Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: For information concerning the next meeting of the Administrative Regulation Review Subcommittee, call toll-free 1-800-372-7613, or 502-564-8100, ext. 535.

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

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

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Public Hearings Scheduled

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division of Air Pollution

A public hearing will be held on November 29, 1983, at 10 a.m. in Room G-2, Capital Plaza Tower, Frankfort, Kentucky, on the following regulations:

401 KAR 50:015. Documents incorporated by reference. [10 Ky.R. 628]
401 KAR 50:040. Air quality models. [10 Ky.R. 631]
401 KAR 50:041. Good engineering practice stack height. [10 Ky.R. 691]
401 KAR 53:005. General provisions. [10 Ky.R. 431]
401 KAR 53:010. Ambient air quality standards. [10 Ky.R. 432]
401 KAR 59:042. New asphalt processing and asphalt roofing manufacturing plants. [10 Ky.R. 692]
401 KAR 59:050. New storage vessels for petroleum liquids. [10 Ky.R. 632]
401 KAR 59:260. New blast furnace casthouses. [10 Ky.R. 434]
401 KAR 59:265. New phosphate rock plants. [10 Ky.R. 695]
401 KAR 59:270. New lead-acid battery manufacturing plants. [10 Ky.R. 696]
401 KAR 61:015. Existing indirect heat exchangers. [10 Ky.R. 434]
401 KAR 61:080. Steel plants using existing basic oxygen process furnaces. [10 Ky.R. 440]
401 KAR 61:170. Existing blast furnaces casthouses. [10 Ky.R. 441]
401 KAR 63:005. Open burning. [10 Ky.R. 634]

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PS Form 3526 July 1981 *(See Instruction on reverse)* *(Page 1)*

Emergency Regulations Now In Effect

(NOTE: Emergency regulations expire upon being repealed or replaced.)

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-832
September 15, 1983

EMERGENCY REGULATION
Natural Resources and Environmental Protection Cabinet

WHEREAS, KRS 350.028(5) authorizes the Natural Resources and Environmental Protection Cabinet to adopt rules and regulations to allow the State to administer and enforce the initial and permanent regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977;" and

WHEREAS, pursuant to the above authority, the Commonwealth of Kentucky assumed exclusive jurisdiction over the regulation of surface coal mining and reclamation on May 18, 1982, under the federal law as it existed at that time; and

WHEREAS, the federal requirement relating to the elimination of highwalls contained in 30 CFR 826 has been amended in 47 FR 51316 to provide an alternative standard under certain conditions; and

WHEREAS, KRS 350.028(5) and 350.465(2) require that the Cabinet's regulations to allow the State to administer and enforce regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," be no more stringent than required by that law; and

WHEREAS, the Secretary of the Natural Resources and Environmental Protection Cabinet advises that it is in the best interest of the Commonwealth to promulgate the accompanying regulation, and that since an emergency exists with respect to highwall elimination under the circumstances of the regulation, it should, pursuant to KRS 13.088, become effective upon being filed with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, pursuant to the authority vested in me by KRS 13.088(1), hereby acknowledge the finding by the Secretary of the Natural Resources and Environmental Protection Cabinet that an emergency exists and direct that the attached regulation, upon being filed with the Legislative Research Commission, pursuant to Chapter 13 of the Kentucky Revised Statutes, become effective under the terms contained therein.

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

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 20:060E. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.445, 350.465

PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.100, 350.445, 350.465

EFFECTIVE: September 19, 1983

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards, specifically including such standards for operations conducted on steep slopes. This regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.

Section 1. Applicability. (1) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this regulation.

(2) The standards of this regulation do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 405 KAR 20:050.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations subject to this regulation shall comply with requirements of Title 405, Chapter 8 and this section, except to the extent a variance is approved under Section 3.

(2) (a) The permittee shall prevent the following materials from being place or allowed to remain on the downslope:

1. Spoil;
2. Waste materials, including waste mineral matter;
3. Debris, including that from clearing and grubbing of haul road construction; and
4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in Title 405, Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of Title 405, Chapters 16 and 18, with respect to backfilling and grading, including, but not limited to, the return of the site to the approximate original contour. The permittee must demonstrate to the cabinet, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

(4) Land above the highwall shall not be disturbed unless the cabinet finds that the disturbance facilitates compliance with the requirements of Title 405, Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall be disposed of in accordance with the requirements of 405 KAR 16:130 or 405 KAR 18:130.

(6) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed

method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

Section 3. Limited Variances. (1) Permittees may be granted variances from the approximate original contour requirements of Section 2(3) for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 405 KAR 8:050:

(a) [(2)] The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

(b) [(3)] The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw, by reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw, or by increasing streamflow during times of the year when the stream is normally at low flow or dry conditions and such increase in streamflow is determined by the cabinet to be beneficial to public or private users or the ecology of such streams. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

(c) [(4)] Land above the highwall may be disturbed only to the extent that the cabinet deems appropriate and approves as necessary to facilitate compliance with the provisions of Title 405, Chapters 16 through 20, and provided that the cabinet finds that the disturbance is necessary to:

1. [(a)] Blend the solid highwall and the backfilled material;

2. [(b)] Control surface runoff;

3. [(c)] Provide access to the area above the highwall; or

4. [(d)] Eliminate the highwall where sufficient backfill material is not otherwise available.

(d) [(5)] The landowner of the permit area has requested, in writing, as part of the permit application under 405 KAR 8:050, that the variance be granted.

(e) [(6)] The operations are conducted in full compliance with a permit issued in accordance with 405 KAR 8:050.

(f) [(7)] Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130 or 405 KAR 18:130.

(2) Permittees shall be granted variances from the approximate original contour requirements and highwall elimination requirements of Section 2(3) of this regulation where steep slope contour-mining operations affect previously mined areas that were not reclaimed to the standards of Title 405 of the Kentucky Administrative Regulations, and there is no continuing responsibility to reclaim to such standards, and the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall; provided, however, that the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(a) The backfill shall be designed by a qualified registered professional engineer.

(b) The permittee shall demonstrate to the cabinet that the backfill has a minimum static safety factor for stability of at least 1.3.

(c) All spoil shall be retained on the solid portion of existing or new benches.

(d) All reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(e) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(f) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(g) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

ELMORE C. GRIM, Commissioner
ADOPTED: August 3, 1983
APPROVED: JACKIE SWIGART, Secretary
RECEIVED BY LRC: September 19, 1983 at 4:30 p.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-847
September 23, 1983

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Health Services

WHEREAS, the Secretary of the Cabinet for Human Resources is required by KRS 194.050(1) to adopt, administer and enforce all rules and regulations needed to operate the programs and to fulfill the responsibilities vested in the Cabinet for Human Resources; and

WHEREAS, the Cabinet has entered into an agreement with the Secretary of the United States Department of Health and Human Services to carry out the provisions of the Health Planning and Resources Development Act of 1974 (Public Law 93-641) and its subsequent amendments; and

WHEREAS, the said agreement and federal law require the establishment of a State Health Plan according to a prescribed procedure; and

WHEREAS, the Secretary has promulgated a regulation providing for the development, establishment and revision, as needed, of the State Health Plan; and

WHEREAS, the Secretary has determined in writing that an emergency exists with respect to said regulation, and that, therefore, said regulation should, pursuant to the provision of KRS 13.088(1), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

900 KAR 1:020E. State health plan development process.

RELATES TO: KRS 194.025(3), 194.050(1)
PURSUANT TO: KRS 13.082, 194.050(1)
EFFECTIVE: October 5, 1983
NECESSITY AND FUNCTION: KRS 194.050 requires the Secretary for Human Resources to adopt, administer and enforce all rules and regulations necessary to operate the programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This regulation implements the agreement between the cabinet and the Secretary of the Department of Health and Human Services to carry out the provisions of the Health Planning and Resources Development Act of 1974 (Public Law 93-641) and its subsequent amendments.

Section 1. Purpose. The purpose of this regulation is to establish the process by which the state health plan is prepared, amended and revised. The state health plan shall serve as a major health policy document which provides a coordinated approach for identifying statewide health needs and addressing major health issues.

Section 2. Definitions. (1) "Council" means the State Health Planning Council which for administrative purposes is attached to the Department for Health Services, Cabinet for Human Resources, and acts as the State Health Coordinating Council pursuant to the cabinet's agreement with the Secretary of the Department of Health and Human Services, under the Health Planning and Resource Development Act, as amended.

(2) "Cabinet" means the Cabinet for Human Resources acting as the State Health Planning and Development Agency pursuant to its contract with the Secretary of the Department for Health and Human Services under the Health Planning and Resources Development Act, as amended.

(3) "State health plan" means the document duly adopted by the State Health Planning Council and approved by the Governor.

Section 3. State Health Plan Development. (1) The cabinet shall determine the statewide health needs of the Commonwealth after providing reasonable opportunity for the submission of written recommendations respecting such needs from appropriate state agencies and other agencies designated by the Governor for the purpose of making such recommendations and after consultation with the council.

(2) The cabinet shall prepare, review at least triennially and revise as necessary a preliminary state health plan.

(3) The cabinet shall submit the preliminary state health plan to the council for approval or disapproval and for use in developing the state health plan.

(4) The council shall review the preliminary state health plan and direct the cabinet to make revisions and amendments as necessary.

(5) The preliminary state health plan shall become the proposed state health plan upon the approval of its contents by the council.

(6) Prior to submission of the proposed state health plan to the Governor, the council shall conduct a public hearing on the proposed plan to receive comments orally or in writing from interested parties.

(7) Not less than thirty (30) days prior to such hearing, the cabinet shall publish in at least two (2) newspapers of general circulation in the state, a notice of the council's consideration of the proposed plan, the time and place of the hearing, the place at which interested persons may consult the plan prior to the hearing and the place and period within which written comments on the proposed plan may be submitted.

(8) The council shall consider the comments received in the public hearing and revise the proposed state health plan as deemed necessary.

(9) After approval of the proposed state health plan and any revisions or amendments made subsequent to the public hearing, the council shall submit the proposed plan to the Governor for approval or disapproval.

(10) If the Governor determines the proposed plan does not effectively meet statewide health needs as determined by the cabinet and disapproves the proposed plan, the council shall review the changes in the plan which the Governor specifies in writing are necessary to meet such needs and implement any such revisions within thirty (30) days. Such revisions shall not be subject to the provisions of subsections (6), (7) and (8) of this section.

(11) All revisions and amendments to the state health plan except those specified by the Governor under subsection (10) of this section shall follow the procedures set forth in this regulation for development of the plan.

Section 4. Effective Date and Availability of State Health Plan. (1) The state health plan adopted by the council on June 8, 1983 and approved by the Governor on August 15, 1983, shall be effective as of that date and remain in effect until June 30, 1986, unless revised or amended.

(2) The state health plan shall be available at the office of the Division of State Health Planning of the Cabinet for Human Resources at 275 East Main Street, Frankfort, Kentucky.

(3) All revisions and amendments to the state health plan and all subsequent state health plans shall be promulgated in accordance with this regulation.

BUDDY H. ADAMS, Secretary
ADOPTED: September 14, 1983
RECEIVED BY LRC: October 5, 1983 at 11 a.m.

JOHN Y. BROWN, JR., GOVERNOR
Executive Order 83-848
September 23, 1983

EMERGENCY REGULATION
Cabinet for Human Resources
Department for Health Services

WHEREAS, the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or hereafter referred to as Board, is responsible for promulgating regulations with the approval of the Secretary for Human Resources by which certificate of need review procedures pursuant to KRS 216B.040(2)(a) are established; and

WHEREAS, in order to effectively implement the capital expenditure review limit on hospital expenditures (effective January 1, 1984), the Board has promulgated a regulation amending the provisions pertaining to the Certificate of Need Review cycle; and

WHEREAS, the Board has determined that an emergency exists with respect to the attached regulation in that the applications to be considered by the Board at its January meeting would be effective under the usual administrative review process; and

WHEREAS, the Secretary of the Cabinet for Human Resources concurs with the Board's determination that an emergency exists with respect to the attached regulation and that, therefore, said regulation should, pursuant to the provision of KRS 13.088(1), become effective immediately upon filing with the Legislative Research Commission:

NOW, THEREFORE, I, John Y. Brown, Jr., Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me under KRS 13.088(1), do hereby acknowledge the finding of an emergency by the Secretary of the Cabinet for Human Resources with respect to the filing of said regulation, and hereby direct that said regulation shall become effective upon being filed with the Legislative Research Commission, as provided in Chapter 13 of the Kentucky Revised Statutes.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services
Certificate of Need and Licensure Board

902 KAR 20:006E. 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
EFFECTIVE: October 5, 1983
NECESSITY AND FUNCTION: KRS 216B.040 and KRS 216B.075 authorize 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.

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

(1) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities 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 facilities 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 facilities for services 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.

(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.

(9) "Health service" means clinically related services 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.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, the board and the cabinet shall utilize the following criteria:

(1) Consistency with plans. The proposal should be consistent with the state health plan *validly in effect on August 16, 1983 and available at the principal office of the board.* 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 state health plan does 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.

(2) Need and accessibility. The proposal should meet an identified need in a defined geographic 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 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 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 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., 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. Notwithstanding the general review criteria established in Section 2, if an HMO or a health 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) 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) 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.

Section 4. Exemptions. (1) A certificate of need shall not be required for any project which meets the applicable requirements of KRS 216B.065, 216B.070, or Section 14 of the 1982 Act. If a person acquires major medical equipment not located in a health 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 or non-substantive review process.

(5) Within fifteen (15) days of receipt of the application the executive director shall acknowledge receipt 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) 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.

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

(9) The executive director 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) 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. Notice to all other affected persons shall be by mail.

(11) 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. 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. Batching review cycles for formal 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) *Hospitals: acute and psychiatric when proposed capital expenditure is $1,000,000 or less* [Hospital facilities and services including: general medical, surgical, psychiatric, obstetric and pediatric beds; primary care centers, renal disease facilities, and ambulatory care clinics, ambulatory surgical centers, and rural health clinics].	October *and* [February,] June	January, *and* [, May,] September
(b) Hospitals: acute and psychiatric when proposed capital expenditure is more than $1,000,000.	*February and August*	*May and November*

(c) Primary care centers, renal disease facilities, ambulatory surgical centers, alternative birth centers, chemical dependency treatment services, physical rehabilitation services, mobile diagnostic services and rural health clinics.	*October, February and June*	*January, May and September*
(d) [(b)] Long-term care facilities and services including: skilled nursing, intermediate care, personal care, and nursing homes; and [proposals for] home health services, *hospice services, rehabilitation clinics,* and any other type of proposals not listed in paragraph (a), *(b) or (c)* of this subsection.	December, April [,] *and* August	March, July [,] *and* November

(12) Capital expenditures made by or on behalf of hospitals requiring certificates of need for proposals reviewed under subsections (a) and (b) of Section 5(11), except those for replacement of equipment five (5) years old or older, will be subject to the capital expenditure limit as contained in the state health plan.

