except that competitive bids may not be required for:

(1) Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;
(2) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
(3) Instructional materials available from only one (1) source;
(4) Where rates are fixed by law or ordinance;
(5) Library books;
(6) Commercial items that are purchased for resale;
(7) Professional, technical, scientific or artistic services, but contracts shall be submitted in accordance with KRS 45.700 and 45.720;
(8) All other commodities, equipment and services which, in the reasonable discretion of the Board, are available from only one (1) source; and
(9) Interests in real property.

Section 2. The President of the University of Louisville, on behalf of the Board of Trustees, is authorized to negotiate with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

Section 3. The President of the University of Louisville shall direct the appropriate institutional officers to take and maintain inventories of plant and equipment.

Section 4. The President of the University of Louisville shall establish procedures to identify items of common general usage among all departments to foster volume purchasing, and shall establish and enforce schedules for purchasing supplies, materials, and equipment.

Section 5. The President of the University of Louisville shall have power, on behalf of the Board of Trustees, to salvage, to exchange, and to condemn supplies, equipment, and real property.

Section 6. Upon the approval of the Secretary of Finance and the Board of Trustees, the president may purchase or otherwise acquire, on behalf of the Board of Trustees, all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure.

Section 7. The Board of Trustees of the University of Louisville, acting through the president, shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the Board. The determination of the Board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the Board. Unless the Board deems it in the best interest of the university to proceed otherwise, all such real or personal property shall be sold either by invitation of

sealed bids or by public auction, provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.

Section 8. Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the university, based upon a written application by the grantor or leasor approved by the Board, that the employee has not either himself or through any other person influenced or attempted to influence the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.

Section 9. For capital construction projects, the bidding may be on a total design-bid basis, a package system commonly referred to as "turnkey," or construction management, whichever in the judgment of the Board offers the lowest real cost to the taxpayer. Bids shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with the bid procedures. All specifications shall be written to promote competition.

Section 10. The Board of Trustees shall attempt in every practicable way to insure the university's supplying its real needs at the lowest possible cost. To accomplish this the Board authorizes the president, on its behalf, to enter into cooperative agreements with other public or private institutions of education or health care.

Section 11. The president, on behalf of the Board of Trustees, shall have control and supervision over all purchases of energy-consuming equipment, supplies and related equipment purchased or acquired by the university. All energy-consuming items will be purchased so as to promote energy conservation and acquisition of energy-efficient products; this is to be accomplished by having the Director of Physical Plant review all such purchases in terms of energy conservation plans of the university and advise the president or his purchasing delegate accordingly.

Section 12. The president is authorized on behalf of the Board of Trustees to negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the Vice President for Administration and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively-established price for emergency purchase.

Section 13. The president shall recommend to the Board of Trustees internal policies and procedures including prescribed forms and manuals, as he deems necessary, for approval. These materials shall provide detailed instructions to administrators and staff of the university day-to-day management of the business affairs of the university as prescribed in the published regulations pertaining to financial management, applicable portions of KRS Chapters 45A, 164, 164A and other laws. Exceptions to these internal procedures and policies shall be made only as provided for in these documents, which shall be made available to the public upon request. The president is authorized to enter into any memorandum of agreement deemed necessary to coordinate financial management responsibilities with agencies of state government.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:040. Disposal of property proceeds; title.

RELATES TO: KRS 164.410
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164.410 at the University of Louisville.

Section 1. The Board of Trustees of the University of Louisville shall periodically review the assets of the university and shall sell and convey those assets not necessary for implementing the institutional mission. Proceeds from the disposition shall be deposited in the unexpended plant fund account or in the fund for excellence authorized by KRS 164A.620.

Section 2. Any real property acquired by the Board of Trustees of the University of Louisville pursuant to KRS 164.410 shall be in the name of the Commonwealth of Kentucky for the use and benefit of the University of Louisville.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:050. Management of capital consturction projects.

RELATES TO: KRS 164A.580
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher

education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.580 at the University of Louisville.

Section 1. Subject to the provisions of KRS 45.750 through 45.800 and 56.870 to 56.874, the President of the University of Louisville on behalf of the Board of Trustees, shall provide for the management and administration of capital construction projects authorized for the University of Louisville including, but not limited to:

(1) The procurement of necessary consulting services;

(2) The supervision and control of the making of all contracts for building projects, renovation projects, repair projects, and supervision of same;

(3) The prescription of the amount and form of evidences of indebtedness submitted in connection with bids and contracts when not otherwise provided by law;

(4) The preparation of plans and specifications for any construction, alteration, or enlargement of buildings, structures, and other improvements;

(5) The advertisement of bids and the awarding of contracts in connection with such projects;

(6) The supervision and inspection of all related work;

(7) The approval of changes in plans or specifications; and

(8) The acceptance of such improvements when completed according to such plans and specifications.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:060. Contracting for capital construction projects.

RELATES TO: KRS 164A.585
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.585 at the University of Louisville.

Section 1. Subject to authorization by the General Assembly, the president is authorized, on behalf of the Board of Trustees, to make plans and specifications, advertise for bids, let contracts or incur any financing commitments, either in the way of a charge against institution funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal, water supply system, or other utility system.

Section 2. Review of construction plans for conformance with the uniform state building code shall be conducted by the Department of Housing, Buildings and Construction. The president shall not approve any such project on behalf of the Board of Trustees in any instance where it is found that the project is not needed, or that the proposed method of financing is not sound, or in cases where the project will exceed the amount of the funds available therefor, or the work contemplated will be insufficient to accomplish the purpose of the project, or that after providing for the ordinary recurring expenses of administration and debt service or for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the treasury to promptly pay for the work or that the work is to be done by employees of the university.

Section 3. Any capital construction project, except as provided in Section 4 of this regulation, shall be contracted for on a competitive bid basis, and the execution of such contracts shall be approved and authorized by the president for contracts of $100,000 or less, but contracts in excess of $100,000 shall be authorized by the Board of Trustees. When a capital construction project has been approved as provided in this section, in whole or in part, the president, on behalf of the Board of Trustees, shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction and handle the financial negotiations.

Section 4. A capital construction project, the total cost of completion of which will not exceed $75,000, may be performed by the employees of the institution or by individuals hired specifically for the project. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the University of Louisville as defined in 740 KAR 1:040.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:070. Contracting for architectural and engineering services.

RELATES TO: KRS 164A.590
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.590 at the University of Louisville.

Section 1. In the procurement of architectural and engineering services, the Board of Trustees of the University of Louisville, through its president, shall encourage firms engaged in the lawful practice of their profession to

submit an annual statement of qualifications and performance data.

Section 2. When the need for architectural and engineering services arises for specific projects, the president, on behalf of the Board of Trustees, shall evaluate current statements of qualifications and performance data on file with the Commonwealth, together with those that may be submitted by other firms and shall conduct discussions with no less than three (3) firms regarding anticipated design concepts and the relative utility of alternative methods of approach for furnishing the required services, and shall then select therefrom, in order of preference, based upon criteria established and published, no less than three (3) of the firms deemed to be the most highly qualified to provide the services required.

Section 3. The president, on behalf of the Board of Trustees, shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the president, on behalf of the Board of Trustees, determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof, shall be taken into account. Should the president, on behalf of the Board, be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price it determines to be fair and reasonable to the institution, negotiations with that firm shall be formally terminated. The president, on behalf of the Board of Trustees, shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the president shall, on behalf of the Board, formally terminate negotiations with that firm and shall then undertake negotiations with the third most qualified firm. Should the president, on behalf of the Board, be unable to negotiate a satisfactory contract with any of the selected firms, additional firms shall be selected in order of their competence and qualification and negotiations shall then continue in accordance with this regulation until an agreement is reached.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:080. Carrying out of capital construction projects.

RELATES TO: KRS 164A.595
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.595 at the University of Louisville.

Section 1. Subject to the provisions of KRS 45.750 through 45.800, the president, on behalf of the Board of Trustees of the University of Louisville, may acquire, erect, construct, reconstruct, improve, rehabilitate, remodel, repair, complete, extend, enlarge, equip, furnish, and operate any buildings, structures, improvements, or facilities, including any utilities, other related services and appurtenances and land required as the respective governing boards shall deem necessary for carrying on the educational, research or public service programs or discharging the statutory responsibilities of the University of Louisville and various divisions under the jurisdiction of its Board of Trustees, or for the management, operation, or servicing of the University of Louisville.

Section 2. The president, on behalf of the Board of Trustees of the University of Louisville, may acquire real or personal property, by purchase, lease, sublease, condemnation, trade or exchange, gift, devise, or otherwise, and improve such property whenever in the judgment of the Board of Trustees it shall be necessary. The title to any real estate acquired under this section shall vest in the Commonwealth of Kentucky for the use and benefit of the University of Louisville.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:090. Procedures and limitations of KRS 45.750 through 45.800 apply; projects limited to scope authorized by General Assembly.

RELATES TO: KRS 164A.600
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.600 at the University of Louisville.

Section 1. The procedures and limitations related to capital construction and equipment purchases set forth in KRS 45.750 through 45.800 shall apply to the University of Louisville. There is established a contingency fund and an emergency repair, maintenance and replacement fund in the University of Louisville plant fund records. Transfer and use of these funds shall be governed by the provisions of KRS 45.770 and 45.780, as appropriate, except that the president, on behalf of the Board of Trustees of the University of Louisville, shall perform the functions assigned to the Finance and Administration Cabinet in KRS 45.770 and 45.780.

Section 2. Capital construction and equipment purchase projects established by the Board of Trustees of the University of Louisville shall be limited to the scope authorized by the General Assembly, and the total costs of

each project shall not exceed the appropriation; except for emergency projects that may arise. In such instances, the president, on behalf of the Board of Trustees, may transfer funds from other projects or from operating funds; however, each emergency project that is authorized by the president on behalf of the Board of Trustees and sources of funds shall be promptly reported to the Capital Construction and Equipment Purchase Oversight Committee.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:100. Issuance of bonds.

RELATES TO: KRS 164A.605
PURSUANT TO: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing boards of public institutions of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.605 at the University of Louisville.

Section 1. Subject to the provisions of KRS 45.750 to 45.800 and KRS 56.870 to 56.874, the Board of Trustees of the University of Louisville may issue, under the provisions of KRS 162.340 to 162.380, consolidated educational building revenue bonds, housing bonds, or bond anticipation notes. The president, on behalf of the Board of Trustees of the University of Louisville, shall submit to the State Property and Buildings Commission a request for approval of the project before any financial commitment of any sort may be made in connection therewith, including employment of architects, engineers, fiscal agents or attorneys. Personal service contracts for fiscal agents and bond counsel shall be subject to KRS 45.700 to 45.720 and architects and engineers shall be selected as provided in 740 KAR 1:040. After approval by the commission, the Board of Trustees of the University of Louisville, upon recommendation of the president, shall appoint fiscal agents, bond counsel, architects and engineers as may be required to make plans and specifications or financial arrangements for the project. The date of sale on such issues shall be coordinated with the Finance and Administration Cabinet to avoid a conflict with other state bond issues.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

UNIVERSITY OF LOUISVILLE
Board of Trustees

740 KAR 1:110. Delegation of financial management responsibility.

RELATES TO: KRS 164A.560
PURSUANT TO: KRS 164A.555 to 164A.605
NECESSITY AND FUNCTION: KRS 164A.560(1) permits governing boards of each public institution of higher education which has elected by regulation to implement the financial management functions authorized by KRS 164A.555 to 164A.630 to delegate those responsibilities by regulation to appropriate officials of the university. This regulation provides for such delegations.

Section 1. The Board of Trustees of the University of Louisville authorizes the president, by formal, written assignment, to delegate any portion of his authority conferred by financial management regulations, 740 KAR 1:010 to 740 KAR 1:090, to the Vice President for Administration except as provided in Section 4 of this regulation.

Section 2. University of Louisville officials, to whom the president has delegated certain financial management responsibilities pursuant to this regulation, are authorized to subdelegate those responsibilities or any portion thereof to their deputies and subordinates to the extent authorized by the president. All such subdelegations shall be made in writing and reported to the president.

Section 3. Any University of Louisville official with authority derived from a delegation or subdelegation under this regulation shall furnish a copy of his delegation or subdelegation upon request of any vendor or member of the public. All such delegations or subdelegations are terminated immediately upon suspension of the individual's employment at the university.

Section 4. No official, including the president, is authorized by the University of Louisville Board of Trustees to acquire or dispose of an interest in real property, the duration of which interest exceeds two (2) years time, without action of the Board of Trustees or its Executive Committee.

DONALD C. SWAIN, President
ADOPTED: August 25, 1982
RECEIVED BY LRC: September 15, 1982 at 4 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: David L. Baker, University Counsel, University of Louisville, Louisville, Kentucky 40292.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 43:010. Prepaid dental plan organization agent license.

RELATES TO: KRS 304.43-080
PURSUANT TO: KRS 13.082, 304.43-080
NECESSITY AND FUNCTION: KRS 304.43-080 provides that the Commissioner shall promulgate rules and

regulations necessary for licensure of prepaid dental plan organization agents. This regulation sets forth basic procedures to acquire and to keep an agent license.

Section 1. Definitions. (1) As used in this regulation, "agent" has the meaning set forth in KRS 304.43-010(1).

(2) "Profit or pecuniary gain" as used in KRS 304.43-010(1) means any type of compensation that a person receives directly or indirectly from the prepaid dental plan organization for which the solicitation or enrollment of members is made.

Section 2. To qualify for an agent's license, an applicant shall:

(1) Be above the age of eighteen (18) years;

(2) Be a bona fide resident of and actually reside in this state;

(3) Be competent, trustworthy, financially responsible, and of good reputation;

(4) Pass a written examination required for the license by the Commissioner;

(5) Be appointed as an agent by one (1) or more corporations subject to the provisions of KRS Chapter 304.43;

(6) Make application to the Commissioner in the manner and form prescribed by him. As a part of or in connection with any application, the applicant shall furnish information concerning his identity, personal history, experience, business record, purposes, and any other information the Commissioner may reasonably require; and

(7) Pay the fee provided in KRS 304.4-010.

Section 3. Agents licenses shall expire as of midnight on March 31, 1983, and biennially thereafter, unless the licensee prior thereto has filed with the Commissioner on forms prescribed and furnished by him, a request for continuation of license for an ensuing biennium, except that any request for continuation received by the Commissioner after such March 31 and prior to the next following June 30 may be accepted and effectuated by the Commissioner if accompanied by a penalty as provided in KRS 304.99-100.

Section 4. (1) Each corporation qualified under KRS Chapter 304.43 appointing an agent shall notify the Commissioner by filing written notice in duplicate with the Commissioner on forms prescribed and furnished by him, and shall pay the fee as provided in KRS 304.4-010. If the agent is then licensed, or as soon as licensed, the Commissioner shall mail the appointment certificate to the corporation.

(2) Each appointment shall continue in force until:

(a) The Commissioner notifies the corporation that the agent's license is suspended or revoked;

(b) The appointment is revoked by the corporation by written notice of revocation filed with the Commissioner; or

(c) The corporation fails to renew the appointment.

Section 5. The Commissioner may suspend, revoke, or refuse to renew any license issued under this regulation, for any of the following causes:

(1) For any cause for which the issuance of the license could have been refused had it then existed and been known to the Commissioner;

(2) If the licensee willfully violates or knowingly participates in the violation of any provision of KRS Chapter 304.43 or this regulation;

(3) If the licensee obtains or attempts to obtain a license through unfair, false, misleading, or deceptive practices, or fails to pass any examination required by the Commissioner;

(4) If the licensee has materially misrepresented the terms or effect of any membership contract, or has engaged or is about to engage in any fraudulent transactions;

(5) If the licensee has been guilty of misrepresentation or rebating, as defined in KRS Chapter 304.12;

(6) If the licensee has been convicted, by final judgment, of a felony involving moral turpitude;

(7) If in the conduct of his affairs under the license, the licensee has shown himself to be and is deemed by the Commissioner to be, incompetent or untrustworthy;

(8) If the licensee exercises powers outside the scope of his license;

(9) If the licensee misappropriates or converts to his own use or illegally withholds monies received in the conduct of his business under the license, belonging to enrollees, members, the prepaid dental plan organization, or others.

DANIEL D. BRISCOE, Commissioner
ADOPTED: August 26, 1982
APPROVED: TRACY FARMER, Secretary
RECEIVED BY LRC: September 8, 1982 at 3 p.m.
SUBMIT COMMENT TO: Daniel D. Briscoe, Commissioner of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.
See public hearings scheduled on page 395.

CABINET FOR HUMAN RESOURCES

900 KAR 2:020. Appeals.

RELATES TO: KRS 216.567
PURSUANT TO: KRS 194.050, 216.567
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 216.567 to establish the manner in which appeals are to be presented on any decision on ratings, citations or penalties assessed pursuant to KRS Chapter 216. This regulation is designed to set forth the procedure by which appeals from assignment of ratings, imposition of citations and assessment of penalties shall be pursued within the Cabinet for Human Resources.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.

(2) "Licensee" in the case of a licensee who is an individual means the individual; in the case of a licensee who is a corporation, association or partnership means the corporation, association or partnership.

(3) "Long-term care facilities" 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.

(4) "Party" means the licensee operating a long-term care facility.

Section 2. (1) Upon the assignment of a rating for a long-term care facility pursuant to KRS 216.550, or whenever the cabinet has reason to believe there has been a violation of any requirement enforced by the cabinet pursuant to KRS 216.555, or whenever the cabinet assesses a penalty pursuant to KRS 216.557 or 216.560, it shall issue and serve by certified mail to the licensee of the facility or its agent for service of process a written notice of rating, citation or penalty. Said notice shall set forth the rating assigned, citation made, or penalty assessed, together with the specific findings of the cabinet alleged to result in the action taken and shall advise the licensee of the facility of his right to appeal the imposition of such rating, citation or penalty at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Human Resources. Upon receipt of the written request for hearing, the Secretary shall appoint an impartial hearing officer to hear and decide upon appealed decisions.

(3) A hearing shall be scheduled within thirty (30) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, regulations and administrative action by the cabinet involved.

(4) Prior to the formal hearing, and upon seven (7) days' written notice to all parties, delivered personally or by certified mail, return receipt requested, the hearing officer may hold a pre-hearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the pre-hearing conference, by stipulation, agreed settlement, or consent order.

(5) Any party to a hearing may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.

(6) All testimony at the hearing shall be recorded but need not be transcribed unless the decision of the hearing officer is subject to appeal.

(7) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(8) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding. The record shall include:

(a) The notice of rating, citation, or penalty assessed which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, the report of the hearing officer containing the findings of fact, conclusions of law and final decision.

(9)Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.570.

BUDDY H. ADAMS, Secretary
ADOPTED: September 15, 1982
RECEIVED BY LRC: September 15, 1982 at 4 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 August 24-25, 1982 Meeting

(Subject to subcommittee approval at the September 22 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Tuesday, August 24, and on Wednesday, August 25, 1982, at 10 a.m., in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators James Bunning and Helen Garrett; Representatives Albert Robinson, Gregory Stumbo, and James Bruce.

Guests: Joe Johnson, Attorney General's Office; Jim Ahler, Board of Accountancy; Martin Glazer, Board of Nursing; J. H. Voige, Board of Registration for Professional Engineers and Land Surveyors; Irving Bell, Donna K. Smith, Ralph Turton, Greg Lawther, Sharon Rodriguez, Ked Fitzpatrick, James Judy, Bill Draper, Terry Morrison, and Vic Routenberg, Cabinet for Human Resources; J. Michael Noyes and Bill Criscillis, Department of Agriculture; Catherine Staib and Edward A. Farris, Department of Alcoholic Beverage Control; Gary Bale, Billie R. Downing, Deborah Hendricks, Deborah Knapp, Ross B. Payton, Redwood Taylor, Charles E. Calloway, E. L. Palmer, Billy R. Howard, W. L. Hampton, Robert E. Spillman, Conley Manning, Russell R. Below, Arnold Guess and Don B. Hunter, Department of Education; Edwin F. Crowell and Don R. McCormick, Department of Fish and Wildlife Resources; Patrick Watts, Department of Insurance; Mark S. Spellman and Thomas E. Little, Department of Military Affairs; Arthur Hatterick, Jr. and Dee Maynard, Department of Personnel; William M. Stevens, Kentucky Association of State Employees; Tony Sholar and Philip Thompson, Kentucky Chamber of Commerce; Bill K. Caylor, Kentucky Coal Association; Tom Johnson, Mrs. Joanna Sherman, Stanley Rising and Clara Rising, Kentucky Ginseng Growers Association; Nancy C. Lipinski, Kentucky Hospital Association; Will D. Evans and Betty Wommack, Kentucky School for the Blind; John W. Hudson, Jr., Kentucky School for the Deaf;

Billy Hunt, Kentucky Teachers' Retirement System; Stanford H. Lampe, Louisville Area Chamber of Commerce; T. Michael Taimi, Andrew Cammack, J. Alex Barber, Ken Hahn, Gordon Goad, Christina Macpherson, Carl Breeding, Bob Yarbrough, Marjorie Mullen, Martha Hall, Norman Schell and Hisham Saaid, Natural Resources and Environmental Protection Cabinet; William Sawyer, Public Service Commission; John Stephen Kirby, Real Estate Commission; Tony Novello, Sandoz Pharmaceuticals; James F. Runke, Mel Jenkins, Jim Helson and Thomas Townes, Transportation Cabinet; and Katie Nienaber.