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

(14) [(13)] The local health planning agency shall notify the executive director 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 agency, the board shall proceed without a recommendation.

(15) [(14)] The executive director of the board shall notify the applicant, the local health planning agency and any party to the proceeding 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 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 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 agency, the executive director shall submit to the local health planning agency and to the applicant a written detailed statement of the reasons for the inconsistency.

Section 6. Nonsubstantive Review. (1) An applicant may waive the procedures for formal review of an application for a certificate of need and request 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) Procedures. Procedures for nonsubstantive review shall be as follows:

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

(b) Within fifteen (15) days of the receipt of the application the executive director shall acknowledge receipt of the application in writing to the applicant and the local health planning 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) 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.

(e) Within fifteen (15) days after the application is filed, the executive director functioning as the representative of the cabinet 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. Notice to all other affected persons shall be by mail.

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

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

(i) 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.

(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. 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 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 facility and is issued only for the location stated on the certificate.

(3) Cost escalations. (a) A certificate of need shall not be required for an escalation of the capital expenditure authorized provided that the scope of the project as approved is not altered and the amount of the escalation does not exceed:

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. Progress Reports. (1) As one of the conditions of a certificate of need, the certificate of need holder shall submit a report of progress every six (6) months or more frequently if required by the board until the project is complete.

(2) All certificate of need holders 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. 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 shall send notice to the certificate of need holder specifying the date each 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 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 the certificate of need holder wishes to change the location of the project from the site specified on the certificate of need, the certificate of need holder shall note the proposed change of location on the first progress report form and shall submit a certificate of need application for nonsubstantive review.

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

1. All projects for conversion of beds are complete (ready for licensure);
2. All projects for addition of new services, not involving construction, are complete;
3. Schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources for construction projects. The second six-month report for all construction projects shall also include:

a. Schedule for project completion with projected dates;

b. Evidence of preliminary negotiation with financial agent;

c. 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 final plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources;
4. Enforceable contract with construction contractor;

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

(f) 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.

Section 9. Effective date of amendments approved by the board on September 7, 1983. The proposed amendments to the batching review cycle in Section 5(11)(a) through (d) of this regulation shall go into effect immediately upon filing with the Legislative Research Commission of an executive order by the governor declaring the emergency nature of these amendments. The proposed amendments to Section 2(1) and Section 5(12) of this regulation shall go into effect upon completion of the regular process of promulgation of regulations.

FRANK W. BURKE, SR., Chairman
ADOPTED: September 13, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 5, 1983 at 11 a.m.

Amended After Hearing

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

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

401 KAR 30:010. Definitions.

RELATES TO: KRS 224.033, 224.835, 224.846, 224.855 to 224.889
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.017 and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to adopt rules and regulations for the management of solid and hazardous wastes. This chapter establishes the general administrative procedures which are applicable to 401 KAR Chapters 31 through 49. This regulation defines essential terms used in connection with the waste management regulations.

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

(1) "Active fault" means a land area which, according to the weight of geological evidence, has a reasonable probability of being affected by movement along a fault to the extent that a hazardous waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(2) "Active life of a facility" means that period of time for a facility between the beginning of construction and continuing through the closure period.

(3) [(2)] "Active portion" means any area of a facility where treatment, storage 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.

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

(5) "Admixed liner" means a liner made from a mixture of any of a multitude of materials, often asphalt or cement, with widely varying physical and chemical properties. Admixed liners must be demonstrated to be structurally sound and chemically resistant to the waste placed in it so as to be capable of supporting the waste without cracking or disintegrating or allowing waste or leachate to escape.

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

(7) "Ampule" means a small sealed glass container for one (1) dose of sterile medicine.

(8) [(5)] "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.

(9) [(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.

(10) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(11) [(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.

(12) "Board" means the Kentucky regional integrated waste treatment and disposal facility siting board (KRS 224.2201(1)).

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet (KRS 224.005(7)).

(14) [(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.

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

(16) "Certificate" means a certificate of environmental safety and public necessity (KRS 224.2201(2)).

(17) "Certification" means a statement of professional opinion based upon knowledge and belief.

(18) [(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.

(19) [(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 *(KRS 224.005(4)).*

(20) [(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.

(21) [(13)] "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, paints or flammable liquids. The term includes the following:

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

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

(c) Coal mining by-products which include any material that is not one (1) of the primary products of a particular coal mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately mined by the particular operation. The term does not include an intermediate mining product which results from one (1) of the steps in a mining process and is processed through the next step of the process within a short time. An example of a coal mining by-product is that part of the ore deposit that is too low in grade to be of economic value at the time, but which is stored separately in the hope that it can be profitably treated later.

(22) [(14)] "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.

(23) [(15)] "Constituent" or "hazardous waste constituent" means a constituent which caused the cabinet to list the hazardous waste in 401 KAR 31:040, or a constituent listed in [Table I of 40 CFR 261.24 which is incorporated by reference in] Section 5*(3)* of 401 KAR 31:030.

(24) [(16)] "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.

(25) "Contained landfill" see subsection (137)(c) of this section.

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

(27) [(18)] "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 Section 2 of 401 KAR 30:030 *and 401 KAR 34:060, Section 5.*

(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 Section 2 of 401 KAR 30:030 *and 401 KAR 34:060, Section 5.*

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

(29) [(20)] "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.

(30) [(21)] "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.

[*(31) "Decontaminated" means all artificially-placed harmful or toxic materials have been removed returning the material to its original background contamination levels.*]

(31) [(32)] [(22)] "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.

(32) [(33)] [(23)] "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.

(33) [(34)] [(24)] "Director" means the director of the cabinet's division of waste management.

(34) [(35)] [(25)] "Discharge" means *but is not limited to* [the accidental or intentional] spilling, leaking, pumping, pouring, emitting, emptying, or dumping *(KRS 224.877(a))* [of solid or hazardous waste into or on any land or water].

(35) [(36)] [(26)] "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(36) [(37)] [(27)] "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 *(KRS 224.005(8)).*

(37) [(38)] "Disposal facility" see subsection (63) [(64)](a) of this section.

(38) [(39)] "Elementary neutralization unit" see subsection (63)[(64)](b) of this section.

(39) [(40)] [(28)] "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.

(40) [(41)] "Environmental emergency" includes any release or threatened release of materials into the environment in such quantities or concentrations as cause or threaten to cause an imminent and substantial danger to human health or the environment; the term includes, but is not limited to, discharges of oil and hazardous substances prohibited by section 311(b)(3) of the federal Clean Water Act (P.L. 92-500), as amended (KRS 224.877(1)(d).

(41) [(42)] [(29)] "EPA hazardous waste number" means the number assigned by EPA *and the cabinet* to each hazardous waste listed in 401 KAR 31:040, and to each characteristic identified in 401 KAR 31:030.

(42) [(43)] [(30)] "EPA identification number" means the number assigned by EPA or the cabinet to each generator, transporter, and treatment, storage, or disposal facility.

(43) [(44)] "EPA region" means the states and territories found in any one (1) of the following ten (10) regions:

Region I—Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II—New York, New Jersey, Puerto Rico, and the Virgin Islands.

Region III—Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV—Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V—Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

Region VI—New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII—Nebraska, Kansas, Missouri, and Iowa.

Region VIII—Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX—California, Nevada, Arizona, Hawaii, Guam, American Samoa, and Commonwealth of Northern Mariana Islands.

Region X—Washington, Oregon, Idaho, and Alaska.

(44) [(45)] [(31)] "Equivalent method" means any testing or analytical method, approved *jointly* by the administrator *and* [or] the secretary under 401 KAR Chapter 31, or methods in 401 KAR 47:040 or 401 KAR 47:050, approved by the secretary of the cabinet.

(45) [(46)] [(32)] "Existing hazardous waste *site or* [management] facility" *or "existing 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 *has* [had] commenced construction if*:*

(a) The owner or operator had obtained *the federal, state and local* [all necessary governmental] approvals or permits necessary to begin physical construction; and

(b) Either:

1. A continuous on-site, physical construction program has begun; or

2. The owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time. [Such construction had begun or contractual obligations for physical construction which cannot be cancelled or modified without substantial loss are established.]

(46) [(47)] "Existing portion" means that land surface area of an existing hazardous waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(47) [(48)] [(33)] "Explosive gas" means methane (CH_4) in 401 KAR 30:030, Section 1(1).

(48) [(49)] [(34)] "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 landfills, surface impoundments, or combination of them).

(49) [(50)] [(35)] "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(50) [(51)] [(36)] "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.

(51) [(52)] [(37)] "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, storage, or disposal on the entire facility.

(52) [(53)] [(38)] "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.

(53) [(54)] [(39)] "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless othewise specified in 401 KAR 47:040.

(54) [(55)] [(40)] "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(55) [(56)] [(41)] "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(56) [(57)] [(42)] "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(57) [(58)] [(43)] "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in 401 KAR Chapter 31 or whose act first causes a hazardous waste to become subject to regulation.

(58) [(59)] [(44)] "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."

(59) [(60)] [(45)] "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(60) [(61)] "Hazardous substance" means any substance or combination of substances including wastes of a solid,

liquid, gaseous or semi-solid 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. Such substances may include but are not limited to those which are, according to criteria established by the cabinet, toxic, corrosive, ignitable, irritants, strong sensitizers or explosive (KRS 224.877(b)).

(61) [(62)] "Hazardous waste constituent" means a constituent that caused the administrator to list the hazardous waste in 401 KAR 31:040, or a constituent listed in Section 5(3) of 401 KAR 31:030.

(62) [(63)] [(46)] "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(63) [(64)] [(47)] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, 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 Chapter 31 or are wastes listed in 401 KAR Chapter 31 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 emplacement.

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

(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.

(i) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

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

(k) "Thermal treatment facility" means a facility or part of a facility which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

(l) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which acid is neutralized.

(m) "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.

(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.

(64) "Holocene" means the most recent epoch of the quartenary period, extending from the end of the pleistocene to the present.

(65) [(48)] "Inactive portion" means that portion of a hazardous waste site or facility which is not operated after November 19, 1980.

(66) "Incinerator" see subsection (63)[(64)](c) of this section.

(67) [(49)] "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.

(68) "Individual generation site" means the contiguous site at or on which one (1) or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one (1) or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(69) "Inert landfill" see subsection (137)(a) of this section.

(70) [(50)] "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.

(71) "Injection well" see subsection (63)[(64)](d) of this section.

(72) [(51)] "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.

(73) "In operation" refers to a facility which is treating, storing or disposing of hazardous waste.

(74) [(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 Chapter 38 or under 40 CFR Part *270* [122] and is treated as having a permit until such time as final administrative disposition of such application is made.

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

(76) "KPDES" means Kentucky Pollutant Discharge System.

(77) "Labpack" means any large container equal to or smaller than fifty-five (55) gallons that holds many smaller containers of various content tightly secured with packing material.

(78) "Landfarming facility" see subsection (137)(e) of this section.

(79) "Landfill" see subsection (63)[(64)](e) of this section.

(80) [(54)] "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.

(81) "Land treatment facility" see subsection (63)[(64)](f) of this section.

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

(83) [(56)] "Liner" means a continuous layer of natural or man-made material, beneath or on the sides of a hazardous waste *site or facility, including but not limited to a waste pile,* surface impoundment, landfill, or landfill cell, or beneath or on the sides of a solid waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(84) [(57)] "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.

(85) [(58)] "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 *3* [2(5)] of 401 KAR 38:040.)

(86) [(59)] "Manifest" means the shipping document originated and signed by the generator, *used in a management control system to trace the movement of hazardous wastes from generation to final disposal (KRS 224.005(30))* [which contains information required by 401 KAR Chapter 32].

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

(88) [(61)] "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.

(89) [(62)] "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.

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

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

(92) "NPDES" means National Pollutant Discharge Elimination System (KRS 224.005(29)).

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

(94) "Off-site" means properties non-contiguous to the generation site.

(95) [(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.

(96) [(66)] "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.

(97) [(67)] "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.

(98) "Open dump" means any facility or site for the disposal of solid waste which does not meet the criteria for a sanitary landfill under regulations promulgated by the department which shall be consistent with regulations promulgated under section 4004, Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580), and which is not a facility for disposal of hazardous waste (KRS 224.005(31)).

(99) [(68)] "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and/or disposal of wastes.

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

(101) [(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 *38:080.* [38:070, Section 8. 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.]

(102) [(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 38:090*

through 401 KAR 38:090 through 38:210 [Sections 9 and 10 of 401 KAR 38:070 and Sections 1 through 6 of 401 KAR 38:080]. Specifically, Part B consists of submitting all of the information required in *401 KAR 38:090 through 38:210* [Sections 9 and 10 of 401 KAR 38:070 and Sections 1 through 6 of 401 KAR 38:080]; there are no official forms for the submission.

(103) [(72)] "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 Chapter 34 or 35.

(104) [(73)] "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.

(105) [(74)] "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management regulations. *The term "permit" includes also* "permit by rule," and "emergency permit." *However, the term "permit"* does not include "draft permit" or a "proposed permit:"

(a) "Emergency permit" means a permit issued by the cabinet to temporarily store, treat or dispose of hazardous waste in accordance with the provisions of 401 KAR *38:060* [38:010], Section 4.

(b) "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 30:020 or 30:030 *or the maximum groundwater contaminant levels specified in Section 5 of 401 KAR 34:060.*

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

(107) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body (KRS 224.005(12)).

(108) [(76)] "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.

(109 [(77)] "Pile" *see subsection (63)[(64)](g) of this section* [means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage].

(110) [(78)] "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.

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

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

(113) "Preventive measures" means the installation or testing of equipment or devices, designated way of performing a specified operation or the preparation of an emergency response plan (KRS 224.877(c)).

(114) [(81)] "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including *recycling and recovery* [reclamation]) of any municipal sewage or industrial wastes of a liquid nature which is owned by the *Commonwealth or a* [state, any] political subdivision *of the Commonwealth (KRS 224.005(14)).* [, municipality (as defined by Section 502(4) of the Clean Water Act) or other public entity. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.]

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

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

(117) "Recovered material" means waste material and by-products which have been recovered or diverted from waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (KRS 224.005(15)).

(118) "Recycling" means any treatment process for the reclamation of material or energy from waste (KRS 224.005(16)).

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

(120) "Regional integrated waste treatment and disposal demonstration facility" means a model hazardous waste facility receiving wastes from a region larger than the county boundaries in which it is located, from more than one (1) person, and utilizing multiple treatment and disposal technologies, one (1) of which must be a secure landfill, and one (1) of which must be a high technology incinerator, and designed so as to promote resource recovery and energy generation from hazardous waste and the use of state-of-the-art techniques for rendering waste nonhazardous, and the disposal of waste in a manner that minimizes the risk to public health and long term environmental impacts (KRS 224.2201(4)).

(121) "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continue to receive waste after January 26, 1983.

(122) "Residential landfill" see subsection (137)(b) of this section.

(123) "Residual landfill" see subsection (137)(d) of this section.

(124) [(85)] "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.

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

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

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

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

(129) [(90)] "Sanitary landfill" means a facility for the disposal of solid waste which complies with the "Environmental performance standards" specified in 401 KAR 30:030.

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

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

(132) "Secretary" means the secretary of the Natural Resources and Environmental Protection Cabinet (KRS 224.005(17)).

(133) [(93)] "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.

(134) "Solid waste management" means the administration of solid waste activities: collection, source separation, storage, transportation, transfer, processing, treatment and disposal, which shall be in accordance with a departmentally approved county or multi-county solid waste management plan (KRS 224.005(32)).

(135) "Solid waste management area" or "area" means any county or group of counties so designated by the cabinet by approval of the local solid waste management plan (KRS 224.005(33)).

(136) "Solid waste management facility" means any resource recovery system or component thereof, any system, program or facility for resource conservation, and any facility for collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise (KRS 224.005(34)).

(137) [(94)] "Solid waste site or facility" means one (1) of the four (4) categories of sanitary landfills or a land farming facility permitted by the cabinet 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 cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, woodchips, and tree trimming, etc.) may be considered by the cabinet 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 cabinet.

(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 cabinet.

(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 30:030, Section 1(1) and which receives a case-by-case design review by the cabinet.

(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.

(138) [(95)] "Special wastes" means those wastes of high volume and low hazard which [commonly] include, but are not [necessarily] limited to, *mining waste,* utility wastes (fly ash, bottom ash, scrubber sludge), [mining wastes,] sludge from [pollution control equipment,] water treatment facilities and *waste water* [sewage] treatment facilities, cement kiln dust, gas and oil drilling muds and oil production brines *(KRS 224.868(1)(a)).*

(139) [(96)] "Spill" means any accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(140) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(141) "Storage facility" see subsection (63)[(64)](h) of this section.

(142) [(97)] "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.

(143) "Surface impoundment" see subsection (63)[(64)](i) of this section.

(144) "Tank" see subsection (63)[(64)](j) of this section.

(145) [(98)] "Termination" means the final actions taken by the cabinet as to a solid waste or hazardous waste *treatment, storage or disposal* site or facility when formal responsibilities for post-closure monitoring and maintenance cease *(KRS 224.005(19)).*

(146) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge (see also "incinerator" and "open burning").

(147) "Thermal treatment facility" see subsection (63)[(64)](k) of this section.

(148) "Totally enclosed treatment facility" see subsection (63)[(64)](l) of this section.

(149) [(99)] '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.

(150) [(100)] "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.

(151) "Transportation" means any off-site movement of waste by any mode, and any loading, unloading, or storage incidental thereto (KRS 224.005(22)).

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

(153) "Treatment" means any method, technique, or process including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous (KRS 224.005(23)).

(154) "Treatment facility" see subsection (63)[(64)](m) of this section.

(155) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(156) [(102)] "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.

(157) [(103)] "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.

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

(159) [(105)] "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.

(160) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(161) [(106)] "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.

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

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

(164) "Waste" means:

(a) "Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining wastes, coal mining by-products, refuse and overburden) and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (KRS 224.005(24)(a));

(b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended 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; 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 (68 Stat. 923) (KRS 224.005(24)(b)).

(165) [(109)] "Waste boundary" means [either]:

[[](a)[]] The outermost perimeter of the waste (projected in the horizontal plane) as it would exist at completion of the disposal activity[[]; or[]]

[[](b) An alternative boundary for a *solid waste disposal* facility which may be used in lieu of paragraph (a) when the cabinet finds that such a change would not result in the contamination of groundwater which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all the factors identified in the following subparagraphs of this paragraph that are relevant:[]]

[[]1. The hydrogeological characteristics of the facility and surrounding land including any natural attenuation and dilution characteristics of the aquifer;[]]

[[]2. The volume and physical and chemical characteristics of the leachate;[]]

[[]3. The quantity, quality, and direction of flow of groundwater underlying the facility;[]]

[[]4. The proximity and withdrawal rates of groundwater users;[]]

[[]5. The availability of alternative drinking water supplies;[]]

[[]6. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater; and[]]

[[]7. Public health, safety, and welfare effects.[]]

(166) "Waste management district" means any county or group of counties electing to form under the provisions of KRS 109.071 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource and Conservation and Recovery Act of 1976, as amended (P.L. 94-580) (KRS 224.005(25)).

(167) "Wastewater treatment unit" see subsection (64)(n) of this section.

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

(169) "Water" or "waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction (KRS 224.005(26)).

(170) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(171) [(111)] "Wetlands" means those areas that are in-

undated 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.

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

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in 401 KAR Chapters 30 through 49 can be found in Table 1.

Table 1. Acronyms and Abbreviations

Am.	*Amended*
C	*Corrosive waste*
CAA	*Clean Air Act*
CFR	*Code of Federal Regulations*
cm	*Centimeter*
cm_2	*Centimeter squared*
CO	*Carbon monoxide*
CO_2	*Carbon dioxide*
CWA	*Clean Water Act*
DOT	*Department of Transportation*
DRE	*Destruction and removal efficiency*
E	*Explosive waste*
eff.	*Effective*
EPA	*United States Environmental Protection Agency*
EP Toxicity	*Extraction procedure toxicity*
FIA	*Federal Insurance Administration*
FR	*Federal Register*
H	*Acutely hazardous waste*
ha	*Hectare*
I	*Ignitable waste*
KAR	*Kentucky Administrative Regulation*
kg	*Kilogram*
KPDES	*Kentucky Pollution and Discharge Elimination System*
KRS	*Kentucky Revised Statute*
Ky.R.	*Administrative Register of Kentucky*
l	*Liter*
LC	*Lethal concentration*
LD	*Lethal dose*
ml	*Milliliter*
mm	*Millimeter*
N	*Normal*
NESHAPS	*National Emissions Standards for Hazardous Pollutants*
NPDES	*National Pollution and Discharge Elimination System*
PCB	*Polychlorinated biphenyl*
pCi/l	*Picocuries per liter*
PHC	*Principal hazardous constituent*
Permit POHC	*Permitted principal organic hazardous constituent*
POHC	*Principal organic hazardous constituent*
Trial POHC	*Trial burn principal organic hazardous constituent*
POTW	*Publicly owned treatment works*
PSD	*Prevention of significant deterioration*
psi	*Pounds per square inch*
psig	*Pounds per square inch gauge*
R	*Reactive waste*
RCRA	*Resource Conservation and Recovery Act, as amended*
SDWA	*Safe Drinking Water Act*
SEC	*Securities and Exchange Commission*
SIC	*Standard Industrial Classification Code*
SPCC	*Spill Prevention, Control, and Countermeasures Plan*
T	*Toxic waste*
UIC	*Undergound Injection Control*
UICP	*Underground Injection Control Program*
USC	*United States Code*
USEPA	*United States Environmental Protection Agency*
USPS	*United States Postal Service*

Section 3. References. Title 401, Chapter 30 through 49, incorporate certain publications by reference. The publications listed in 40 CFR Part 260.11 are adopted and filed herein by reference. Copies of these publications may be obtained as follows:

(1) "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D-3278-78, availablve from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(2) "Flammable and Combustible Liquids Code" (1977 or 1981), available from the National Fire Protection Association, Battery March Park, Quincy, Massachusetts 02269.

(3) "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (1980), EPA publication number SW-846, available from the U.S. Environmental Protection Agency, Solid Waste Information, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

(4) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication, SW-846 (Second Edition, 1982), copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238, on a subscription basis, and future updates will automatically be mailed to this subscriber.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 30:030. Environmental performance standards.

RELATES TO: KRS 224.033, 224.830 to 224.846, 224.855 to 224.889
PURSUANT TO: KRS 13.082, *13.083*, 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.017, 224.033 and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to adopt rules and regulations for the generation, treatment, storage, recycling, disposal of hazardous wastes and the disposal of solid wastes. This chapter establishes the general administrative

procedures which are applicable to 401 KAR Chapters 31 through 49. This regulation sets forth the environmental performance standards *which the permit applicant must demonstrate compliance with and* which are applicable to any *solid* waste *disposal [management]* site or facility.

Section 1. Standards. These standards are for use under the waste management provisions of KRS Chapter 224 in determining which *solid* waste [*management*] [[]disposal[]] sites or facilities pose a reasonable probability of adverse effects on health or the environment. Solid waste [*management*] [[]disposal[]] sites or facilities failing to satisfy the applicable standards will be considered open dumps which are prohibited by KRS 224.835. [Hazardous wastes *management* [disposal] sites or facilities failing to satisfy the standards of this section will be considered to be in violation of the hazardous waste management provisions of KRS Chapter 224.]

[(1)] No *solid* waste [*management*] [[]disposal[]] site or facility shall:

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

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

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

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

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

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

(7) [(g)] Contaminate an underground drinking water source beyond the waste boundary. The maximum contaminant levels for this paragraph are contained in Section 2 of this regulation.

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

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

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

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

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

(d) [4.] Table.

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

(e) [5.] For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food-chain crops are grown.

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

(f) [6.] The only food-chain crop produced is animal feed.

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

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

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

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

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

(11) [(k)] Exist or occur which applies sewage sludge or septic tank pumpings to within three (3) feet (one (1) meter)

of the surface of the land unless a method to reduce pathogens has been utilized.

(12) [(l)] Engage in open burning solid waste, special waste or hazardous wastes. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency clean-up operations, and ordnance.

(13) [(m)] Violate applicable *air pollution* requirements developed under the state implementation plan approved or promulgated by the cabinet pursuant to KRS Chapter 224.

(14) [(n)] Exceed the concentration of explosive gases:

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

(b) [2.] The lower explosive limit for the gases at the facility boundary.

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

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

(17) [(q)] Result in a public nuisance because of blowing litter, debris, dust or other waste or material.

(18) [(r)] Exist which allows [poses the threat of allowing] pollution to enter karstic terrain.

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

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

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

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

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

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

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

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

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

[(i) The patterns of rainfall in the region;]

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

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

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

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

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

Section 2. Maximum Groundwater Contaminant Levels. The maximum contaminant levels promulgated herein are for use in determining whether solid [*or hazardous*] waste [*management*] [[]disposal[]] activities comply with the groundwater criteria of Section 6(1)(g). Analytical methods for these contaminants may be found in 40 CFR 141 which should be consulted in its entirety.

(1) Maximum contaminant levels for inorganic chemicals. *No solid waste disposal site or facility shall contaminate an aquifer beyond the maximum contaminant levels established herein.*

(a) The following are the maximum levels of inorganic chemicals other than fluoride:

Contaminant	Level[1] [(milligrams per liter)]
Arsenic	0.05 *mg/l*
Barium	1.0 *mg/l*
Cadmium	0.01 *mg/l*
[*Chloride, total*	*250 mg/l*]
Chromium	0.05 *mg/l*
[*Coliform bacteria*	*1 per 100 ml*]
[*Color*	*75 platinum-cobalt units*]
[*Copper*	*1.0 mg/l*]
[*Foaming agents*	*0.5 mg/l*]
[*Iron*	*0.3 mg/l*]
Lead	0.05 *mg/l*
[*Manganese*	*0.05 mg/l*]
Mercury	0.002 *mg/l*
Nitrate (as N)	10.0 *mg/l*
[*Odor*	*3 threshold odor no.*]
[*pH*	*6.5-8.5*]
Selenium	0.01 *mg/l*
Silver	0.05 *mg/l*
[*Sulfate, total*	*250 mg/l*]
[*Total dissolved solids*	*750 mg/l*]
[*Zinc*	*5.0 mg/l*]

[1]*Metal criteria are total recoverable metals to be measured in an unfiltered sample.*

(b) The maximum contaminant levels for fluoride are:

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

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

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

	Level (milligrams per liter
(a) Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10,10-Hexachloro-6, 7-epoxy-1,4,4a, 5,6,7,8,8a-octahydro-1,4-endo-endo-5,8-dimethano-naphthalene)	0.0002
Lindane (1,2,3,4,5,6-Hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenyl) ethane)	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67 to 69 percent chlorine)	0.005
(b) Chlorophenoxys:	
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	*0.01* [0.001]

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

(a) Using the membrane filter technique:

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

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

(b) Using the five (5) tube most probable number procedure (the fermentation tube method) in accordance with the analytical recommendations set forth in "Standard Methods for Examination of Water and Waste Water," American Public Health Association, and using a standard sample, each portion being one-fifth (1/5) of the sample.

1. If the standard portion is ten (10) milliliters, coliform in any five (5) consecutive samples from a well shall not be present in three (3) or more of the twenty-five (25) portions; or

2. If the standard portion is 100 milliliters, coliform in any five (5) consecutive samples from a well shall not be present in five (5) portions in any of five (5) samples or in more than fifteen (15) of the twenty-five (25) portions.

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

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

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

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 31:010. General provisions for hazardous wastes.

RELATES TO: KRS *224.830 through 224.877, 224.994* [224.864(3), 224.868, 224.876]
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.864(3)
NECESSITY AND FUNCTION: KRS 224.864(3) requires the Natural Resources and Environmental Protection Cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and list hazardous waste. This regulation establishes the general provisions necessary for identification and listing of a hazardous waste.

Section 1. *Purpose and Scope. (1) This chapter identifies those wastes which are subject to regulation as hazardous wastes under 401 KAR Chapters 32 through 40 and which are subject to the notification and permitting requirements of KRS 224.830 through 224.877. In this chapter:*

(a) This regulation defines the terms "waste" and "hazardous waste," identifies those waste which are excluded from regulation under 401 KAR Chapters 32 through 40 and establishes special management requirements for hazardous waste produced by small quantity generators and hazardous waste which is used, reused, recycled or reclaimed.