Press: Richard Farmer and Lina Asberny, WLEX-TV; Herb Sparrow, Associated Press.

Staff: Susan Harding, Joe Hood, Dan Risch, June Mabry, Shirley Hart, Carla Arnold, Debbie McGuffey, Paula Payne, Joy Blanton, Bob Doris, Jim Peyton and Nancy Gall-Clayton.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Stumbo, seconded by Senator Bunning, the minutes of the July 28 meeting were approved.

The following regulations were deferred by the subcommittee until the September 22 meeting.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Unemployment Insurance
904 KAR 5:250. Recoupment and recovery.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Accountancy
201 KAR 1:095. Code of ethics.
Real Estate Commission
201 KAR 11:070. Branch offices.

DEPARTMENT OF MILITARY AFFAIRS
Division of Disaster and Emergency Services
National Guard
106 KAR 1:030. Rescue organizations.

PUBLIC PROTECTION AND REGULATION CABINET
Board of Claims
Practice and Procedure
108 KAR 1:010. Board operation and claim procedure.

The subcommittee recommended that no action be taken on the following emergency regulations:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Motor Vehicle Tax
601 KAR 9:072E. Kentucky highway use license, taxes, and records.

ENERGY AND AGRICULTURE CABINET
Department of Agriculture
Marketing Services
302 KAR 45:010E. Ginseng, general provisions.

FINANCE AND ADMINISTRATION CABINET
Department of Personnel
Personnel Rules
101 KAR 1:030E. Personnel Board procedure.
101 KAR 1:055E. Compensation plan, pay for performance.
101 KAR 1:110E. Promotion, transfer, demotion and detail to special duty.
101 KAR 1:130E. Appeals.
101 KAR 1:140E. Service regulations.
101 KAR 1:150E. Incentive programs.
101 KAR 1:200E. Rules for unclassified service.

The following regulations were approved by the subcommittee on August 24 and order filed:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Waste Management
401 KAR 2:060. Hazardous waste site or facility process and application.
401 KAR 2:063. General standards for hazardous waste sites or facilities. (Approved with technical corrections.)
401 KAR 2:070. Standards applicable to generators of hazardous waste. (Approved with technical corrections.)
401 KAR 2:073. Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. (Approved with technical corrections.)
401 KAR 2:075. Identification and listing of hazardous waste. (Approved with technical corrections.)
Air Pollution
401 KAR 59:010. New bulk gasoline plants.
401 KAR 61:055. Existing loading facilities at bulk gasoline terminals.
401 KAR 61:056. Existing bulk gasoline plants.
401 KAR 63:031. Leaks from gasoline tank trucks.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Education for Exceptional Children
707 KAR 1:100. Kentucky School for the Deaf admission policy.
707 KAR 1:110. Kentucky School for the Blind admission policy.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Medical Assistance
904 KAR 1:012. Inpatient hospital services.

On motion of Representative Robinson, seconded by Representative Bruce, 807 KAR 5:006 was reconsidered from August 24 as approved by the subcommittee. On motion of Representative Robinson, seconded by Representative Bruce, the following regulation was approved as amended on August 25.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
Utilities
807 KAR 5:006. General rules. (As amended.)

The following regulation was approved by the subcommittee on August 25 and order filed:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Environmental Protection
Waste Management
401 KAR 2:050. Waste management definitions and designation of regulatory responsibility. (As amended.)

The subcommittee recommended that the following regulations be approved for filing:

CABINET FOR HUMAN RESOURCES
Regional Mental Health-Mental Retardation Boards
902 KAR 6:050. Formula for allocation of funds.
Sanitation
902 KAR 10:060. Onsite sewage disposal. (Representative Bruce voted no.)
Certificate of Need and Licensure Board
902 KAR 20:006. Certificate of need process. (As amended.)
Department for Social Insurance
Medical Assistance
904 KAR 1:036. Amounts payable for skilled nursing and intermediate care facility services.
904 KAR 1:045. Payments for mental health center services.
Public Assistance
904 KAR 2:015. Supplemental programs for the aged, blind, and disabled.
904 KAR 2:016. Standards for need and amount; AFDC.
Food Stamp Program
904 KAR 3:010. Definitions.
904 KAR 3:020. Eligibility requirements.
904 KAR 3:035. Certification process.
Unemployment Insurance
904 KAR 5:121. Repeal of 904 KAR 5:120 and 904 KAR 5:240.
Department for Social Services
Spouse Abuse Shelters and Crisis Centers
905 KAR 5:010. Standards. (As amended.)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
Advertising Distilled Spirits and Wine
804 KAR 1:100. General advertising practices.
Licensing
804 KAR 4:230. Extended hours supplemental licenses.
Department of Insurance
Agents, Consultants, Solicitors and Adjusters
806 KAR 9:161. Repeal of 806 KAR 9:160.
Rates and Rating Organizations
806 KAR 13:016. Repeal of 806 KAR 13:015.
806 KAR 13:031. Repeal of 806 KAR 13:030.
806 KAR 13:040. Automobile fleet insurance defined.
806 KAR 13:051. Repeal of 806 KAR 13:050.
806 KAR 13:061. Repeal of 806 KAR 13:060.
806 KAR 13.070. Kentucky Automobile Insurance Plan.
806 KAR 13:081. Repeal of 806 KAR 13:080.
Insurance Contract
806 KAR 14:005. Rate and form filing.
Public Service Commission
Utilities
807 KAR 5:002. Organization.

EDUCATION AND ARTS CABINET
Department of Education
Planning
701 KAR 1:020. State plan for the administration of Chapter 2, ECIA of 1981.
Bureau of Administration and Finance
General Administration
702 KAR 1:110. Allocation of basic classroom and kindergarten units.
Surplus Property
702 KAR 2:020. Authority for organizing and operating.
Bureau of Instruction
Instructional Services
704 KAR 3:010. Administrative and special services.
704 KAR 3:304. Required program of studies.
Kindergartens and Nursery Schools
704 KAR 5:050. Public school programs.
Elementary and Secondary Education Act
704 KAR 10:022. Elementary, middle and secondary schools standards.
Bureau of Vocational Education
Fiscal Management
705 KAR 2:030. Foundation Program units.
Instructional Programs
705 KAR 4:010. General standards.
705 KAR 4:200. Repeal of 705 KAR 4:060, 4:070, 4:090, 4:100, 4:105, 4:110, 4:120, 4:131, 4:140, 4:151, 4:160, 4:170, 4:180, 4:190.
Adult Education
705 KAR 7:050. Adult plan.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Department of Highways
Traffic
603 KAR 5:096. Highway classifications.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Fish
301 KAR 1:145. Gear allowed for commercial fishing.

FINANCE AND ADMINISTRATION CABINET
Division of Occupations and Professions
Board of Pharmacy
201 KAR 2:040. Registration of interns.
201 KAR 2:056. Repeal of 201 KAR 2:055 and 201 KAR 2:060.
Board of Medical Licensure
201 KAR 9:020. Licensing qualifications; approved schools.
Real Estate Commission
201 KAR 11:030. License cancellation; reasons for.
201 KAR 11:095. Closing statements; rental and management agreements.
201 KAR 11:110. Exclusive authority retained by original broker.
201 KAR 11:135. Salesman's obtaining broker's license.
201 KAR 11:165. Repeal of 201 KAR 11:010, 11:035, 11:037, 11:050, 11:055, 11:060, 11:065, 11:075, 11:085, 11:120, 11:125, 11:130, 11:140.
Board of Registration for Professional Engineers and Land Surveyors
201 KAR 18:140. Code of professional practice and conduct.

Board of Nursing
201 KAR 20:070. Licensure by examination.
201 KAR 20:085. Licensure periods.
201 KAR 20:230. Renewal of licenses. (As amended.)
201 KAR 20:240. Fees for applications and for services.
Board of Examiners of Psychologists
201 KAR 26:120. Certificates of qualification; examinations; supervision.

EDUCATION AND HUMANITIES CABINET
Teachers' Retirement System
General Rules
102 KAR 1:038. Fractional service year.
102 KAR 1:050. Out-of-state service interest rate.
102 KAR 1:110. Leave of absence.
102 KAR 1:122. Voluntary and tax-sheltered contributions.
102 KAR 1:125. Omitted contributions.
102 KAR 1:200. Value of service performed.
102 KAR 1:210. Submission of employer data. (As amended.)

LEGISLATIVE RESEARCH COMMISSION
Block Grants
1 KAR 4:005. Legislative oversight procedures applicable to federal block grants administered by state agencies.
1 KAR 4:010. Statewide notice of public hearings.

Upon motion of Chairman Brinkley, the meeting was adjourned at 2 p.m. on August 25 until September 22.

Administrative Register of Kentucky

Cumulative Supplement

Locator Index—Effective Dates ..... D 2

KRS Index ..... D 6

Subject Index to Volume 9 ..... D 8

Locator Index—Effective Dates

NOTE: Emergency regulations expire upon being repealed or replaced.