(b) 401 KAR 31:020 sets forth the criteria used by the cabinet to identify characteristics of hazardous waste and to list particular hazardous wastes.

(c) 401 KAR 31:030 identifies characteristics of hazardous waste.

(d) 401 KAR 31:040 lists particular hazardous wastes.

(2) The definition of waste contained in this chapter applies only with respect to the hazardous waste regulations implementing KRS 224.212, 224.213, and 224.2201 through 224.2215, and KRS 224.862 through 224.877. This chapter identifies only some of the materials which are hazardous wastes under KRS 224.033(10) and 224.071. A material which is not a hazardous waste identified in this chapter is still a hazardous waste for purposes of those sections if:

(a) In the case of KRS 224.033(10), the cabinet has reason to believe that the material may be a hazardous waste within the meaning of KRS 224.005(24)(b).

(b) In the case of KRS 224.071, the statutory elements are established. [General. A hazardous waste is any material that is a waste as defined in Section 2 of this regulation that meets the criteria set forth in Section 3 of this regulation.]

Section 2. Definition of a Waste. (1) A waste is any garbage, refuse, sludge or any other waste material which is not excluded under Section 4(1) of this regulation.

(2) An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:

(a) Is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or

(b) Has served its original intended use and sometimes is discarded; or

(c) Is a manufacturing or mining by-product and sometimes is discarded.

(3) A material is "discarded" if it is abandoned (and not used, re-used, reclaimed or recycled) by being:

(a) Disposed of; or

(b) Burned or incinerated, except where the material is being burned as a fuel for the purpose of recovering usable energy; or

(c) Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(4) A material is "disposed of" if it is discharged,

deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.

(5) A "manufacturing or mining by-product" is a material that is not one (1) of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one (1) of the steps in a manufacturing or mining process and is processed through the next step of the process within a short time.

Section 3. Definition of a Hazardous Waste. (1) A waste, as defined in Section 2 of this regulation is a hazardous waste if:

(a) It is not excluded from regulation as a hazardous waste under Section 4(2) of this regulation; and

(b) It meets any of the following criteria:

1. It exhibits any of the characteristics of hazardous waste identified in 401 KAR 31:030.

2. It is listed in 401 KAR 31:040 and has not been excluded from the lists in Section 1(2) of 401 KAR 31:040.

3. It is a mixture of any waste and a hazardous waste that is listed in 401 KAR 31:040 solely because it exhibits one (1) or more of the characteristics of hazardous waste identified in 401 KAR 31:040, unless the resultant mixture no longer exhibits any characteristics of hazardous waste identified in 401 KAR 31:030.

4. It is a mixture of any waste and one (1) or more hazardous wastes listed in 401 KAR 31:040 and has not been excluded from this paragraph under Section 1(2) of 401 KAR 31:040, however, the following mixtures of wastes and hazardous wastes listed in 401 KAR 31:040 are not hazardous wastes (except by application of subparagraph 1 or 2 of this paragraph) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

a. One (1) or more of the following spent solvents listed in Section 3 of 401 KAR 31:040, carbon tetrachloride, tetrachloroethylene, trichloroethylene provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed one (1) part per million; or

b. One (1) or more of the following spent solvents listed in Section 3 of 401 KAR 31:040, methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed twenty-five (25) parts per million; or

c. One (1) of the following wastes listed in Section 4 of 401 KAR 31:040, heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

d. A discarded commercial chemical product, or chemical intermediate listed in Section 5 of 401 KAR 31:040, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph, "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

e. Wastewater resulting from laboratory operations containing toxic (T) wastes listed in 401 KAR 31:040, provided that the annualized average flow of laboratory wastewater does not exceed one (1) percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes' combined annualized average concentration does not exceed one (1) part million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

(2) A waste which is not excluded from regulation under subsection (1), paragraph (a) of this section becomes a hazardous waste when any one (1) of the following events occur:

(a) In the case of a waste listed in 401 KAR 31:040 of this regulation when the waste first meets the listing description set forth in 401 KAR 31:040;

(b) In the case of a mixture of solid waste and one (1) or more hazardous wastes when a hazardous waste listed in 401 KAR 31:040 is first added to the waste; or

(c) In the case of any other waste (including a waste mixture) when the waste exhibits any of the characteristics identified in 401 KAR 31:030.

(3) Unless and until it meets the criteria of subsection (4) of this section:

(a) A hazardous waste will remain a hazardous waste.

(b) Any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.

(4) Any waste described in subsection (3) of this section is not a hazardous waste if it meets the following criteria:

(a) In the case of any waste, it does not exhibit any of the characteristics of hazardous waste identified in 401 KAR 31:030.

(b) In the case of a waste which is a listed waste under 401 KAR 31:040, contains a waste listed under 401 KAR 31:040 or is derived from a waste listed in 401 KAR 31:040, it also has been excluded from Section 1(2) of 401 KAR 31:040.

Section 4. Exclusions. (1) The following materials are not wastes for the purpose of this chapter:

(a) Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment;

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended; however, this exclusion applies only to the actual point source discharge. It

does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment;

(c) Irrigation return flows;

(d) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC 2011 et seq.;

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

(f) Mining overburden returned to the mine site; and

(g) Material from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(2) Any waste which meets the requirements of this subsection is not a hazardous waste.

(a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels).

(b) Agricultural wastes generated by any of the following and which are returned to the soils as fertilizers:

1. The growing and harvesting of agricultural crops.
2. The raising of animals, including animal manures.

(c) Mining overburden returned to the mine site.

(d) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(e) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(f) 1. Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in *401 KAR 31:040* [Section 9 of this regulation] due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

a. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

b. The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

c. The waste is typically and frequently managed in non-oxidizing environments.

2. Specific wastes which meet the standard in subparagraph 1a, b and c of this paragraph (so long as they do not fail the test for any other characteristic) are:

a. Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

b. Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

c. Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

d. Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

e. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

f. Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

g. Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

h. Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(g) Waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(h) Cement kiln dust waste.

(i) [Solid] Waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(3) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 38 and 39 until it exits the unit in which it was generated unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety (90) days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(4) Samples.

(a) Except as provided in paragraph (b) of this subsection, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter or 401 KAR Chapter 32, 33, 34, 35, 38 and 39 or to the notification requirements of 401 KAR Chapter 32 and 38 when:

1. The sample is being transported to a laboratory for the purpose of testing; or
2. The sample is being transported back to the sample collector after testing; or
3. The sample is being stored by the sample collector before transport to a laboratory for testing; or
4. The sample is being stored in a laboratory before testing; or
5. The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
6. The sample is being stored temporarily in the

laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

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

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

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

a. Assure that the following information accompanies the sample:

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

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

(iii) The quantity of the sample;

(iv) The date of shipment; and

(v) A description of the sample.

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

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

Section 5. Special Requirements for Hazardous Waste Generated by Small Generators. (1) A generator is a small quantity generator in a calendar month if he generates less than 1,000 kilograms of hazardous waste in that month.

(2) Except for those wastes identified in subsections (5) and (6) of this section, a small quantity generator's hazardous wastes are not subject to regulation under 401 KAR Chapters 32 *through* [, 33, 34, 35, 38 and] 39 provided the generator complies with the requirements of subsection (7) of this section.

(3) Hazardous waste that is benefically used or re-used or legitimately recycled or reclaimed and that is excluded from certain regulations by Section 6(1) of this regulation, is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the special requirements of Section 6(2) of this regulation is included in the quantity determinations of this section, and is subject to the requirements of this section.

(4) In determining the quantity of hazardous waste he generates, a generator need not include:

(a) His hazardous waste when it is removed from on-site storage; or

(b) Hazardous waste produced by on-site treatment of his hazardous waste.

(5) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under 401 KAR Chapters 32 *through* [, 33, 34, 35 38 and] 39, and *the notification and permitting requirements of KRS 224.855 and 224.864 through 224.877:* [401 KAR 30:020 and 30:030.]

(a) A total of one (1) kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in Section *4* [5](5) of 401 KAR 31:040 and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specification, would have the generic names listed in Section *4* [5](5) of 401 KAR 31:040.

(b) A total of 100 kilograms of any residue or contaminated soil water or other debris resulting from the clean-up of a spill into or on any land or water or any commercial chemical products or manufacturing chemical intermediates having the generic names listed in Section *4* [5](5) of 401 KAR 31:040, *or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in Section 4(5) of 401 KAR 31:040.*

(6) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in [paragraphs (a) and (b) of] subsection (5)*(a) or (b)* of this section, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under 401 KAR Chapters 32 *through* [, 33, 34, 35, 38 and] 39 *and the notification and permitting requirements of KRS 224.830 through 224.877.* The time period set out in 401 KAR 32:030, Section 5 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a small quantity generator to be excluded from full regulations under this section, the generator must:

(a) Comply with the requirements of 401 KAR 32:010, Section 2;

(b) If he stores his hazardous waste on-site, stores it in compliance with the requirements of subsection (6) of this section; and

(c) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

1. Permitted under 401 KAR Chapter 38;

2. *In interim status under 401 KAR Chapters 35 and 38;*

3. Located outside of Kentucky and is permitted under 40 CFR Part *270 or in interim status under 40 CFR Parts 270 and 265* [122];

4. [3.] Located outside of Kentucky and is authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part *271* [123]; [or]

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

6. *A facility which:*

a. Beneficially uses or reuses, or legitimately recycles or reclaims his waste; or

b. Treats his waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(8) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section unless the mixture meets any of the characteristics of hazardous wastes identified in 401 KAR 31:030.

(9) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture is subject to full regulation.

Section 6. Special Requirements for Hazardous Waste Which is Used, Re-used, Recycled or Reclaimed.

(1) Except as otherwise provided in subsection[s] (2)

[and (3)] of this section, a hazardous waste which meets *any* [either] of the following criteria is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 38 and 39 *and is not subject to the notification and permitting requirements of KRS 224.830 through 224.877 until the cabinet promulgates regulations to the contrary*:

(a) It is being beneficially used or re-used or legitimately recycled or reclaimed.

(b) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.

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

(2) Except for those wastes listed in subsection (1)(c) of this section, a hazardous waste *that* [which] is a sludge, or *that* [which] is listed in *Section 2 or 3 of* 401 KAR 31:040, *or that contains one (1) or more hazardous wastes listed in Section 2 or 3 of 401 KAR 31:040,* and *that* [which] is transported or stored prior to being used, re-used, recycled or reclaimed is subject to the *following* requirements *with respect to such transportation and storage:* [of 401 KAR Chapters 32, 33, 34, 35, 38 and 39, and 401 KAR 30:020 and 30:030.]

(a) The notification and permitting requirements under KRS 224.830 through 224.877.

(b) 401 KAR Chapter 32.

(c) 401 KAR Chapter 33.

(d) The applicable provisions of 401 KAR 34:010 through 34:210.

(e) The applicable provisions of 401 KAR 35:010 through 35:210.

(f) 401 KAR Chapters 38 and 39 with respect to storage facilities.

(g) 401 KAR 30:020 [and 30:030].

Section 7. Residues of Hazardous Waste in Empty Containers. (1) (a) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsection (2) of this section, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 38 and 39 *but is subject to regulations under 401 KAR Chapter 47.*

(b) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsection (2) of this section is subject to regulations under 401 KAR Chapters 32, 33, 34, 35, 38 and 39, and 401 KAR 30:020 [and 30:030].

(2) (a) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in Section 5(3) of 401 KAR 31:040, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

2. No more than 2.5 centimeters (one (1) inch) of residue remain on the bottom of the container or inner liner*; or*

3. a. No more than three (3) percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size; or

b. No more than 0.3 (three tenths) percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(b) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(c) A container or an inner liner removed from a container that has held a hazardous waste identified in Section 5(3) of 401 KAR 31:040 is empty if:

1. The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

2. The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by test conducted by the generator, to achieve equivalent removal; or

3. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 31:060. Rulemaking petitions for hazardous waste.

RELATES TO: KRS 224.864(3), 224.868, 224.876
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.864(3)
NECESSITY AND FUNCTION: KRS 224.864(3) requires the Natural Resources and Environmental Protection Cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous wastes. This regulation establishes the procedures to exclude a waste at a particular site or facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

Section 1. General Procedures. (1) This regulation sets forth requirements for petitions to exclude a waste at a particular facility from Section 3 of 401 KAR 31:010 or the lists of hazardous wastes in 401 KAR 31:040.

(2) Each petition must be submitted to the cabinet by certified mail and must include:

(a) The petitioner's name and address;

(b) A statement of the petitioner's interest in the proposed action;

(c) A description of the proposed action, including (where appropriate) suggested regulatory language;

(d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information; and

(e) A check payable to the Kentucky State Treasurer in the amount required by 401 KAR Chapter 39.

(3) The cabinet will make a tentative decision to grant or deny a petition. If the tentative decision is to deny, the

cabinet will notify the petitioner. If the tentative decision is to grant the petition, the cabinet will propose an amendment to 401 KAR 31:070.

(4) Upon the written request of any interested person, the cabinet will hold a public hearing as specified in KRS 13.085.

(5) After evaluating all public comments the cabinet will either file the proposed amendment with the Legislative Research Commission for adoption or deny the petition.

Section 2. Petitions to Amend 401 KAR Chapter 31 to Exclude a Waste Produced at a Particular Facility. (1) Any person seeking to exclude a waste at a particular generating facility from the lists in 401 KAR 31:040 may petition for an amendment to the regulation under this section and Section 1 of this regulation. To be successful, the petitioner must demonstrate to the satisfaction of the cabinet that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste listed under Section 2(1)(b) of 401 KAR 31:020, that it also does not meet the criterion of Section 2(1)(c) of 401 KAR 31:020. A waste which is so excluded may still, however, be a hazardous waste in accordance with 401 KAR 31:030.

(2) The procedures in this section and Section 1 of this regulation may also be used to petition the cabinet for a regulatory amendment to exclude from Section 3 of 401 KAR 31:010, a waste which is described in those sections and is either a waste listed in 401 KAR 31:040, contains a waste listed in 401 KAR 31:040, or is derived from a waste listed in 401 KAR 31:040. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by subsection (1) of this section, except that where the waste is a mixture of solid waste and one (1) or more listed hazardous wastes or is derived from one (1) or more hazardous wastes, his demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste in accordance with 401 KAR 31:030.

(3) If the waste is listed with codes "I," "C," "R," or "E" in 401 KAR 31:040, the petitioner must show that demonstration samples of the waste do not exhibit the relevant characteristic defined in 401 KAR 31:030 by using any applicable test methods prescribed therein.

(4) If the waste is listed with code "T" in 401 KAR 31:040, the petitioner must demonstrate that:

(a) Demonstration samples of the waste do not contain the constituent (as defined in 401 KAR 31:160) that caused the cabinet to list the waste, using the appropriate test methods prescribed in 401 KAR 31:120; or

(b) The waste does not meet the criterion of Section 2(1)(c) of 401 KAR 31:020 when considering the factors in Section 2(1)(c)1 through 11 of 401 KAR 31:020.

(5) If the waste is listed with the code "H" in 401 KAR 31:040, the petitioner must demonstrate that the waste does not meet both of the following criteria:

(a) The criterion of Section 2(1)(b) of 401 KAR 31:020.

(b) The criterion of Section 2(1)(c) of 401 KAR 31:020 when considering the factors listed in Section 2(1)(c)1 through 11 of 401 KAR 31:020.

(6) Demonstration samples must consist of enough representative samples, but in no case less than four (4) samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(7) Each petition must include, in addition to the information required by Section 1(2) of this regulation:

(a) The name and address of the laboratory facility performing the sampling or tests of the waste;

(b) The names and qualifications of the persons sampling and testing the waste;

(c) The dates of sampling and testing;

(d) The location of the generating facility;

(e) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(f) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(g) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in Section 2(1)(c) of 401 KAR 31:020;

(h) A description of the methodologies and equipment used to obtain the representative samples;

(i) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(j) A description of the tests performed (including results);

(k) The names and model numbers of the instruments used in performing the tests; and

(l) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(8) After receiving a petition for an exclusion, the cabinet may request any additional information which the cabinet may reasonably require to evaluate the petition.

(9) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(10) The cabinet may exclude only the part of the waste for which the demonstration is submitted where there is reason to believe that variability of the waste justifies a partial exclusion.

Section 3. Requirements for Excluded Wastes. Upon approval by the cabinet of a petition to exclude waste from a particular facility, the excluded waste shall thereby be listed as a *solid* [special] waste [in accordance with KRS 224.868] and be subject to the requirements for *solid* [special] waste disposal in 401 KAR Chapter 47 [and reporting requirements under KRS 224.868].

Section 4. Repeal or Modification of an Exclusion. The cabinet shall repeal or modify an exclusion granted to any generator or petitioner for a waste whenever:

(1) The cabinet has obtained information, which was not available at the time the petition for exclusion was granted, which leaves the cabinet to believe that reasonable probability exists that the waste:

(a) Should not have been excluded from regulation in accordance with Section 2 of this regulation;

(b) Should be regulated as a hazardous waste because it contains a hazardous constituent which was listed as a hazardous waste subsequent to approval of a petition to delist the waste at a particular facility; or

(c) Should be regulated as a hazardous waste because new studies or analysis have been performed which indicate the waste meets the definition of a hazardous waste in KRS 224.005.

(2) The cabinet has obtained information that a petition for an exclusion was incomplete, inaccurate or based on erroneous data or calculations.

(3) The cabinet has obtained information from any other agency of state or federal government, including the EPA, that the waste should be regulated as a hazardous waste consistent with the Resource Conservation and Recovery Act (P.L. 94-580), as amended, and pursuant to KRS Chapter 224.

Section 5. Compatibility with the Federal Acts. In accordance with Section 3 of 401 KAR 30:020, the cabinet shall not approve a petition to exclude a waste at a particular facility unless:

(1) Exclusion of the waste would be consistent with the requirements in KRS 224.864(3);

(2) Petitioning fees have been paid in accordance with 401 KAR 39:020; and

(3) All the requirements of this regulation are satisfied.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:020. General facility standards.

RELATES TO: KRS 224.033, 224.071, 224.835, 224.842, 224.855, 224.860, 224.866
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet 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 chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the general standards for facilities.

Section 1. Applicability. (1) This chapter applies to owners and operators of all hazardous waste facilities, except as provided in 401 KAR 34:010, Section 1, and subsection (2) of this section.

(2) Section 9(2) of this regulation *applies* [is applicable] only to facilities subject to regulation under 401 KAR 34:180, 34:190, 34:200, 34:210, *34:220, 34:230* and 34:240 of this chapter.

Section 2. Identification Number. Every facility owner or operator must apply to the cabinet for an EPA identification number in accordance with the notification procedures.

Section 3. Required Notices. (1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the director 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.

(2) 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.

(3) Before transferring 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 chapter and 401 KAR Chapter 38.

Section 4. General Waste Analysis. (1)(a) 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 chapter or with the conditions of a permit issued under 401 KAR Chapter 38.

(b) The analysis may include data developed under 401 KAR Chapter 31 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(c) 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:

1. When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and

2. For off-site facilities, when the results of the inspection required in paragraph (d) of this subsection indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(d) 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.

(2) 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 subsection (1) of this section. He must keep this plan at the facility. At a minimum, the plan must specify:

(a) The parameters for which each hazardous waste will be analyzed and the rationale 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 subsection (1) of this section);

(b) The test methods which will be used to test for these parameters;

(c) 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:]

[1.] One (1) of the sampling methods described in 401 KAR 31:100 [; or]

[2. An equivalent sampling method (see Section 1(3) of 401 KAR 31:040)].

(d) 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;

(e) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

(f) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Section 2 of 401 KAR 34:240 and in Section 8 of this regulation.

(3) For off-site facilities, the waste analysis plan required in subsection (2) of this section 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:

(a) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(b) The sampling method which will be used to obtain a representative sample of the waste to be idenified, if the identification method includes sampling.

Section 5. Security. (1) 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 that:

(a) 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

(b) 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.

(2) Unless the owner or operator has made a successful demonstration under subsection (1) of this section, a facility must have:

(a) 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

(b) 1. 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

2. 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).

(3) Unless the owner or operator has made a successful demonstration under subsection (1) of this section, 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.

Section 6. General Inspection Requirements. (1) 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.

(2) (a) 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.

(b) He must keep this schedule at the facility.

(c) 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.).

(d) 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 Section 5 of 401 KAR 34:180, Section 4 of 401 KAR 34:190, Section 5 of 401 KAR 34:200, Sections *4 and* 5 of 401 KAR 34:210, *Section 4 of 401 KAR 34:230* and Section 7 of 401 KAR 34:240 of this chapter, where applicable.

(3) 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.

(4) 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.

Section 7. Personnel Training. (1) (a) 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 chapter. The owner or operator must ensure that this program includes all the elements described in the document required under subsection (4)(c) of this section.

(b) 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.

(c) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

1. Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

2. Key parameters for automatic waste feed cut-off systems;
3. Communications or alarm systems;
4. Response to fires or explosions;
5. Response to groundwater contamination incidents; and
6. Shutdown of operations.

(2) Facility personnel must successfully complete the program required in subsection (1) of this section 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 subsection (1) of this section.

(3) Facility personnel must take part in an annual review of the initial training required in subsection (1) of this section.

(4) The owner or operator must maintain the following documents and records at the facility:

(a) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(b) A written job description for each position listed under paragraph (a) 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;

(c) 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 (a) of this subsection; and

(d) Records that document that the training or job experience required under subsections (1), (2) and (3) of this section has been given to, and completed by, facility personnel.

(5) 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.

Section 8. General Requirements for Ignitable, Reactive, or Incompatible Wastes. (1) 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.

(2) Where specifically required by other sections of this regulation, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

(a) Generate extreme heat or pressure, fire or explosions, or violent reactions;

(b) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(c) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

(d) Damage the structural integrity of the device or facility; or

(e) Through other like means threaten human health or the environment.

(3) When required to comply with subsection (1) or (2) of this section, 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 4 of this regulation), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

Section 9. Location Standards. (1) Seismic considerations.

(a) 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.

(b) As used in paragraph (a) of this subsection:

1. "Fault" means a fracture along which rocks on one (1) side have been displaced with respect to those on the other side.

2. "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction.

3. "Holocene" means the most recent epoch of the Quarternary period, extending from the end of the Pleistocene to the present.

(2) Floodplains.

(a) *Except as paragraph (c) of this subsection applies, a facility located within the 100-year floodplain shall be designed, constructed, operated, maintained, and refitted if necessary, to prevent washout of any hazardous waste and to protect the facility from inundation by waters of the 100-year floodplain throughout the active life of the facility, closure and for disposal facilities, post-closure. Prevention of washout and protection from inundation shall be accomplished by one (1) of the following:* [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 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.]

1. Using a structure or device such as a dike or floodwall which has been designed:

a. To provide adequate freeboard to prevent overtopping of the structure during a 100-year flood due to wind and wave action;

b. To provide sufficient structural integrity to prevent massive failure due to the force and erosive tendencies of the 100-year floodwaters;

c. To accommodate such other characteristics of the facility's location, such as special geologic or hydrological features, as necessary to accomplish the requirements of this subsection.

2. Providing procedures which will cause the waste to be removed safely, before floodwaters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters.

3. Demonstrating to the satisfaction of the cabinet that

alternate devices or measures, with the exception of covering the waste, will provide protection which meets the requirements of this paragraph.

(b) No person shall be issued a permit to construct a new hazardous waste site or facility in the floodway.

(c) No person shall be issued a permit to construct a new hazardous waste disposal site or facility in the 100-year floodplain or a seasonal highwater table.

(d) No hazardous waste site or facility shall restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the 100-year floodplain so as to pose a hazard to human life, wildlife or land or water resources.

(e) [(d)] [(b)] As used in paragraphs (a) *through (c)* of this subsection:

1. "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.

2. "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

3. "100-year flood" means a flood that has a one (1) percent chance of being equalled or exceeded to any given year.

4. "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:060. Groundwater protection.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.842, 224.855, 224.860, 224.866
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Natural Resources and Environmental Protection Cabinet to establish standards for these permits, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities. This regulation establishes the minimum groundwater protection standards for new hazardous waste sites or facilities.

Section 1. Applicability. (1) Except as provided in subsection (2) of this section, the requirement in this regulation apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills. The owner or operator must satisfy the requirements of this regulation for all wastes (or constituents thereof) contained in any such waste management unit at the facility that receives hazardous waste after *January 26, 1983* [the effective date of this regulation] (hereinafter referred to as a "regulated unit"). Any waste or waste constituent migrating beyond the waste management area under Section 6(2) of this regulation is assumed to originate from a regulated unit unless the cabinet finds that such waste or waste constituent originated from another source.

(2) The owner or operator is not subject to the requirements of this regulation if:

(a) He is exempted under Section 1 of 401 KAR 34:010;

(b) He designs and operates a surface impoundment in compliance with Section 3 of 401 KAR 34:200, a pile in compliance with Sections 1(3), 3 or 4 of 401 KAR 34:210, or a landfill in compliance with Section 3 of 401 KAR 34:230;

(c) The cabinet finds pursuant to Section 8(4) of 401 KAR 34:220 that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under Section 7 of 401 KAR 34:070. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this subsection on assumptions that maximize the rate of liquid migration.

(3) This regulation applies during the active life of the regulated unit (including the closure period). After closure of the regulated unit, this regulation:

(a) Does not apply if all waste, waste residues, contaiminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(b) Applies during the post-closure care period under Section 7 of 401 KAR 34:070 if the owner or operator is conducting a detection monitoring program under Section 9 of this regulation; or

(c) Applies during the compliance period under Section 7 of this regulation if the owner or operator is conducting a compliance monitoring program under Section 10 of this regulation or a corrective action program under Section 11 of this regulation.

Section 2. Required Programs. (1) Owners and operators subject to this regulation must conduct a monitoring and response program as follows:

(a) Whenever hazardous constituents under Section 4 of this regualtion from a regulated unit are detected at the compliance point under Section 6 of this regulation, the owner or operator must institute a compliance monitoring program under Section 10 of this regulation;

(b) Whenever the groundwater protection standard under Section 3 of this regulation is exceeded, the owner or operator must institute a corrective action program under Section 11 of this regulation;

(c) Whenever hazardous constituents under Section 4 of this regulation from a regulated unit exceed concentration limits under Section 5 of this regulation in groundwater between the compliance point under Section 6 of this regulation and the downgradient facility property boundary, the owner or operator must institute a corrective action program under Section 11 of this regulation; or

(d) In all other cases, the owner or operator must institute a detection monitoring program under Section 9 of this regulation.

(2) The cabinet will specify in the facility permit the specific elements of the monitoring and response program.

The cabinet may include one (1) or more of the programs identified in subsection (1) of this section in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the cabinet will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

Section 3. Groundwater Protection Standard. The owner or operator must comply with conditions specifed in the facility permit that are designed to ensure the hazardous constituents under Section 4 of this regulation entering the groundwater from a regulated unit do not exceed the concentration limits under Section 5 of this regulation in the uppermost aquifer underlying the waste management area beyond the point of compliance under Section 6 of this regulation during the compliance period under Section 7 of this regulation. The cabinet will establish this groundwater protection standard in the facility permit.

Section 4. Hazardous Constituents. *(1)* The cabinet will specify in the facility permit the hazardous constituents to which the groundwater protection standard of Section 3 of this regulation applies. Hazardous constituents are constituents identified in 401 KAR 31:170 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, *unless the secretary has excluded them under subsection (2) of this section.*

(2) The secretary will exclude a 401 KAR 31:170 constituent from the list of hazardous constitutents specified in the facility permit if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the secretary will consider the following:

(a) Potential adverse effects on groundwater quality, considering:

1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity of groundwater and the direction of groundwater flow;

4. The proximity and withdrawal rates of groundwater users;

5. The current and future uses of groundwater in the area;

6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

7. The potential for health risks caused by human exposure to waste constituents;

8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

1. The volume and physical and chemical characteristics of the waste in the regulated unit;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity and quality of groundwater, and the direction of groundwater flow;

4. The patterns of rainfall in the region;

5. The proximity of the regulated unit to surface waters;

6. The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

7. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

8. The potential for health risks caused by human exposure to waste constituents;

9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

10. The persistence and permanence of the potential adverse effects.

(3) In making any determination under subsection (2) of this section about the use of groundwater in the area around the facility, the secretary will consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7 or as designated by the secretary.

Section 5. Concentration Limits. *(1)* The cabinet will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under Section 4 of this regulation. The concentration of a hazardous constituent:

(a) [(1)] Must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(b) [(2)] For any of the constituents listed in *Table 1* [Section 2(1) and (2) of 401 KAR 30:030], must not exceed the respective value given in that *table* [section] if the background level of the constituent is below the value given in *Table 1; or* [Section 2(1) and (2) of 401 KAR 30:030.]