Volume 8

Regulation	8 Ky.R. Page No.	Effective Date
401 KAR 2:170	1110	
Withdrawn		8-2-82
401 KAR 6:050		
Repealed	1197	7-28-82
401 KAR 6:060	1197	7-28-82
401 KAR 50:010		
Amended	1420	
401 KAR 50:055		
Amended	1041	
401 KAR 51:010		
Amended	1044	
401 KAR 59:005		
Amended	1422	
401 KAR 59:010		
Amended	1425	
401 KAR 59:175		
Amended	1050	
Withdrawn		8-2-82
401 KAR 59:210		
Amended	910	
401 KAR 61:005		
Amended	1427	
401 KAR 61:015		
Amended	1434	
401 KAR 61:020		
Amended	1437	
401 KAR 61:075		
Amended	1438	
401 KAR 61:085		
Amended	1054	
Withdrawn		8-2-82
401 KAR 61:120		
Amended	913	
401 KAR 61:128		
Amended	915	
401 KAR 61:140		
Amended	1441	
401 KAR 63:010		
Amended	1443	
405 KAR 1:005	1460	
405 KAR 3:005	1461	
405 KAR 7:020	1462	
405 KAR 7:030	1468	
405 KAR 7:040	1469	
405 KAR 7:060	1471	
405 KAR 7:080	1472	
405 KAR 7:090	1475	
405 KAR 7:095	1480	
405 KAR 7:100	1482	
405 KAR 7:110	1482	
405 KAR 8:010	1483	
405 KAR 8:020	1492	
405 KAR 8:030	1494	
405 KAR 8:040	1503	
405 KAR 8:050	1511	
405 KAR 10:010	1515	
405 KAR 10:020	1517	
405 KAR 10:030	1518	
405 KAR 10:040	1519	
405 KAR 10:050	1521	
405 KAR 12:010	1522	
405 KAR 12:020	1523	
405 KAR 12:030	1526	
405 KAR 16:010	1527	
405 KAR 16:020	1528	
405 KAR 16:030	1529	
405 KAR 16:040	1529	
405 KAR 16:050	1530	
405 KAR 16:060	1531	
405 KAR 16:070	1533	
405 KAR 16:080	1534	
405 KAR 16:090	1535	
405 KAR 16:100	1537	
405 KAR 16:110	1538	
405 KAR 16:120	1538	
405 KAR 16:130	1541	
405 KAR 16:140	1545	
405 KAR 16:150	1546	
405 KAR 16:160	1547	
405 KAR 16:170	1547	
405 KAR 16:180	1548	
405 KAR 16:190	1549	
405 KAR 16:200	1551	
405 KAR 16:210	1553	
405 KAR 16:220	1554	
405 KAR 16:250	1557	
405 KAR 18:010	1557	
405 KAR 18:020	1558	
405 KAR 18:030	1558	
405 KAR 18:040	1559	
405 KAR 18:050	1560	
405 KAR 18:060	1561	
405 KAR 18:070	1563	
405 KAR 18:080	1564	
405 KAR 18:090	1565	
405 KAR 18:100	1566	
405 KAR 18:110	1567	
405 KAR 18:120	1568	
405 KAR 18:130	1571	
405 KAR 18:140	1574	
405 KAR 18:150	1576	
405 KAR 18:160	1576	
405 KAR 18:170	1577	
405 KAR 18:180	1577	
405 KAR 18:190	1578	
405 KAR 18:200	1579	
405 KAR 18:210	1582	
405 KAR 18:220	1583	
405 KAR 18:230	1584	
405 KAR 18:260	1586	
405 KAR 20:010	1587	
405 KAR 20:020	1588	
405 KAR 20:030	1589	
405 KAR 20:040	1590	
405 KAR 20:050	1591	
405 KAR 20:060	1591	
405 KAR 20:070	1592	
405 KAR 20:080	1593	
405 KAR 24:020	1594	
405 KAR 24:030	1595	
405 KAR 24:040	1597	
723 KAR 1:005		
Amended	522	
902 KAR 25:010	1224	
904 KAR 1:011		
Amended	1184	7-28-82

Volume 9

Emergency Regulation	9 Ky.R. Page No.	Effective Date
101 KAR 1:030E	305	7-16-82
101 KAR 1:055E	306	7-16-82
101 KAR 1:110E	310	7-16-82
101 KAR 1:130E	311	7-16-82
Resubmitted	395	9-7-82
101 KAR 1:140E	314	7-16-82
101 KAR 1:150E	318	7-16-82
101 KAR 1:200E	318	7-16-82
103 KAR 18:110E	107	6-23-82
Replaced	10	8-11-82
103 KAR 40:035E	322	7-30-82
201 KAR 9:020E	323	7-16-82
Replaced	248	9-8-82
301 KAR 2:044E	324	7-30-82
302 KAR 35:060E	398	8-24-82
302 KAR 35:070E	399	8-24-82
302 KAR 45:010E	325	7-16-82
405 KAR 26:001E	2	5-24-82
601 KAR 9:072E	326	7-26-82
902 KAR 6:050E	330	7-16-82
Replaced	262	9-8-82
902 KAR 10:060E	332	7-16-82
Replaced	300	9-8-82
904 KAR 1:036E	333	7-16-82
Replaced	263	9-8-82
904 KAR 1:045E	337	7-16-82
Replaced	268	9-8-82
904 KAR 2:105E	108	6-16-82
Replaced	100	8-11-82
904 KAR 3:045E	110	6-16-82
Replaced	67	8-11-82
905 KAR 3:010E	112	6-16-82
Replaced	101	8-11-82
905 KAR 3:020E	112	6-16-82
Replaced	102	8-11-82
905 KAR 3:030E	113	6-16-82
Replaced	103	8-11-82

Regulation	9 Ky.R. Page No.	Effective Date
1 KAR 1:010		
Amended	9	
Amended	339	8-11-82
1 KAR 3:005		
Amended	377	
1 KAR 4:005	280	9-8-82
1 KAR 4:010	75	
Withdrawn		7-7-82
Resubmitted	283	9-8-82
11 KAR 5:010		
Amended	10	8-11-82
15 KAR 1:010	75	
15 KAR 1:020	76	
30 KAR 1:030	386	
31 KAR 1:030	386	
101 KAR 1:030		
Amended	225	
101 KAR 1:055		
Amended	225	
101 KAR 1:110		
Amended	230	
101 KAR 1:130		
Amended	231	
101 KAR 1:140		
Amended	233	
101 KAR 1:150	283	
101 KAR 1:200		
Amended	238	
102 KAR 1:038		
Amended	241	9-8-82
102 KAR 1:050		
Amended	242	9-8-82
102 KAR 1:110		
Amended	242	9-8-82
102 KAR 1:122		
Amended	243	9-8-82

Regulation	9 Ky.R. Page No.	Effective Date
102 KAR 1:125		
Amended	244	9-8-82
102 KAR 1:200	284	9-8-82
102 KAR 1:210	284	
Amended	400	9-8-82
103 KAR 18:110		
Amended	10	8-11-82
103 KAR 40:035	387	
106 KAR 1:030		
Amended	244	
108 KAR 1:010		
Amended	246	
200 KAR 8:020		
Amended	10	8-11-82
201 KAR 1:095		
Amended	247	
201 KAR 2:020		
Amended	11	8-11-82
201 KAR 2:040		
Amended	247	9-8-82
201 KAR 2:050		
Amended	12	8-11-82
201 KAR 2:055		
Repealed	285	9-8-82
201 KAR 2:056	285	9-8-82
201 KAR 2:060		
Repealed	285	9-8-82
201 KAR 2:105	77	8-11-82
201 KAR 2:110	285	
201 KAR 2:115	285	
201 KAR 2:120	285	
201 KAR 2:125	286	
201 KAR 2:130	286	
201 KAR 2:135	286	
201 KAR 2:140	286	
201 KAR 2:145	287	
201 KAR 2:150	287	
201 KAR 2:155	288	
201 KAR 9:020		
Amended	248	9-8-82
201 KAR 11:010		
Repealed	288	9-8-82
201 KAR 11:030		
Amended	249	9-8-82
201 KAR 11:035		
Repealed	288	9-8-82
201 KAR 11:037		
Repealed	288	9-8-82
201 KAR 11:050		
Repealed	288	9-8-82
201 KAR 11:055		
Repealed	288	9-8-82
201 KAR 11:060		
Repealed	288	9-8-82
201 KAR 11:065		
Repealed	288	9-8-82
201 KAR 11:070		
Amended	249	
201 KAR 11:075		
Repealed	288	9-8-82
201 KAR 11:085		
Repealed	288	9-8-82
201 KAR 11:095		
Amended	250	9-8-82
201 KAR 11:110		
Amended	250	9-8-82
201 KAR 11:120		
Repealed	288	9-8-82
201 KAR 11:125		
Repealed	288	9-8-82
201 KAR 11:130		
Repealed	288	9-8-82
201 KAR 11:135		
Amended	250	9-8-82
201 KAR 11:140		
Repealed	288	9-8-82
201 KAR 11:165	288	9-8-82

Regulation	9 Ky.R. Page No.	Effective Date
201 KAR 12:030		
Amended	12	8-11-82
201 KAR 18:140	288	9-8-82
201 KAR 19:025		
Amended	490	
201 KAR 19:030		
Amended	491	
201 KAR 19:035		
Amended	491	
201 KAR 19:040		
Amended	492	
201 KAR 19:050		
Amended	493	
201 KAR 19:085		
Amended	494	
201 KAR 20:070		
Amended	251	9-8-82
201 KAR 20:080		
Repealed	289	9-8-82
201 KAR 20:085	289	9-8-82
201 KAR 20:230	289	
Amended	400	9-8-82
201 KAR 20:240	290	9-8-82
201 KAR 25:011		
Amended	12	8-11-82
201 KAR 25:012	77	8-11-82
201 KAR 25:031		
Amended	13	8-11-82
201 KAR 25:051	78	8-11-82
201 KAR 25:061	80	8-11-82
201 KAR 25:071	80	8-11-82
201 KAR 26:120	291	9-8-82
301 KAR 1:015		
Amended	495	
301 KAR 1:055		
Amended	14	8-11-82
Amended	495	
301 KAR 1:145		
Amended	252	9-8-82
301 KAR 2:044	387	
301 KAR 2:060		
Repealed	14	8-11-82
301 KAR 2:080		
Amended	14	8-11-82
301 KAR 2:087	510	
301 KAR 4:040		
Amended	16	8-11-82
302 KAR 25:045		
Amended	496	
302 KAR 35:060	388	
302 KAR 35:070	389	
302 KAR 45:010	292	
401 KAR 2:050		
Amended	126	
Amended	401	8-25-82
401 KAR 2:060		
Amended	132	
Amended	407	8-24-82
401 KAR 2:063		
Amended	150	
Amended	425	8-24-82
401 KAR 2:070		
Amended	195	8-24-82
401 KAR 2:073		
Amended	201	
Amended	471	8-24-82
401 KAR 2:075		
Amended	203	8-24-82
401 KAR 2:180	512	
401 KAR 2:185	514	
401 KAR 2:190	516	
401 KAR 50:015		
Amended	345	
401 KAR 50:035		
Amended	347	
401 KAR 51:017		
Amended	350	