(c) Must not exceed an alternate limit established by the secretary under subsection (2) of this section.

(2) The secretary will establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the secretary will consider the following factors:

(a) Potential adverse effects on groundwater quality, considering:

TABLE I

MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUNDWATER PROTECTION

Constituent	Maximum concentration
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chromium	0.05 mg/l
Lead	0.05 mg/l
Mercury	0.002 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5,8-dimethanonaphthalene)	0.0002 mg/l
Lindane (1,2,3,4,5,6,-hexachlorocyclohexane, gamma isomer)	0.004 mg/l
Methoxychlor (1,1,1-Trichloro-2,2,-bis (p-methoxyphenyl-ethane	0.1 mg/l
Toxaphene ($C_{10}H_{10}C_{18}$, Technical chlorinated camphene, 67-69 percent chlorine)	0.005 mg/l
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1 mg/l
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01 mg/l

1. The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity of groundwater and the direction of groundwater flow;

4. The proximity and withdrawal rates of groundwater users;

5. The current and future uses of groundwater in the area;

6. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

7. The potential for health risks caused by human exposure to waste constituents;

8. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constitutents;

9. The persistence and permanence of the potential adverse effects; and

(b) Potential adverse effects of hydraulically connected surface water quality, considering:

1. The volume and physical and chemical characteristics of the waste in the regulated unit;

2. The hydrogeological characteristics of the facility and surrounding land;

3. The quantity and quality of groundwater, and the direction of groundwater flow;

4. The patterns of rainfall in the region;

5. The proximity of the regulated unit to surface waters;

6. The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

7. The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

8. The potential for health risks caused by human exposure to waste constituents;

9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

10. The persistence and permanence of the potential adverse effects.

(3) In making any determination under subsection (2) of this section about the use of groundwater in the area around the facility, the secretary will consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7 or as designated by the secretary.

Section 6. Point of Compliance. (1) The cabinet will specify in the facility permit the point of compliance at which the groundwater protection standard of Section 3 of this regulation applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(2) The waste management area is the limit projected in the horizontal plane of the area on which waste will be place during the active life of a regulated unit.

(a) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(b) If the facility contains more than one (1) regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

Section 7. Compliance Period. (1) The cabinet will specify in the facility permit the compliance period during which the groundwater protection standard of Section 3 of this regulation applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period).

(2) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of Section 10 of this regulation.

(3) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (1) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of Section 3 of this regulation has not been exceeded for a period of three (3) consecutive years.

Section 8. General Groundwater Monitoring Requirements. The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy Section 9, 10 or 11 of this regulation:

(1) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(a) Represent the qualify of background water that has not been affected by leakage from a regulated unit; *and*

(b) Represent the quality of groundwater passing the point of compliance. [; and]

[(c) Yield enough samples to accomplish the requirements in paragraphs (a) and (b) of this subsection. For new facilities, the minimum number of wells shall be two (2) upgradient and two (2) downgradient to the facility. Wells shall be spaced no more than fifty (50) feet apart along aline perpendicular to groundwater flow beneath the facility such that no more than fifty (50) feet of the perpendicular side of the facility is unmonitored. The cabinet may grant a variance to the requirements in this paragraph in accordance with Section 2 of 401 KAR 30:020 if the owner or operator demonstrates that:]

[1. The placement of aquifers beneath the facility justifies a different number or spacing of the groundwater monitoring wells; or]

[2. Circumstances exist beyond the control of the owner or operator, such as the location of an existing building, which justify a different number or spacing of groundwater monitoring wells.]

(2) If a facility contains more than one (1) regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring-well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program must include procedures and techniques for:

(a) Sample collection;

(b) Sample preservation and shipment;

(c) Analytical procedures; and

(d) Chain of custody control.

(5) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) Where appropriate, the groundwater monitoring program must establish background groundwater quality for each of the hazardous constituents or monitoring parameters or constituents specified in the permit.

(a) In the detection monitoring program under Section 9 of this regulation, background groundwater quality for a monitoring parameter or constituent must be based on data from at least quarterly sampling of wells upgradient from the waste management area for one (1) year.

(b) In the compliance monitoring program under Section 10 of this regulation, background groundwater quality for a hazardous constituent must be based on data from upgradient wells that:

1. Is available before the permit is issued;

2. Accounts for measurement errors in sampling and analysis; and

3. Accounts, to the extent feasible, for seasonal fluctuations in background groundwater quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

(c) Background quality may be based on sampling of wells that are not upgradient from the waste management area where sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells. The owner or operator shall submit documentation that demonstrates to the satisfaction of the cabinet that such other wells will provide samples that are at least as representative than that which would reasonably be expected to be provided from an upgradient well.

(d) In developing the data base used to determine a background value for each parameter or constituent, the owner or operator must take a minimum of one (1) sample from each well and a minimum of four (4) samples from the entire system used to determine background quality, each time the system is sampled.

(8) The owner or operator must use the following statistical procedure in determining whether background values or concentration limits have been exceeded:

(a) If, in a detection monitoring program, the level of a constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00:

1. The owner or operator must take at least four (4) portions from a sample at each well at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Students' t-test as described in 401 KAR 34:320. If the test indicates that the difference is significant, the owner or operator must repeat the same procedures (with at least the same number of portions as used in the first test) with fresh samples from the monitoring wells. If this second round of analyses indicates that the difference is significant, the owner or operator must conclude that a statistically significant change has occurred; or

2. With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The cabinet will specify such a procedure in the facility permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in subparagraph 1 of this paragraph.

(b) In all other situations in a detection monitoring program and in a compliance monitoring program, the owner or operator must use a statistical procedure specified in the permit which provides reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be indicated. The cabinet will specify a statistical procedure in the facility permit which:

1. Is appropriate for the distribution of the data used to establish background values or concentration limits; and

2. Provides a reasonable balance between the probability of falsely identifying a non-contaminating regulated unit

and the probability of failing to identify a contaminating regulated unit.

Section 9. Detection Monitoring Program. An owner or operator required to establish a detection monitoring program under this regulation must, at a minimum, discharge the following responsbilities:

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The cabinet will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(a) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(b) The mobility, stability, and persistence of waste constituents or their reaction products in the saturated and unsaturated zone beneath the waste management area;

(c) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(d) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the background groundwater quality.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 6 of this regulation. The groundwater monitoring system must comply with Section 8(1)(b), (2) and (3).

(3) The owner or operator must establish a background value for each monitoring parameter or constituent specified in the permit pursuant to subsection (1) of this section. The permit will specify the background values for each parameter or specify the procedures to be used to calculate the background values.

(a) The owner or operator must comply with Section 8(7) of this regualtion in developing the data base used to determine the background values.

(b) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under Section 8(8) of this regulation.

(c) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with Section 8(1)(a), (2) and (3) of this regulation.

(4) The owner or operator must determine groundwater quality at each monitoring well at the compliance point at least semi-annually during the active life of a regulated unit (including the closure period) and the post-closure care period. The owner or operator must express the groundwater quality at each monitoring well in a form necessary for the determination of statistically significant increases under Section 8(8) of this regulation. The cabinet shall specify in the permit the frequency of sampling necessary to determine whether a statistically significant increase has occurred under Section 8(8) of this regulation.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit. This determination shall be made at least annually.

(6) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of Section 8(4) and (5) of this regulation.

(7) The owner or operator must determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to subsection (1) of this section each time he determines groundwater quality at the compliance point under subsection (4) of this section.

(a) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality at each monitoring well at the compliance point for each parameter or constituent to the background value for that parameter or constituent, according to the statistical procedure specified in the permit under Section 8(8) of this regulation.

(b) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The cabinet will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(8) If the owner or operator determines, pursuant to subsection (7) of this section, that there is a statistically significant increase for parameters or constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point he must:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification must indicate what parameters or constituents have shown statistically significant increases;

(b) Immediately sample the groundwater in all monitoring wells and determine the concentration of all constituents identified in 401 KAR 31:170 that are present in groundwater.

(c) Establish a background value for each constituent from 401 KAR 31:170 that has been found at the compliance point under paragraph (b) of this section, as follows:

1. The owner or operator must comply with Section 8(7) of this regulation in developing the data base used to determine background values;

2. The owner or operator must express background values in a form necessary for the determination of statistically significant increases under Section 8(8) of this regulation; and

3. In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with Section 8(1)(a), (2) and (3) of this regulation;

(d) Within ninety (90) days, submit to the cabinet an application for a permit modification to establish a compliance monitoring program meeting the requirements of Section 10 of this regulation. The application must include the following information:

1. An identification of the concentration of any constituents from 401 KAR 31:170 found in the groundwater at each monitoring well at the compliance point;

2. Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of Section 10 of this regulation;

3. Any proposed changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of Section 10 of this regulation;

4. For each hazardous constituent found at the compliance point, a proposed concentration limit under Section 5(1) [(a)] or *(2)* [(b)] of this regulation, *or a notice of intent to sink a variance under Section 5(2) of this regulation*; and

(e) Within 180 days, submit to the cabinet:

1. All data necessary to justify any variance sought under Section 5(2) of this regulation; and

2. An engineering feasibility plan for a corrective action program necessary to meet the requirements of Section 11 of this regulation, *unless all hazardous constituents identified under subsection (8)(b) of this section are listed in Table 1 of Section 5 of this regulation and their concentrations do not exceed the respective values given in that table.*

(9) If the owner or operator determines, pursuant to subsection (7) of this section, that there is a statistically significant increase of parameters or constituents specified pursuant to subsection (1) of this section at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this subsection in addition to submitting a permit modification application under subsection (8)(d) of this section, he is only relieved of the requirement to submit a permit modification application within the time specified in subsection (8)(d) of this section if the cabinet approves the demonstration made under this subsection showing that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this subsection, the owner or operator must:

(a) Notify the cabinet in writing within seven (7) days of determining a statistically significant increase at the compliance point that he intends to make a demonstration under this subsection;

(b) If appropriate, within ninety (90) days, submit a report to the cabinet which demonstrates that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation;

(c) Within ninety (90) days, submit to the cabinet an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

(d) Continue to monitor in accordance with the detection monitoring program established under this section.

(10) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

(11) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under Section 3 of this regulation are taken during the term of the permit.

Section 10. Compliance Monitoring Program. An owner or operator required to establish a compliance monitoring program under this regulation must, at a minimum, discharge the following responsibilities:

(1) The owner or operator must monitor the groundwater to determine whether all regulated units are in compliance with the groundwater protection standard under Section 3 of this regulation. The cabinet will specify the groundwater protection standard in the facility permit, including:

(a) A list of the hazardous constituents identified under Section 4 of this regulation;

(b) Concentration limits under Section 5 of this regulation for each of those hazardous constituents;

(c) The compliance point under Section 6 of this regulation; and

(d) The compliance period under Section 7 of this regulation.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under Section 6 of this regulation. The groundwater monitoring system must comply with Section 8(1)(b), (2) and (3).

(3) Where a concentration limit established under subsection (1)(b) of this section is based on background groundwater quality, the cabinet will specify the concentration limit in the permit as follows:

(a) If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the owner or operator may establish the concentraion limit through sampling at upgradient wells each time groundwater is sampled at the compliance point. The cabinet will specify the procedures used for determining the concentration limit in this manner in the permit. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent at the upgradient well.

(b) If a hazardous constituent is identified in Section *5 of this regulation* [2(1) and (2) of 401 KAR 30:030] and the difference between the respective concentration limit in Section *5 of this regulation* [2(1) and (2) of 401 KAR 30:030] and the background value of that constituent under Section 8(7) of this regulation is not statistically significant, the owner or operator must use the background value of the constituent as the concentration limit. In determining whether this difference is statistically significant, the owner or operator must use a statistical procedure specified in the permit which is capable of providing reasonable confidence that a real difference will be indicated. The statistical procedure must:

1. Be appropriate for the distribution of the data used to establish background values; and

2. Provide a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

(c) The owner or operator must:

1. Comply with Section 8(7) of this regulation in developing the data base used to determine background values;

2. Express background values in a form necessary for the determination of statistically significant increases under Section 8(8) of this regulation; and

3. Use a groundwater monitoring system that complies with Section 8(1)(a), (2) and (3) of this regulation.

(4) The owner or operator must determine the concentration of hazardous constituents in the groundwater at each monitoring well at the compliance point as specified in the permit and which shall be no less frequently than at least quarterly during the compliance period. The owner or operator must express the concentration at each monitoring well in a form necessary for the determination of statistically significant increases under Section 8(8) of this regulation.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer as specified in the permit and which shall be no less frequently than at least annually.

(6) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in 401 KAR 31:170 as specified in the permit at least annually to determine whether additional hazardous constituents are present in the uppermost

aquifer. If the owner or operator finds constituents from 401 KAR 31:170 in the groundwater that are not identified in the permit as hazardous constituents, the owner or operator must report the concentrations of these additional constituents to the cabinet within seven (7) days after completion of the analysis.

(7) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of Section 8(4) and (5) of this regulation.

(8) The owner or operator must determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to subsection (1) of this section each time he determines the concentration of hazardous constituents in the groundwater at the compliance point.

(a) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality at each monitoring well at the compliance point for each hazardous constituent to the concentration limit for that constituent according to the statistical procedures specified in the permit under Section 8(8) of this regulation.

(b) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point, within a reasonable time period after completion of sampling. The cabinet will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(9) If the owner or operator determines, pursuant to subsection (8) of this section, that the groundwater protection standard is being exceeded at any monitoring well at the point of compliance, he must:

(a) Notify the cabinet of this finding in writing within seven (7) days. The notification must indicate what concentration limits have been exceeded.

(b) Submit to the cabinet an application for a permit modification to establish a corrective action program meeting the requirements of Section 11 of this regulation within 180 days, or within ninety (90) days if an engineering feasibility study has been previously submitted to the cabinet under Section 9(8)(e) of this regulation. The application must at a minimum include the following information:

1. A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under subsection (1) of this section; and

2. A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(10) If the owner or operator determines, pursuant to subsection (8) of this section, that the groundwater protection standard is being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this subsection in addition to submitting a permit modification application under subsection (9)(b) of this section, he is only relieved of the requirement to submit a permit modification application within the time specified in subsection (9)(b) of this section if the cabinet approves the demonstration made under this subsection showing that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this subsection, the owner or operator must:

(a) Notify the cabinet in writing within seven (7) days that he intends to make a demonstration under this subsection;

(b) If appropriate, within ninety (90) days, submit a report to the cabinet which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(c) Within ninety (90) days, submit to the secretary an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(d) Continue to monitor in accordance with the compliance monitoring program established under this section.