Regulation	9 Ky.R. Page No.	Effective Date
401 KAR 51:052 Amended	358	
401 KAR 51:055 Amended	363	
401 KAR 59:018 Amended	368	
401 KAR 59:101 Amended	208	8-24-82
401 KAR 59:212 Amended	371	
401 KAR 59:260	390	
401 KAR 61:055 Amended	210	8-24-82
401 KAR 61:056 Amended	211	8-24-82
401 KAR 61:080 Amended	380	
401 KAR 61:122 Amended	373	
401 KAR 61:170	390	
401 KAR 63:031 Amended	212	8-24-82
405 KAR 2:010	81	8-11-82
405 KAR 26:001	81	
405 KAR 30:010 Amended	17	
405 KAR 30:020 Amended	21	
405 KAR 30:130 Amended	23	
405 KAR 30:160	82	
405 KAR 30:190 Amended	28	
405 KAR 30:200 Amended	30	
405 KAR 30:250 Amended	31	
405 KAR 30:320 Amended	34	
405 KAR 30:360	84	
405 KAR 30:370	85	
405 KAR 30:390 Amended	35	
601 KAR 9:072	293	
603 KAR 4:035	518	
603 KAR 5:096 Amended	253	9-8-82
701 KAR 1:020 Amended	253	9-8-82
702 KAR 1:005 Amended	36	8-11-82
702 KAR 1:025 Amended	87 487	
702 KAR 1:110	296	9-8-82
702 KAR 2:020 Amended	253	9-8-82
702 KAR 3:030 Amended Amended	254 488	
704 KAR 3:010 Amended	255	9-8-82
704 KAR 3:285 Amended	40	8-11-82
704 KAR 3:304 Amended	256	9-8-82
704 KAR 3:312 Repealed	88	8-11-82
704 KAR 3:314	88	8-11-82
704 KAR 5:010 Repealed	88	8-11-82
704 KAR 5:011	88	8-11-82
704 KAR 5:050 Amended Amended	41 256	8-11-82 9-8-82
704 KAR 10:022 Amended	257	9-8-82
705 KAR 1:010 Amended	42	8-11-82
705 KAR 2:030 Amended	257	9-8-82
705 KAR 4:010 Amended	259	9-8-82
705 KAR 4:020 Repealed	297	9-8-82
705 KAR 4:060 Repealed	297	9-8-82
705 KAR 4:070 Repealed	297	9-8-82
705 KAR 4:090 Repealed	297	9-8-82
705 KAR 4:100 Repealed	297	9-8-82
705 KAR 4:105 Repealed	297	9-8-82
705 KAR 4:110 Repealed	297	9-8-82
705 KAR 4:120 Repealed	297	9-8-82
705 KAR 4:131 Repealed	297	9-8-82
705 KAR 4:140 Repealed	297	9-8-82
705 KAR 4:151 Repealed	297	9-8-82
705 KAR 4:160 Repealed	297	9-8-82
705 KAR 4:170 Repealed	297	9-8-82
705 KAR 4:180 Repealed	297	9-8-82
705 KAR 4:190 Repealed	297	9-8-82
705 KAR 4:200	297	9-8-82
705 KAR 7:050 Amended	261	9-8-82
707 KAR 1:100 Amended	214	8-24-82
707 KAR 1:110 Amended	215	8-24-82
740 KAR 1:010	521	
740 KAR 1:020	522	
740 KAR 1:030	522	
740 KAR 1:040	523	
740 KAR 1:050	523	
740 KAR 1:060	524	
740 KAR 1:070	524	
740 KAR 1:080	525	
740 KAR 1:090	525	
740 KAR 1:100	526	
740 KAR 1:110	526	
803 KAR 1:050 Repealed	42	8-11-82
803 KAR 1:075 Amended	42	8-11-82
803 KAR 2:090 Amended	43	8-11-82
803 KAR 2:190	89	8-11-82
804 KAR 1:100 Amended	261	9-8-82
804 KAR 4:230	297	9-8-82
804 KAR 11:010 Amended	381	
806 KAR 2:080 Amended	382	
806 KAR 2:090 Amended	383	
806 KAR 2:095 Amended	383	
806 KAR 7:090 Amended	89 375	
806 KAR 9:160 Repealed	91	9-8-82
806 KAR 9:161	91	9-8-82
806 KAR 13:006	391	
806 KAR 13:015 Repealed	91	9-8-82
806 KAR 13:016	91	9-8-82
806 KAR 13:030 Repealed	91	9-8-82
806 KAR 13:031	91	9-8-82
806 KAR 13:040 Amended	44	9-8-82
806 KAR 13:050 Repealed	92	9-8-82
806 KAR 13:051	92	9-8-82
806 KAR 13:060 Repealed	92	9-8-82
806 KAR 13:061	92	9-8-82
806 KAR 13:070 Amended	45	9-8-82
806 KAR 13:080 Repealed	92	9-8-82
806 KAR 13:081	92	9-8-82
806 KAR 14:005 Amended	45	9-8-82
806 KAR 14:080 Amended	383	
806 KAR 38:020 Amended	496	
806 KAR 39:030 Amended	384	
806 KAR 43:010	526	
807 KAR 5:002	298	9-8-82
807 KAR 5:006 Amended Amended	217 473	8-24-82
808 KAR 1:090	391	
808 KAR 3:010 Repealed	92	8-11-82
808 KAR 3:050 Amended	92 340	8-11-82
808 KAR 10:090 Amended	46	8-11-82
815 KAR 7:012 Amended	497	
815 KAR 20:070 Amended	46	8-11-82
815 KAR 20:080 Amended	47	8-11-82
815 KAR 20:100 Amended	48	8-11-82
815 KAR 20:120 Amended	49	8-11-82
815 KAR 45:035 Amended	51	8-11-82
900 KAR 2:010	299	
900 KAR 2:020	527	
902 KAR 4:030 Amended	386	
902 KAR 6:050 Amended	262	9-8-82
902 KAR 8:011	391	
902 KAR 9:010 Amended Withdrawn	53	8-24-82
902 KAR 10:060	300	9-8-82
902 KAR 11:010 Amended	498	
902 KAR 12:020 Amended	499	
902 KAR 12:030 Amended	501	
902 KAR 12:040 Amended	502	
902 KAR 12:050 Amended	502	
902 KAR 14:010 Amended	94 341	8-11-82
902 KAR 14:020	94	8-11-82
902 KAR 20:006 Amended Amended	55 479	9-8-82
902 KAR 20:008 Amended	61	8-11-82
902 KAR 20:126 Amended	62	8-11-82
902 KAR 20:127 Amended Amended	63 342	8-11-82
902 KAR 20:130 Repealed	95	8-11-82
902 KAR 20:131	95	8-11-82
902 KAR 20:150	95	8-11-82
902 KAR 45:110	300	
902 KAR 45:120	300	

Regulation	9 Ky.R. Page No.	Effective Date
904 KAR 1:004 Amended	6	7-28-82
904 KAR 1:012 Amended	223	8-24-82
904 KAR 1:013 Amended	489	
904 KAR 1:026 Amended	503	
904 KAR 1:033 Amended	66	8-11-82
904 KAR 1:036 Amended	263	9-8-82
904 KAR 1:037	99	8-11-82
904 KAR 1:042	99	8-11-82
904 KAR 1:045 Amended	268	9-8-82
904 KAR 2:006 Amended	504	
904 KAR 2:015 Amended	269	9-8-82
904 KAR 2:016 Amended	271	9-8-82
904 KAR 2:050 Amended	506	
904 KAR 2:100 Repealed	100	8-11-82
904 KAR 2:105	100	8-11-82
904 KAR 3:010 Amended	275	9-8-82
904 KAR 3:020 Amended	277	9-8-82
904 KAR 3:035 Amended	279	9-8-82
904 KAR 3:045 Amended	67	8-11-82
904 KAR 3:050 Amended	507	
904 KAR 3:060 Amended	507	
904 KAR 5:120 Repealed	301	9-8-82
904 KAR 5:121	301	9-8-82
904 KAR 5:240 Repealed	301	9-8-82
904 KAR 5:250	301	
905 KAR 2:010 Amended	68	
905 KAR 3:010	101	8-11-82
905 KAR 3:020	102	8-11-82
905 KAR 3:030	103	8-11-82
905 KAR 5:010 Amended	103 485	9-8-82

Regulation	9 Ky.R. Page No.	Effective Date

Regulation	9 Ky.R. Page No.	Effective Date

KRS Index

KRS Section	Regulation
Chapter 13	1 KAR 1:010
13.082	806 KAR 13:006
18A.005	101 KAR 1:110
18A.030	101 KAR 1:055
	101 KAR 1:110
	101 KAR 1:140
18A.045	101 KAR 1:030
18A.070	101 KAR 1:030
18A.075	101 KAR 1:055
	101 KAR 1:130
	101 KAR 1:140
18A.095	101 KAR 1:110
	101 KAR 1:130
18A.100	101 KAR 1:130
18A.110	101 KAR 1:055
	101 KAR 1:110
	101 KAR 1:140
	101 KAR 1:150
18A.115	101 KAR 1:110
18A.155	101 KAR 1:200
18A.165	101 KAR 1:055
18A.202	101 KAR 1:150
29A.180	200 KAR 8:020
44.070	108 KAR 1:010
44.080	108 KAR 1:010
44.086	108 KAR 1:010
44.090	108 KAR 1:010
45.350 to 45.359	1 KAR 4:005
45.352	1 KAR 4:010
45.750 to 45.800	1 KAR 3:005
91A.080	806 KAR 2:090
	806 KAR 2:095
Chapter 95A	815 KAR 45:035
117.075	31 KAR 1:030
Chapter 138	601 KAR 9:072
141.310	103 KAR 18:110
141.370	103 KAR 18:110
150.010	301 KAR 1:055
	301 KAR 1:145
	301 KAR 2:087
150.025	301 KAR 1:015
	301 KAR 1:055
	301 KAR 1:145
	301 KAR 2:080
	301 KAR 2:087
	301 KAR 4:040
150.090	301 KAR 1:015
150.120	301 KAR 1:145
150.170	301 KAR 1:145
	301 KAR 2:087
150.175	301 KAR 1:145
	301 KAR 2:087
	301 KAR 4:040
150.180	301 KAR 2:080
	301 KAR 4:040
150.235	301 KAR 2:087
150.280	301 KAR 2:080
150.290	301 KAR 2:080
150.300	301 KAR 2:044
150.305	301 KAR 2:044
	301 KAR 2:080
	301 KAR 2:087
150.320	301 KAR 2:044
	301 KAR 2:080
150.330	301 KAR 2:044
	301 KAR 2:080
	301 KAR 2:087
150.340	301 KAR 2:044
	301 KAR 2:087
150.360	301 KAR 2:044
	301 KAR 2:080
	301 KAR 2:087
150.370	301 KAR 2:080
150.411	301 KAR 4:040
150.445	301 KAR 1:145
150.450	301 KAR 1:145
150.470	301 KAR 1:055
	301 KAR 2:080
150.600	301 KAR 2:087
150.620	301 KAR 1:015
150.625	301 KAR 1:015
150.990	301 KAR 1:055
156.022	702 KAR 2:020
156.031	701 KAR 1:020
156.035	701 KAR 1:020
	705 KAR 7:050
156.070	705 KAR 2:030
	705 KAR 7:050
156.112	705 KAR 1:010
	705 KAR 4:010
	705 KAR 7:050
156.160	704 KAR 3:304
	704 KAR 10:022
156.400 to 156.476	702 KAR 1:005
157.100 to 157.190	702 KAR 1:005
157.312	704 KAR 5:050
157.315	704 KAR 5:050
157.360	702 KAR 1:110
	704 KAR 3:010
	704 KAR 5:050
	705 KAR 2:030
157.390	702 KAR 1:025
158.030	704 KAR 5:050
158.090	704 KAR 5:050
158.600 to 158.620	704 KAR 3:285
160.105	702 KAR 3:030
161.515	102 KAR 1:050
161.545	102 KAR 1:038
	102 KAR 1:110
161.560	102 KAR 1:125
	102 KAR 1:210
161.620	102 KAR 1:200
161.705	102 KAR 1:122
163.020	705 KAR 1:010
	705 KAR 2:030
	705 KAR 4:010
163.030	705 KAR 1:010
	705 KAR 2:030
	705 KAR 4:010
164.410	740 KAR 1:040
164.740 to 164.764	11 KAR 5:010
164.780	11 KAR 5:010
164.785	11 KAR 5:010
164A.060	15 KAR 1:010
	15 KAR 1:020
164A.560	740 KAR 1:010
	740 KAR 1:030
	740 KAR 1:110
164A.570	740 KAR 1:020
164A.580	740 KAR 1:050
164A.585	740 KAR 1:060
164A.590	740 KAR 1:070
164A.595	740 KAR 1:010
	740 KAR 1:080
164A.600	740 KAR 1:090
164A.605	740 KAR 1:100
167.150	707 KAR 1:100
	707 KAR 1:110
177.830 to 177.890	603 KAR 4:035
189.222	603 KAR 5:096
194.050	904 KAR 2:105
	904 KAR 3:010
	904 KAR 3:020
	904 KAR 3:035
	904 KAR 3:045
	904 KAR 3:050
	904 KAR 3:060
Chapter 198B	815 KAR 7:012
199.420	905 KAR 3:010
	905 KAR 3:020
	905 KAR 3:030
199.892 to 199.896	905 KAR 2:010
Chapter 202A	902 KAR 12:020
	902 KAR 12:050
202A.181	902 KAR 12:040
202A.201	902 KAR 12:030
Chapter 202B	902 KAR 12:020
	902 KAR 12:050
205.010	904 KAR 2:006
205.200	904 KAR 2:006
	904 KAR 2:016
205.204	905 KAR 3:010
	905 KAR 3:020
	905 KAR 3:030
205.210	904 KAR 2:016
205.220	904 KAR 2:050
205.245	904 KAR 2:015
205.520	904 KAR 1:004
	904 KAR 1:012
	904 KAR 1:013
	904 KAR 1:026
	904 KAR 1:033
	904 KAR 1:036
	904 KAR 1:037
	904 KAR 1:042
	904 KAR 1:045
209.030	905 KAR 3:010
	905 KAR 3:020
	905 KAR 3:030
	905 KAR 5:010
209.160	905 KAR 5:010
210.420	902 KAR 6:050
210.440	902 KAR 6:050
211.350	902 KAR 10:060
211.920 to 211.945	902 KAR 9:010
211.950 to 211.958	902 KAR 14:010
	902 KAR 14:020
Chapter 212	902 KAR 8:011
214.155	902 KAR 4:030
216.540	900 KAR 2:010
216.567	900 KAR 2:020
216B.010 to 216B.130	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:150
216B.990	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:126
	902 KAR 20:127
	902 KAR 20:150
Chapter 217	201 KAR 2:110
	201 KAR 2:115
	201 KAR 2:120
	201 KAR 2:125
	201 KAR 2:130
	201 KAR 2:135
	201 KAR 2:140
	201 KAR 2:145
	201 KAR 2:150
	201 KAR 2:155
217.025	902 KAR 45:110
217.035	902 KAR 45:110
217.037	902 KAR 45:110
217.125	902 KAR 45:110
219.031	902 KAR 45:120
219.041	902 KAR 45:120
Chapter 224	401 KAR 50:015
	401 KAR 50:035
	401 KAR 51:017
	401 KAR 51:052
	401 KAR 51:055
	401 KAR 59:018
	401 KAR 59:101
	401 KAR 59:212
	401 KAR 59:260
	401 KAR 61:055
	401 KAR 61:056
	401 KAR 61:080
	401 KAR 61:122
	401 KAR 61:170
	401 KAR 63:031
224.033	401 KAR 2:050
	401 KAR 2:060

KRS Section	Regulation
224.033	401 KAR 2:063
	401 KAR 2:073
224.036	401 KAR 2:060
224.071	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:070
224.087	401 KAR 2:060
224.255	401 KAR 2:050
	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:070
	401 KAR 2:073
	401 KAR 2:180
	401 KAR 2:185
	401 KAR 2:190
224.855	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.855 to 224.884	401 KAR 2:050
224.860	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.862	401 KAR 2:060
224.864	401 KAR 2:060
	401 KAR 2:070
	401 KAR 2:075
224.866	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
224.868	401 KAR 2:060
	401 KAR 2:075
224.871	401 KAR 2:060
224.873	401 KAR 2:060
224.874	401 KAR 2:060
224.876	401 KAR 2:060
	401 KAR 2:075
224.877	401 KAR 2:060
224.880	401 KAR 2:060
	401 KAR 2:063
	401 KAR 2:073
	401 KAR 2:180
	401 KAR 2:185
	401 KAR 2:190
224.887	401 KAR 2:180
	401 KAR 2:185
	401 KAR 2:190
224.888	401 KAR 2:180
	401 KAR 2:185
	401 KAR 2:190
243.050	804 KAR 4:230
243.710	103 KAR 40:035
243.720	103 KAR 40:035
243.884	103 KAR 40:035
244.130	804 KAR 1:100
244.500	804 KAR 11:010
246.650	302 KAR 45:010
246.660	302 KAR 45:010
251.480	302 KAR 35:060
	302 KAR 35:070
260.675 to 260.760	302 KAR 25:045
Chapter 271A	30 KAR 1:030
Chapter 272	30 KAR 1:030
Chapter 273	30 KAR 1:030
273.453 to 273.466	1 KAR 4:005
273.458	1 KAR 4:010
Chapter 274	30 KAR 1:030
Chapter 278	807 KAR 5:002
	807 KAR 5:006
287.690	808 KAR 1:090
290.020	808 KAR 3:050
290.030	808 KAR 3:050
290.040	808 KAR 3:050
290.050	808 KAR 3:050
Chapter 292	808 KAR 10:090
304.2-110	806 KAR 13:006
304.2-330	806 KAR 2:080
304.4-010	806 KAR 14:005
304.7-360	806 KAR 7:090
304.13-121	806 KAR 13:040
304.13-151	806 KAR 13:070
304.14-030	806 KAR 14:080
304.14-120	806 KAR 14:005
304.14-190	806 KAR 14:005
304.38-110	806 KAR 38:020
304.39-060	806 KAR 39:030
304.43-080	806 KAR 43:010
311.420	201 KAR 25:011
	201 KAR 25:012
	201 KAR 25:071
311.450	201 KAR 25:031
311.475	201 KAR 25:061
311.490	201 KAR 25:051
311.530 to 311.620	201 KAR 9:020
311.990	201 KAR 9:020
314.041	201 KAR 20:070
	201 KAR 20:085
	201 KAR 20:230
	201 KAR 20:240
314.042	201 KAR 20:240
314.051	201 KAR 20:070
	201 KAR 20:085
	201 KAR 20:230
	201 KAR 20:240
314.071	201 KAR 20:230
	201 KAR 20:240
314.073	201 KAR 20:085
	201 KAR 20:230
	201 KAR 20:240
314.131	201 KAR 20:240
314.161	201 KAR 20:240
Chapter 315	201 KAR 2:020
	201 KAR 2:040
	201 KAR 2:050
	201 KAR 2:105
317A.010	201 KAR 12:030
317A.020	201 KAR 12:030
317A.060	201 KAR 12:030
Chapter 318	815 KAR 20:070
	815 KAR 20:080
	815 KAR 20:100
	815 KAR 20:120
319.040	201 KAR 26:120
319.055	201 KAR 26:120
319.065	201 KAR 26:120
322.050	201 KAR 18:140
322.180	201 KAR 18:140
322.190	201 KAR 18:140
322.200	201 KAR 18:140
322.290	201 KAR 18:140
322.350	201 KAR 18:140
322.430	201 KAR 18:140
323.050	201 KAR 19:025
	201 KAR 19:035
	201 KAR 19:040
323.060	201 KAR 19:035
323.080	201 KAR 19:085
323.090	201 KAR 19:050
323.110	201 KAR 19:085
323.210	201 KAR 19:050
323.215	201 KAR 19:025
	201 KAR 19:040
324.045	201 KAR 11:070
	201 KAR 11:135
324.115	201 KAR 11:070
324.160	201 KAR 11:095
	201 KAR 11:110
324.330	201 KAR 11:030
325.340	201 KAR 1:095
Chapter 333	902 KAR 11:010
337.275	803 KAR 1:075
337.285	803 KAR 1:075
337.520	803 KAR 1:075
338.121	803 KAR 2:090
	803 KAR 2:190
341.415	904 KAR 5:250
Chapter 350	405 KAR 26:001
350.575	405 KAR 2:010
350.600	405 KAR 30:010
	405 KAR 30:020
	405 KAR 30:130
	405 KAR 30:160
	405 KAR 30:190
	405 KAR 30:200
	405 KAR 30:250
	405 KAR 30:320
350.600	405 KAR 30:360
	405 KAR 30:370
	405 KAR 30:390
c. 109, 1980 Acts	1 KAR 3:005
c. 398, 1982 Acts	1 KAR 3:005
	702 KAR 1:110
	704 KAR 5:050
	905 KAR 5:010
E.O. 78-356	106 KAR 1:030

Subject Index

ACCOUNTANCY
Code of ethics; 201 KAR 1:095

ADMINISTRATIVE REGULATIONS
(See Legislative Research)