(11) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

(12) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under Section 3 of this regulation are taken during the term of the permit.

Section 11. Corrective Action Program. An owner or operator required to establish a corrective action program under this regulation must, at a minimum, discharge the following responsibilities:

(1) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under Section 3 of this regulation. The cabinet will specify the groundwater protection standard in the facility permit, including:

(a) A list of the hazardous constituents identified under Section 4 of this regulation;

(b) Concentration limits under Section 5 of this regulation for each of those hazardous constituents;

(c) The compliance point under Section 6 of this regulation; and

(d) The compliance period under Section 7 of this regulation.

(2) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.

(3) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The cabinet will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the correction action will begin and such a requirement will operate in lieu of Section 10(9)(b) of this regulation.

(4) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a com-

pliance monitoring program under Section 10 of this regulation and must be as effective as that program in determining compliance with the groundwater protection standard under Section 3 of this regulation and in determining the success of a corrective action program under subsection (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under Section 4 of this regulation that exceed concentration limits under Section 5 of this regulation in groundwater between the compliance point under Section 6 of this regulation and the downgradient facility property boundary. The permit will specify the measures to be taken.

(a) Corrective action measures under this subsection must be initiated and completed within a reasonable period of time as specified by the cabinet considering the extent of contamination.

(b) Corrective action measures under this subsection may be terminated upon approval of the cabinet once the concentration of hazardous constituents under Section 4 of this regulation is reduced to levels below their respective concentration limits under Section 5 of this regulation.

(6) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate correction action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate to the satisfaction of the cabinet based on data from the groundwater monitoring program under subsection (4) of this section, that the groundwater protection standard of Section 3 of this regulation has not been exceeded for a period of three (3) consecutive years.

(7) The owner or operator must report in writing to the cabinet on the effectiveness of the corrective action program. The owner or operator must submit these reports at least semi-annually on a schedule determined by the cabinet.

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within ninety (90) days, submit an application for a permit modification to make any appropriate changes to the program.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:090. Closure financial requirements.

RELATES TO: KRS 224.033, 224.071, *224.830 through 224.877, 224.994* [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the closure financial requirements.

Section 1. Cost Estimate for Facility Closure. (1) The owner or operator must prepare a written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan as specified in Section 3 of 401 KAR 34:070 *and applicable closure requirements in Section 9 of 401 KAR 34:180, Section 5 of 401 KAR 34:190, Section 7 of 401 KAR 34:200, Section 9 of 401 KAR 34:210, and Section 8 of 401 KAR 34:240.* 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.

(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 *paragraphs* [subsection (2)] (a) and (b) of this *sub*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.

(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.

(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 2. 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 Sections 3 through 9 of this regulation.

Section 3. Closure Trust Fund. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by establishing a closure trust fund which conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the director. An owner or operator of a

new facility must send the originally signed duplicate of the trust agreement to the cabinet 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 which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The *trust agreement must be executed on the form provided by the cabinet containing* wording [of the trust agreement must be] identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 2 of 401 KAR 34:140). 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.

(3) Payments to 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 closure trust fund must be made as follows:

(a) For a new facility, as defined in 401 KAR 30:010, 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. The first payment must be at least equal to the current closure cost estimate (see Section 1 of this regulation), except as provided in Section 10 of this regulation, 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:

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

Where CE is the current 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.

(b) If an owner or operator established a trust fund as specified in Section *3* [7(4)] of 401 KAR *35:090* [35:010], and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in *this* subsection [(3) 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 Chapter 35. The amount of each payment must be determined by this formula:

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

Where CE is the current 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.

(4) 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 (3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in [Sections 2 through 12 of] this regulation or in 401 KAR *35:090* [Chapter 35], 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 section and Section *3* [7(4)] of 401 KAR *35:090* [35:010], as applicable.

(6) After the pay-in period is completed, whenever the current 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. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days of 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 closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current 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 closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in [Sections 2 through 12 of] this regulation 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.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (7) and (8) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(10) 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, 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 Section 12 of this regulation, that the owner or operator is no longer required to maintain financial assurance for closure.

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

(a) An owner or operator substitutes alternate financial assurance for closure as specified in this section; or

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation in accordance with Section 12 of this regulation.

Section 4. Surety Bond Guaranteeing Payment into a Closure Trust Fund. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining a surety bond which conforms to the requirements of this section 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

treatment, storage, or 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.

(2) The *surety bond must be executed on the form provided by the cabinet containing* wording [of the surety bond must be] identical to the wording specified in 401 KAR 34:144.

(3) The owner or operator who uses a surety bond to satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) *Unless* [Until] the standby trust fund is funded pursuant to the requirements of [Sections 2 through 12 of] this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see *Section 1 of* 401 KAR 34:140) to show current closure cost estimates;

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

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

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

(a) 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

(b) 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 secretary or by circuit court or other court of competent jurisdiction pursuant to KRS Chapter 224, or within fifteen (15) days after issuance of a notice of termination of the permit pursuant to 401 KAR Chapter 38; or

(c) Provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation 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.

(5) 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.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 10 of this regulation.

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the penal sum, the owner or operator 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 *regulation* [section] to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the director.

(8) Under the terms of the bond, the surety may cancel the bond 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.

(9) 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 [Sections 2 through 12 of] this regulation.

Section 5. Surety Bond Guaranteeing Performance of Closure. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining a surety bond which conforms to the requirements of this subsection and by 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 treatment, storage, or 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.

(2) The *surety bond must be executed on the form provided by the cabinet containing* wording [of the surety bond must be] identical to the wording specified in 401 KAR 34:148.

(3) The owner or operator who uses a surety bond to satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Unless the standby trust fund is funded pursuant to the requirements of [Sections 2 through 12 of] this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating on Schedule A of the trust agreement (see 401 KAR 34:140) to show current closure cost estimates;

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

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

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

(a) Perform final closure in accordance with the closure plan and other requirements in the permit for the facility whenever required to do so; or

(b) Provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation 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.

(5) 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.

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

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator, 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 [Sections 2 through 12 of] this regulation. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the director.

(8) 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.

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

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation in accordance with Section 12 of this regulation.

(10) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation in accordance with Section 12 of this regulation.

Section 6. Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the director. An owner or operator of a new facility must have submitted the letter of credit to the director 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 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.

(2) The wording of the letter of credit must be identical to the wording specified in *Section 2 of* 401 KAR 34:152.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of [Sections 2 through 12 of] this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section *3* [1] of this regulation;

2. Updating the Schedule A of the trust agreement (see *Section 1 of* 401 KAR 34:140) to show current closure cost estimates;

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

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

(4) 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 *(see Section 1 of 401 KAR 34:152 for an example).*

(5) 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.

(6) The letter of credit must be issued for at least the amount of the current closure cost estimate except as provided in Section 10 of this regulation.

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days of the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in [Sections 2 through 12 of] this regulation to cover the increase. Whenever the adjusted closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the director.

(8) 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, the director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in [Sections 2 through 12 of] this regulation 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 [Sections 2 through 12 of] this regulation and obtain written approval of such assurance from the director.

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

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements *of this regulation* in accordance with Section 12 of this regulation.

Section 7. Closure Insurance. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining closure insurance which conforms to the requirements of this section 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. *Each insurance policy providing primary coverage must be issued by an insurer who is licensed to transact the business of insurance in the Commonwealth of Kentucky except as KRS 304.11-030 provides otherwise. Each insurance policy providing excess coverage must be issued by an insurer who is licensed to transact the business of insurance in a state.* [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 *certificate of insurance must be executed on a form provided by the cabinet containing* wording [of the certificate of insurance must be] identical to the wording specified in 401 KAR 34:156.

(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 Section 10 of this regulation. 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 Section 12 of this regulation, 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 subsection (10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in [Sections 2 through 12 of] this regulation, 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 [Sections 2 through 12 of] this regulation 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 [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements *of this regulation* in accordance with Section 12 of this regulation.

Section 8. Financial Test and Corporate Guarantee for Closure. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator must

meet the criteria of either *paragraph of this subsection* [of the following]:

(a) The owner or operator must have:

1. 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

2. 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

3. Tangible net worth of at least $10 million; and

4. Assets in the *United States* [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:

1. 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

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

3. Tangible net worth of at least $10 million; and

4. Assets located in the *United States* [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 subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 through *4* [5] of the letter from the owner's or operator's chief financial officer (see 401 KAR 34:159).

(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 *executed on the form provided by the cabinet,* signed by the owner's or operator's chief financial officer and worded as specified in 401 KAR 34:159; 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:

1. 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

2. 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 subsection (3) of this section 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 subsection (3) of this section, 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 subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must send notice to the director of intent to establish alternate financial assurance as specified in [Sections 2 through 12 of] this regulation. 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 subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator must provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation 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 subsection (3)(c) of this section). 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 [Sections 2 through 12 of] this regulation within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (3) of this section when:

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation;

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation by terminating the financial requirements in accordance with Section 12 of this regulation.

(10) An owner or operator may meet the requirements of [Sections 2 through 12 of] this regulation 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 subsections (1) through (8) of this section and must comply with the terms of the corporate guarantee. The [wording of the] corporate guarantee must be *executed on a form provided by the cabinet containing wording* identical to the wording specified in 401 KAR 34:165. The corporate guarantee must accompany the items sent to the director as specified in subsection (3) of this section. 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 Section 3 of this regulation 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 [Sections 2 through 12 of] this regulation 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.

Section 9. Cash Account and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by submitting [evidence of a cash account or certificate of deposit which conforms to the requirements of this section] to the director by certified mail, *a bond guaranteeing compliance with KRS Chapter 224 and regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement.* 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. The bank or financial institution holding the cash account or certificate of deposit *in escrow* must be regulated and examined by a federal or state agency.

(2) The bond must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168. The escrow agreement for the cash account or certificate(s) of deposit must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.

(3) [(2)] The cabinet must be the beneficiary of the *escrow agreement for 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 closure or post-closure care in accordance with the closure plan and other permit requirements.

(4) [(3)] 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 Section 10 of this regulation.

(5) [(4)] 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 [Sections 2 through 12 of] this regulation 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.

(6) [(5)] 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.

(7) [(6)] 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 [Sections 2 through 12 of] this regulation.

Section 10. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation 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, certificate of deposit and cash. The mechanisms must be as specified in Sections 3, 4, 6, 7, and 9, respectively, of this regulation, 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 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. The director may use any or all of the mechanisms to provide for closure of the facility.

Section 11. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this *regulation* [section] to meet the requirements of this *regulation* [section] for more than one (1) facility. 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 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.

Section 12. Release of the Owner or Operator from the Requirements of [Sections 2 through 12 of] this Regulation. Within sixty (60) days after receiving certifications from the owner or operator and an independent [registered] professional engineer *who is registered in Kentucky* that closure has been accomplished in accordance with the closure plan (see Section 6 of 401 KAR 34:070 and KRS 224.866(3) and (4)), the director will notify the owner or operator in writing that he is no longer required by [Sections 2 through 12 of] this regulation 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.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:100. Post-closure financial requirements.

RELATES TO: KRS 224.033, 224.071, *224.830 through 224.877, 224.994* [224.835, 224.842, 224.855, 224.860, 224.866]
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the post-closure financial requirements.

Section 1. Cost Estimate for Post-Closure Care. (1) *The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must 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 Sections 1 and 7 through 10 of 401 KAR 34:070, Section 6 of 34:200, and Section 8 of 34:210.* [The owner or operator of a disposal facility must prepare 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 Sections 7 through 10 of 401 KAR 34:070.] 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 401 KAR 34:070.

(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.

(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.

(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 2. Financial Assurance for Post-Closure Care. The owner or operator of each disposal facility must establish financial assurance for post-closure care of the facility. Financial assurance must be established as specified in Sections 3 through 9 of this regulation.

Section 3. Post-Closure Trust Fund. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation 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.

(2) The *trust agreement must be executed on the form provided by the cabinet containing* wording [of the trust agreement must be] identical to the wording specified in Section 1 of 401 KAR 34:140, and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 2 of 401 KAR 34:140). 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.

(3) 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:

(a) 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 Section 10 of this regulation, 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:

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

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.

(b) If an owner or operator establishes a trust fund as specified in 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 (3) 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 Chapter 35. The amount of each payment must be determined by this formula:

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

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.

(4) 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 (3) of this section.

(5) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in [Sections 2 through 12 of] this regulation or in [Section 7(6) of] 401 KAR 35:010, 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 *3* [7(6)] of 401 KAR 35:010, as applicable.

(6) 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 [Sections 2 through 12 of] this regulation to cover the difference.

(7) 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.

(8) If an owner or operator substitutes other financial assurance as specified in [Sections 2 through 12 of] this regulation 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.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (7) and (8) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(10) 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.

(11) 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.

(l2) The director will agree to termination of the trust when:

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation in accordance with Section 12 of this regulation.

Section 4. Surety Bond Guaranteeing Payment into a Post-Closure Trust Fund. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining a surety bond which conforms to the requirements of this section 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.

(2) The *surety bond must be executed on the form provided by the cabinet containing* wording [of the surety bond must be] identical to the wording specified in 401 KAR 34:144.

(3) The owner or operator who uses a surety bond to satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Until the standby trust fund is funded pursuant to the requirements of [Sections 2 through 12 of] this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see 401 KAR 34:140) to show current post-closure cost estimates;

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

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

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

(a) 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

(b) 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

(c) Provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation, 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.

(5) 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.

(6) 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 Section 10 of this regulation.

(7) 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 [Sections 2 through 12 of] this regulation 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.

(8) 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.

(9) 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 [Sections 2 through 12 of] this regulation.

Section 5. Surety Bond Guaranteeing Performance of Post-Closure. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining a surety bond which conforms to the requirements of this section 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.

(2) The *surety bond must be executed on the form provided by the cabinet containing* wording [of the surety bond must be] identical to the wording specified in 401 KAR 34:148.

(3) The owner or operator who uses a surety bond to satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Unless the standby trust fund is funded pursuant to the requirements of [Sections 2 through 12 of] this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see 401 KAR 34:140) to show current post-closure cost estimates;

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

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

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

(a) Perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

(b) Provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation 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.

(5) 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.