AGRICULTURE
Grain Storage
Bookkeeping; 302 KAR 35:070; 302 KAR 35:070E
Contracts; 302 KAR 35:060; 302 KAR 35:060E
Marketing Services
General provisions; 302 KAR 45:010; 302 KAR 45:010E
Milk Marketing
Stamps, coupons, redemption certificates; 302 KAR 25:045

AIR POLLUTION
Administrative Procedures
Permits, compliance schedules; 401 KAR 50:035
Reference materials; 401 KAR 50:015
Existing Source Standards
Blast furnace casthouses; 401 KAR 61:170
Bulk gasoline plants; 401 KAR 61:056
Graphic arts facilities; 401 KAR 61:122
Loading facilities at bulk gasoline terminals; 401 KAR 61:055
Oxygen process furnaces; 401 KAR 61:080
New Source Requirements; Non-Attainment Areas
Emissions trading; 401 KAR 51:055
Prevention of significant deterioration; 401 KAR 51:017
Review; 401 KAR 51:052
New Sources, Standards for
Blast furnace casthouses; 401 KAR 59:260
Bulk gasoline plants; 401 KAR 59:101
Gas turbines, stationary; 401 KAR 59:018
Graphic arts facilities; 401 KAR 59:212
Performance, General Standards
Gasoline tank truck leaks; 401 KAR 63:031

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits, Wine
General practices; 804 KAR 1:100
Licensing
Extended hours supplemental licenses; 804 KAR 4:230
Malt Beverages
Equipment, supplies; 804 KAR 11:010

ARCHITECTS
Examination application; 201 KAR 19:025
Examination, general; 201 KAR 19:030
Examination qualifications; 201 KAR 19:035
Examination types; 201 KAR 19:040
Fees; 201 KAR 19:085
Re-examinations; 201 KAR 19:050

BANKING AND SECURITIES
Administration
Stay, notice of intent to remove from office; 808 KAR 1:090
Credit Unions
Conduct; 808 KAR 3:050
Securities
Issuers' reports; 808 KAR 10:090

BUILDING CODE
Plan review fee; 815 KAR 7:012

CLAIMS, BOARD OF
Practice, Procedure
Board, operation of; 108 KAR 1:010
Claims, procedure for; 108 KAR 1:010

COMMERCE
Fish and Wildlife
Fish; 301 KAR 1:015 to 301 KAR 1:145
Game; 301 KAR 2:044 to 301 KAR 2:087
Wildlife; 301 KAR 4:040

CORPORATIONS
State Filing
Business address; 30 KAR 1:030

EDUCATION
Administration, Finance
Classroom, kindergarten units; allocation of funds; 702 KAR 1:110
Extended employment; 702 KAR 1:025
Textbook program; 702 KAR 1:005
Exceptional
Exceptional, handicapped; programs for; 707 KAR 1:100; 707 KAR 1:110
Instruction
Elementary, secondary; 704 KAR 10:022
Instructional services; 704 KAR 3:285; 704 KAR 3:304; 704 KAR 3:314
Kindergartens, nursery schools; 704 KAR 5:011; 704 KAR 5:050
Planning
ECIA, 1981, plan for; 701 KAR 1:020
School district finance; 702 KAR 3:030
Surplus property; 702 KAR 2:020
Vocational
Administration; 705 KAR 1:010
Adult education; 705 KAR 7:050
Fiscal management; 705 KAR 2:030
Instructional programs; 705 KAR 4:010; 705 KAR 4:200

ELECTIONS
(See also Voting)
Absentee Voting
Medical emergency special ballot; 31 KAR 1:030

EMPLOYEES, STATE
Personnel Rules
Appeal; 101 KAR 1:130; 101 KAR 1:130E
Board procedure; 101 KAR 1:030; 101 KAR 1:030E
Compensation plan, pay for performance; 101 KAR 1:055; 101 KAR 1:055E
Incentive programs; 101 KAR 1:150; 101 KAR 1:150E
Promotion, transfer, demotion, detail to special duty; 101 KAR 1:110; 101 KAR 1:110E
Service; 101 KAR 1:140; 101 KAR 1:140E
Unclassified service; 101 KAR 1:200; 101 KAR 1:200E

ENERGY, AGRICULTURE CABINET
(See Energy and/or Agriculture)

ENGINEERS, LAND SURVEYORS
Code of professional practice, conduct; 201 KAR 18:140

ENVIRONMENTAL PROTECTION
(See Natural Resources)

EXAMINERS OF PSYCHOLOGISTS
Certificate of qualification, examinations, supervisions; 201 KAR 26:120

EXCEPTIONAL, HANDICAPPED EDUCATION
Admission policy, School for Blind; 707 KAR 1:110
Admission policy, School for Deaf; 707 KAR 1:100

FINANCE
Administration
Accounts; county, municipal; 200 KAR 8:020
Occupations and professions, various; Title 201

FIRE DEPARTMENTS
Education incentive; 815 KAR 45:035

FISH AND WILDLIFE
Fish
Angling, limits, seasons; 301 KAR 1:055
Boats, motors; sizes; 301 KAR 1:015
Commercial fishing, gear; 301 KAR 1:145
Game
Migratory birds, limits; 301 KAR 2:087
Migratory wildlife; 301 KAR 2:044; 301 KAR 2:044E
Pets, permits for; 301 KAR 2:080
Wildlife
Taxidermists, sales by; 301 KAR 4:040

GRAIN STORAGE
(See Agriculture)

HEALTH SERVICES
Certificate of Need, Licensure
Alternative birth centers; 902 KAR 20:150
Certificate of need hearings; 902 KAR 20:127
Certificate of need process; 902 KAR 20:006
License, fee schedule; 902 KAR 20:008
Licensure hearings; 902 KAR 20:126
Repeal; 902 KAR 20:131
Confinement Facilities
Environmental health; 902 KAR 9:010
Emergency Medical Services
Equipment purchase; 902 KAR 14:020
Personnel funding assistance; 902 KAR 14:010
Food, Cosmetics
Fees; food plants, markets, warehouses, distributors; 902 KAR 45:110
Fees; food service establishments, hotels; 902 KAR 45:120
Health Boards, District
Repeal; 902 KAR 8:011
Maternal, Child Health
Metabolism, tests for errors; 902 KAR 4:030
Medical Laboratories
Licensure; application, fee; 902 KAR 11:010
Mental Health, Mental Retardation Boards
Allocation formula; 902 KAR 6:050
Mentally Ill, Mentally Retarded, Hospitalization of
Convalescent status; 902 KAR 12:040
Patients' rights; 902 KAR 12:020
Patient transfers; 902 KAR 12:050
Penal institutions; 902 KAR 12:030
Sanitation
On-site sewage disposal; 902 KAR 10:060; 902 KAR 10:060E

HIGHER EDUCATION ASSISTANCE AUTHORITY
KHEAA Grant Program
Authority, purpose; 11 KAR 5:010

HIGHER EDUCATION STUDENT LOAN CORPORATION
Guaranteed Student Loans, Loans to Parents
Applicants' qualifications; 15 KAR 1:010
Lending, purchasing policies; 15 KAR 1:020

HIGHWAYS
Right-of-Way
Advertising devices, limited access roadways; 603 KAR 4:035
Traffic
Highway classifications; 603 KAR 5:096

HOUSING, BUILDINGS, CONSTRUCTION
Building code; 815 KAR 7:012
Fire departments; 815 KAR 45:035
Plumbing; 815 KAR 20:070 to 815 KAR 20:120

HUMAN RESOURCES
Health Services
Certificate of need, licensure; 902 KAR 20:006 to 902 KAR 20:150
Confinement facilities; 902 KAR 9:010
Emergency medical services; 902 KAR 14:010; 902 KAR 14:020
Food, cosmetics; 902 KAR 45:110; 902 KAR 45:120
Health boards, district; 902 KAR 8:011
Maternal, child health; 902 KAR 4:030
Medical laboratories; 902 KAR 11:010
Mental health-mental retardation boards; 902 KAR 6:050
Mentally ill, retarded, hospitalization of; 902 KAR 12:020 to 902 KAR 12:050
Sanitation; 902 KAR 10:060; 902 KAR 10:060E
Long-term Care
Access, hours of visitation; 900 KAR 2:010
Appeals; 900 KAR 2:020
Social Insurance
Food stamp program; 904 KAR 3:010 to 904 KAR 3:060
Medical assistance; 904 KAR 1:004 to 904 KAR 1:045E
Public assistance; 904 KAR 2:006 to 904 KAR 2:105
Unemployment insurance; 904 KAR 5:121; 904 KAR 5:250
Social Services
Block grants; 905 KAR 3:010 to 905 KAR 3:030
Day care; 905 KAR 2:010
Spouse abuse; 905 KAR 5:010

INSTRUCTION, EDUCATION
Elementary, Secondary
Standards; 704 KAR 10:022
Instructional Services
Gifted, talented; programs for; 704 KAR 3:285
Repeal; 704 KAR 3:314
Required program of studies; 704 KAR 3:304
Kindergarten
Public programs; 704 KAR 5:050
Repeal; 704 KAR 5:010

INSURANCE
Administration
Public hearings; 806 KAR 2:080
Tax, accounting for; reporting of; 806 KAR 2:095
Tax, fee for collecting; 806 KAR 2:090
Agents, Consultants, Solicitors, Adjusters
Repeal; 806 KAR 9:161
Contracts
Rate, form filing; 806 KAR 14:005
Taxes, premium must show; 806 KAR 14:080
Health Maintenance Organizations
Agents' licenses; 806 KAR 38:020
Investments
Custodial accounts; 806 KAR 7:090
Motor Vehicle Reparation (No-Fault)
Rejection form; 806 KAR 39:030
Prepaid Dental Plan Organizations
Agents' licenses; 806 KAR 43:010
Rates, Rating Organizations
Auto fleet, definition; 806 KAR 13:040
Auto insurance, Ky. plan; 806 KAR 13:070
Repeal; 806 KAR 13:006; 806 KAR 13:016; 806 KAR 13:031; 806 KAR 13:051; 806 KAR 13:061; 806 KAR 13:081

LABOR
Occupational Safety, Health
Dangerous conditions, refusal to work; 803 KAR 2:190
Unwarranted inspections, complaint; 803 KAR 2:090
Standards, Wages, Hours
Minimum wage, overtime; exclusions; 803 KAR 1:075

LEGISLATIVE RESEARCH
Block Grants
Public hearing, statewide notice; 1 KAR 4:010
Oversight procedures; 1 KAR 4:005
Capital Construction
Procedure, records; 1 KAR 3:005
Regulations
Form, codification, "Register;" 1 KAR 1:010

MEDICAL LICENSURE
Licensing qualifications, approved schools; 201 KAR 9:020; 201 KAR 9:020E

MILITARY AFFAIRS
Disaster, Emergency Services
Rescue organizations; 106 KAR 1:030

MILK MARKETING
Stamps, coupons, redemption certificates; 302 KAR 25:045

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air Pollution
Administrative procedures; 401 KAR 50:015; 401 KAR 50:035
Existing source standards; 401 KAR 61:055 to 401 KAR 61:170
New sources; non-attainment areas; 401 KAR 51:017 to 401 KAR 51:055
New sources, standards for; 401 KAR 59:018 to 401 KAR 59:260
Performance, general standards; 401 KAR 63:031
Waste management; 401 KAR 2:050 to 401 KAR 2:190
Natural Resources
Reclamation
General coal mining practices; 405 KAR 2:010
Oil shale operations; 405 KAR 30:010 to 30:090
Surface coal mining, two acres or less; 405 KAR 26:001E; 405 KAR 26:001

NURSING
Fees; applications, services; 201 KAR 20:240
License renewal; 201 KAR 20:230
Licensure, examination; 201 KAR 20:070
Licensure periods; 201 KAR 20:085

OCCUPATIONAL SAFETY, HEALTH
(See Labor)

OCCUPATIONS, PROFESSIONS
Accountancy; 201 KAR 1:095
Architects; 201 KAR 19:025 to 201 KAR 19:085
Engineers, land surveyors; 201 KAR 18:140
Examiners of psychologists; 201 KAR 26:120
Medical licensure; 201 KAR 9:020
Pharmacy; 201 KAR 2:020 to 201 KAR 2:155
Podiatry; 201 KAR 25:011 to 201 KAR 25:061
Real Estate Commission; 201 KAR 11:030 to 201 KAR 11:165

OIL SHALE OPERATIONS
(See Reclamation)

PERSONNEL, DEPT. OF
(See also Employees, State)
Personnel rules; 101 KAR 1:030 to 101 KAR 1:200; 101 KAR 1:030E to 101 KAR 1:200E

PHARMACY
Aerosol-nebulizer delivery systems; 201 KAR 2:125
Bioinequivalence problems; 201 KAR 2:135
Controlled release tablets, capsules, injectables; 201 KAR 2:115
Controlled substances; Schedule I, II; 201 KAR 2:130
Drug manufacturers, wholesalers; permits; 201 KAR 2:105
Drug products, insufficient data; 201 KAR 2:110
Drug standard deficiencies; 201 KAR 2:140
Enteric coated oral dosage forms; 201 KAR 2:120
Examinations; 201 KAR 2:020
Interns, registration of; 201 KAR 2:040
Licenses, permits; fees; 201 KAR 2:050
Repealer; 201 KAR 2:056
Suppositories, enemas; 201 KAR 2:155
Topical products; 201 KAR 2:150

PLUMBING
Joints, connections; 815 KAR 20:100
Plumbing fixtures; 815 KAR 20:070
Waste pipe size; 815 KAR 20:080
Water supply, distribution; 815 KAR 20:120

PODIATRY
Continuing education; 201 KAR 25:031
Examination; application, fees; 201 KAR 25:011
Hearings; denial, suspension, nonrenewal, revocation; 201 KAR 25:051
Licensing examination; 201 KAR 25:012
Reciprocity; 201 KAR 25:061
Residency, examination, results; 201 KAR 25:071

PSYCHOLOGISTS
(See Examiners of Psychologists)

PUBLIC PROTECTION
Alcoholic Beverage Control
Advertising distilled spirits, wine; 804 KAR 1:100
Licensing; 804 KAR 4:230
Malt beverages; 804 KAR 11:010
Banking and Securities
Administration; 808 KAR 1:090
Credit unions; 808 KAR 3:050
Securities; 808 KAR 10:090
Housing, Buildings, Construction
Plumbing; 815 KAR 20:070 to 815 KAR 20:120
Fire departments; 815 KAR 45:035
Insurance
Administration; 806 KAR 2:080 to 806 KAR 2:095
Agents, consultants, solicitors, adjusters; 806 KAR 9:161
Contracts; 806 KAR 14:005; 806 KAR 14:080
Health maintenance organizations; 806 KAR 38:020
Investments; 806 KAR 7:090
Motor vehicle reparation (no-fault); 806 KAR 39:030
Prepaid dental plan organizations; 806 KAR 43:010
Rates, rating organizations; 806 KAR 13:006 to 806 KAR 13:081
Labor
Standards, wages, hours; 803 KAR 1:075
Public Service Commission; 807 KAR 5:002; 807 KAR 5:006

PUBLIC SERVICE COMMISSION
General rules; 807 KAR 5:006
Organization; 807 KAR 5:002

REAL ESTATE COMMISSION
Authority, retention of; 201 KAR 11:110
Branch office; 201 KAR 11:070
Broker's license; 201 KAR 11:135
License cancellation; 201 KAR 11:030
Repealer; 201 KAR 11:165
Statements, agreements; 201 KAR 11:095

RECLAMATION
General Coal Mining Practices
Privately-owned lands, liens; 405 KAR 2:010
Oil Shale Operations
Backfilling, grading; 405 KAR 30:390
Data requirements; 405 KAR 30:160
Definitions; 405 KAR 30:010
Explosives; 405 KAR 30:250
General provisions; 405 KAR 30:020
Land unsuitable; 405 KAR 30:190
Permits; 405 KAR 30:180
Petition requirements; 405 KAR 30:200
Spoil materials, spent shale; 405 KAR 30:370
Waste management; 405 KAR 30:360
Water quality; 405 KAR 30:320
Surface Mining, Two Acres or Less
Operations; 405 KAR 26:001E; 405 KAR 26:001

RETIREMENT
Teachers
Absence, leave of; 102 KAR 1:038
Contributions, omitted; 102 KAR 1:125
Contributions, voluntary, tax-sheltered; 102 KAR 1:122
Employer data; 102 KAR 1:210
Interest, out-of-state service; 102 KAR 1:050
Service year, fractional; 102 KAR 1:038
Value of service performed; 102 KAR 1:200

REVENUE
Excise Tax, Selective
Alcoholic beverages; 103 KAR 40:035; 103 KAR 40:035E
Income Tax
Withholding; 103 KAR 18:110; 103 KAR 18:110E

SCHOOL DISTRICT FINANCE
Insurance requirements; 702 KAR 3:030

SOCIAL INSURANCE
Food Stamp Program
Additional provisions; 904 KAR 3:050
Certification process; 904 KAR 3:035
Coupon issuance procedures; 904 KAR 3:045; 904 KAR 3:045E
Definitions; 904 KAR 3:010
Eligibility requirements; 904 KAR 3:020
Fraud hearings; 904 KAR 3:060
Medical Assistance
Dental services; 904 KAR 1:026
Inpatient hospital services; 904 KAR 1:012
Intermediate care facility services; amounts payable; 904 KAR 1:036; 904 KAR 1:036E
Intermediate care, skilled nursing; facility services; 904 KAR 1:037; 904 KAR 1:042
Medically needy; 904 KAR 1:004
Mental health center services, payments; 904 KAR 1:045; 904 KAR 1:045E
Payments; 904 KAR 1:013
Pediatric services; 904 KAR 1:033
Public Assistance
AFDC, standards; 904 KAR 2:016
Aged, blind, disabled; supplemental programs; 904 KAR 2:015
Payments; 904 KAR 2:050
Summer energy program; 904 KAR 2:105; 904 KAR 2:105E
Technical requirements; 904 KAR 2:006
Unemployment Insurance
Recoupment, recovery; 904 KAR 5:250
Repealer; 904 KAR 5:121

SOCIAL SERVICES
Block Grants
Limitations; 905 KAR 3:010; 905 KAR 3:010E
Matching requirements; 905 KAR 3:030; 905 KAR 3:030E
Technical eligibility; 905 KAR 3:020; 905 KAR 3:020E
Day Care
Facility standards; 905 KAR 2:010
Spouse Abuse Shelters, Crisis Centers
Standards; 905 KAR 5:010

STATE, DEPT. OF
Corporations; 30 KAR 1:030

SURPLUS PROPERTY, EDUCATION
Organizing, operating authority; 702 KAR 2:020

TAXATION
Excise, Selective; Alcoholic Beverages
Exemptions; 103 KAR 40:035; 103 KAR 40:035E
Income, Withholding
Methods; 103 KAR 18:110; 103 KAR 18:110E

TEACHERS' RETIREMENT
General retirement rules; 102 KAR 1:038 to 102 KAR 1:210

TRANSPORTATION
Highways
Advertising devices; 603 KAR 4:035
Traffic; 603 KAR 5:096
Vehicle Regulation
Motor vehicle tax; 601 KAR 9:072; 601 KAR 9:072E

UNIVERSITY OF LOUISVILLE
Board of Trustees
Audit, annual; 740 KAR 1:020
Bond issuance; 740 KAR 1:100
Capital construction, carrying out; 740 KAR 1:080
Capital construction limitations; 740 KAR 1:090
Capital construction management; 740 KAR 1:050
Contracting; agricultural, engineering; 740 KAR 1:070
Contracting, capital construction; 740 KAR 1:060
Financial management; 740 KAR 1:110
Funds; acquisition, disbursement; 740 KAR 1:010
Property proceeds, disposal of; 740 KAR 1:040
Purchasing, inventory; 740 KAR 1:030

VEHICLE REGULATION
Motor Vehicle Tax
Highway use license, taxes, records; 601 KAR 9:072; 601 KAR 9:072E

VOCATIONAL EDUCATION
Administration
Annual program plan; 705 KAR 1:010
Adult Education
Adult plan; 705 KAR 7:050
Fiscal Management
Foundation Program units; 705 KAR 2:030
Instructional Programs
General standards; 705 KAR 4:010
Repealer; 705 KAR 4:200

VOTING
Absentee
Medical emergency special ballot; 31 KAR 1:030

WASTE MANAGEMENT
Area plan, submission of; 401 KAR 2:185
Definitions, designation; 401 KAR 2:050
General standards; 401 KAR 2:063
Generator standards; 401 KAR 2:070
Interim status standards; 401 KAR 2:073
Permit process, application; 401 KAR 2:060
Solid waste designation; 401 KAR 2:190
Solid waste, general provisions; 401 KAR 2:180
Waste identification, listing; 401 KAR 2:075