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

(7) 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 [Sections 2 through 12 of] this regulation. 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.

(8) 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.

(9) 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.

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

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation in accordance with Sections 12 of this regulation.

(11) 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 [Sections 2 through 12 of] this regulation in accordance with Section 12 of this regulation.

Section 6. Post-Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of [Sections 2

through 12 of] this regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section 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.

(2) The wording of the letter of credit must be identical to the wording specified in *Section 2 of* 401 KAR 34:152.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of [Sections 2 through 12 of] this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;
2. Updating the Schedule A of the trust agreement (see 401 KAR 34:140) to show current post-closure cost estimates;
3. Annual valuations as required by the trust agreement; and
4. Notices of nonpayment as required by the trust agreement.

(4) 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 *(see Section 1 of 401 KAR 34:152 for an example).*

(5) 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.

(6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in Section 10 of this regulation.

(7) 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 [Sections 2 through 12 of] this regulation 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.

(8) 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.

(9) 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.

(10) If the owner or operator does not establish alternate financial assurance as specified in [Sections 2 through 12 of] this regulation and obtain written approval of such alternate assurance from the director within ninety (90) days after receipt by both the owner or operator and the director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension, the director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation and obtain written approval of such financial assurance from the director.

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

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation in accordance with Section 12 of this regulation.

Section 7. Post-Closure Insurance. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by obtaining post-closure insurance which conforms to the requirements of this section 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. *Each insurance policy providing primary coverage must be issued by an insurer who is licensed to transact the business of insurance in the Commonwealth of Kentucky except as KRS 304.11-030 provides otherwise. Each insurance policy providing excess coverage must be issued by an insurer who is licensed to transact the business of insurance in a state.* [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 *certificate of insurance must be executed on a form provided by the cabinet containing* wording [of the certificate of insurance must be] identical to the wording specified in 401 KAR 34:156.

(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 Section 10 of this regula-

tion. 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 subsection (11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in [Sections 2 through 12 of] this regulation, 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 [Sections 2 through 12 of] this regulation 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 [Sections 2 through 12 of] this regulation; or

(b) The director releases the owner or operator from the requirements *of this regulation* in accordance with Section 12 of this regulation.

Section 8. Financial Test with Corporate Guarantee for Post-Closure Care. (1) An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator must have:

1. 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

2. 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

3. Tangible net worth of at least $10 million; and

4. Assets in the *United States* [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:

1. 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

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

3. Tangible net worth of at least $10 million; and

4. Assets located in the *United States* [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 subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 through *4* [5] of the letter from the owner's or operator's chief financial officer (see 401 KAR 34:159).

(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 *executed on the form provided by the cabinet,* signed by the owner's or operator's chief financial officer and worded as specified in 401 KAR 34:159; 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:

1. 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

2. 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 subsection (3) of this section 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 subsection (3) of this section, 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 subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must send notice to the director of intent to establish alternate financial assurance as specified in [Sections 2 through 12 of] this regulation. 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 subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator must provide alternate financial assurance as specified in [Sections 2 through 12 of] this regulation 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 subsection (3) of this section). 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 [Sections 2 through 12 of] this regulation 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 subsection (3) of this section when:

(a) An owner or operator substitutes alternate financial assurance as specified in [Sections 2 through 12 of] this regulation;

(b) The director releases the owner or operator from the requirements of [Sections 2 through 12 of] this regulation by terminating the financial requirements in accordance with Section 12 of this regulation.

(11) An owner or operator may meet the requirements of [Sections 2 through 12 of] this regulation 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 subsections (1) through (9) of this section and must comply with the terms of the corporate guarantee. The [wording of the] corporate guarantee must be *executed on a form provided by the cabinet containing wording* identical to the wording specified in 401 KAR 34:165. The corporate guarantee must accompany the items sent to the director as specified in subsection (3) of this section. 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 Section of this regulation 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 [Sections 2 through 12 of] this regulation 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.

Section 9. Cash and Certificates of Deposit. (1) An owner or operator must satisfy the requirements of [Sections 2 through 12 of] this regulation by submitting [evidence of a cash account or a certificate of deposit] to the director *a bond guaranteeing compliance with KRS Chapter 224 and regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement* [which conforms to the requirements of Sections 2 through 12 of this regulation]. An owner or operator of a new facility must submit the *bond* [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 bank or other financial institution holding the cash account or certificate of deposit *in escrow* must be regulated and examined by a federal or state agency.

(2) The bond must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168. The escrow agreement for the cash account or certificate of deposit must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.

(3) [(2)] The cabinet must be the beneficiary of the *escrow agreement for 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.

(4) [(3)] 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 Section 10 of this regulation.

(5) [(4)] 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 [Sections 2 through 12 of] this regulation 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.

(6) [(5)] 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.

(7) [(6)] The owner or operator may terminate the cash account or certificate of deposit *in accordance with Section 12 of this regulation* if the director has given prior written consent on his receipt of evidence of alternate financial assurance as specified in [Sections 2 through 12 of] this regulation.

(8) [(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 bank or financial institution 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.

Section 10. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of [Sections 2 through 12 of] this regulation 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 Sections 3, 4, 6, 7, and 9 of this regulation, 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.

Section 11. Use of a Financial Mechanism or Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in [Sections 2 through 12 of] this regulation to meet the requirements of [Sections 2 through 12 of] this regulation 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. 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.

Section 12. Release of the Owner or Operator from the Requirements of [Sections 2 through 12 of] this Regulation. 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 [Sections 2 through 12 of] this regulation to maintain financial assurance for post-closure care of the particular facility.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:120. Liability requirements.

RELATES TO: KRS 224.033, 224.071, *224.830 through 224.877, 224.994* [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste

sites or facilities. This regulation establishes the liability requirements [for both new and existing facilities].

Section 1. Coverage for Sudden Accidental Occurrences. [The liability requirements of this regulation apply to both new facilities and existing facilities.] 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 sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage 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 subsections (1), (2), and (3) of this section.

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

(a) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The *liability endorsement must be executed on a form provided by the cabinet containing* wording [of the endorsement must be] identical to the wording specified in 401 KAR 34:172. The *certificate of liability insurance must be on a form provided by the cabinet containing* wording [of the certificate of insurance must be] identical to the wording specified in 401 KAR 34:176. 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.

(b) Each *primary* insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of *primary* insurance *in Kentucky except as KRS 304.11-030 provides otherwise.* [, or] *Each excess insurance policy must be issued by an insurer which, at a minimum, is licensed* [eligible] to provide insurance as an excess or surplus lines insurer in *one (1) state* [the Commonwealth of Kentucky].

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

(3) 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 regulation. The amounts of coverage demonstrated must total at least the minimum amounts required by this section.

Section 2. Coverage for Nonsudden 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 nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain additional liability coverage for nonsudden *accidental* occurrences in the amount of at least $5,000,000 per occurrence with an annual aggregate of at least $10,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subsections (1), (2), and (3) of this section:

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

(a) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The *liability endorsement must be on a form provided by the cabinet containing* wording [of the endorsement must be] identical to the wording specified in 401 KAR 34:172. The *certificate of liability insurance must be on a form provided by the cabinet containing* wording [of the certificate of insurance must be] identical to the wording specified in 401 KAR 34:176. 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.

(b) Each *primary* insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of *primary* insurance *in Kentucky except as KRS 304.11-030 provides otherwise.* [, or] *Each excess insurance policy must be issued by an insurer which, at a minimum, is licensed* [eligible] to provide insurance as an excess or surplus lines insurer in *one (1) state* [the Commonwealth of Kentucky].

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

(3) 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 regulation. The amounts of coverage demonstrated must total at least the minimum amounts required by this section.

(4) For existing facilities, the required liability coverage for nonsudden 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 dates apply. 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:

(a) For an owner or operator with sales or revenues totaling $10,000,000 or more, *February 24, 1983* [six (6) months after the effective date of this regulation].

(b) For an owner or operator with sales or revenues

greater than $5,000,000 but less than $10,000,000, *February 24, 1984* [eighteen (18) months after the effective date of this regulation].

(c) All other owners or operators, *February 24, 1985* [thirty (30) months after the effective date of this regulation].

Section 3. Adjustments by the Director. If the director determines that the levels of financial responsibility required by Sections 1 and 2 of this regulation 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 the level of financial responsibility required under Sections 1 and 2 of this regulation as may be necessary to protect human health and the environment. This adjusted level will 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. If the director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences from the operations of a facility 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 Section 2 of this regulation. 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 Section 2 [and 3] (1)(e) of 401 KAR 38:040 *and Section 2 of 401 KAR 38:050.*

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the director that the increased level of financial responsibility required by Section 3 of this regulation is 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 seek to decrease the level of financial responsibility below the minimums required by KRS 224.866(3)(c). 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 Sections 1 and 2 of this regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2 [and 3] (1)(e) of 401 KAR 38:040 *and Section 2 of 401 KAR 38:050.*

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

Section 6. Liability Self-Insurance. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. 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 paragraph (a) or (b) of this subsection:

(a) The owner or operator must have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test;
2. Tangible net worth of at least $10 million; and
3. Assets in the *United States* [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 appropriate liability coverage to be demonstrated by this test.

(b) The owner or operator must have:

1. 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
2. Tangible net worth of at least $10 million; and
3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and
4. Assets located in the *United States* [Commonwealth of Kentucky] amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 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 *executed on a form provided by the cabinet which is* worded as specified in 401 KAR 34:162;

(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:

1. 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
2. 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 subsection (3) of this section 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 subsection (3) of this section, 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 subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must obtain insurance for the entire amount of required liability coverage as specified in this regulation. 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.

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

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:159. Wording of the instrument for financial test on closure or post-closure care.

RELATES TO: KRS 224.033, 224.071, *224.830 through 224.877, 224.994* [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the wording of the instrument for a letter from the chief financial officer to demonstrate assurance of closure or post-closure care.

Section 1. Financial Test for Closure or Post-Closure Care Instrument. A letter from the chief financial officer, as specified in Section 8 of 401 KAR 34:090 or Section 8 of 401 KAR 34:100 or Section 7 *of 401 KAR 35:090 or Section 7 of 401 KAR 35:100* [(4) or (6) of 401 KAR 35:010, which incorporate 40 CFR 265.143(e) and 265.145(e) respectively], must be *executed on a form provided by the cabinet which is* 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)

Director
Division of Waste Management
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Frankfort, Kentucky 40601

Dear Director:

[(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 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010]: _____

(Fill out the following *four (4)* [five] paragraphs *and schedules* regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" *on the appropriate schedule* [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 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010]. The current closure and/or post-closure cost estimates covered by this test are shown for each facility *in Schedule 1 which is attached.* [:

_____]

2. This firm guarantees, through the corporate guarantee specified in [Section 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010], 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 *in Schedule 2 which is attached.* [:

_____]

3. In states other than Kentucky [where EPA is not administering the financial requirements which are substantially equivalent to Section 1 of 401 KAR 34:080 and Section 7 of 401 KAR 35:010], 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 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010]. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility *in Schedule 3 which is attached.* [:

_____]

[4. In states other than Kentucky where EPA is administering the financial requirements which are substantially equivalent to Section 1 of 401 KAR 34:080 and Section 7 of 401 KAR 35:010, 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 1 of 401 KAR 34:080 and Section 7 of 401 KAR 35:010. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

_____]

4. [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 *or any state* through the financial test or any other financial assurance mechanism specified in [Section 1 of] 401 KAR 34:080 *through 401 KAR 34:176* or [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010] 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 *in Schedule 4 which is attached.*

[:

_____]

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 8(1)(a) of 401 KAR 34:090 or Section 8(1)(a) of 401 KAR 34:100 or Section 7*(1)(a)* [(4) or (6)] of 401 KAR *35:090 or Section 7(1)(a) of 401 KAR 35:100* [35:010 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 8(1)(b) of 401 KAR 34:090 or Section 8(1)(b) of 401 KAR 34:100 or Section 7*(1)(b)* [[(4) or (6)] of 401 KAR *35:090 or Section 7(1)(b) of 401 KAR 35:100* [35:010 which incorporate 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 *four (4)* [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 *United States* [Kentucky] (required only if less than 90 percent of assets are located in *United States* [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 *United States* [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 of current closure and post-closure cost estimates (total of all cost estimates shown in the *four (4)* [five] paragraphs above) $ _____

2. Current bond rating of most recent issuance of this firm and name of rating service. _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $ _____

*6. Total assets in *United States* [Kentucky] (required only if less than 90 percent of firm's assets are located in *United States* [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 *United States* [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 401 KAR 34:159 as such regulations were constituted on the date shown immediately below.

(Signature) _____

(Name, typed) _____

(Title, typed) _____

(Date) _____

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:162. Wording of the instrument for financial test on liability coverage and closure or post-closure care.

RELATES TO: KRS 224.033, 224.071, *224.830 through 224.877, 224.994* [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the wording of the instrument for financial test on liability and closure or post-closure care.

Section 1. Financial Test for Liability and Closure or Post-Closure Instrument. A letter from the chief financial

officer, as specified in Section 6 of 401 KAR 34:120 *or Section 6 of 401 KAR 35:120* must be *executed on a form provided by the cabinet which is* worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter from Chief Financial Officer
(to Demonstrate Liability Coverage or to
Demonstrate Both Liability Coverage and
Assurance of Closure or Post-Closure Care)

Director
Division of Waste Management
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Frankfort, Kentucky 40601

Dear Director:

[(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. This letter is in support of the 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 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010].

(Fill out the following five paragraphs regarding facilities and liability coverage. For each facility, include its EPA Identification Number, name, and address.)

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 401 KAR 34:120 and [Section 7(8) of] 401 KAR *35:120* [35:010]: _____

(If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following *four (4)* [five] paragraphs *and schedules* 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 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010]. The current closure and/or post-closure cost estimates covered by this test are shown for each facility *in Schedule 1 which is attached.* [:

_____]

2. The owner or operator identified above guarantees, through the corporate guarantee specified in [Section 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010], 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 *in Schedule 2 which is attached.* [:

_____]

3. In states other than Kentucky [where EPA is not administering the federal financial requirements which are substantially equivalent to Section 1 of 401 KAR 34:080 and Section 7 of 401 KAR 35:010], 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 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010]. The current closure and/or post-closure cost estimates covered by such a test as shown for each facility *in Schedule 3 which is attached.* [:

_____]

[4. In states other than Kentucky where EPA is administering the federal financial requirements which are substantially equivalent to Section 1 of 401 KAR 34:080 and Section 7 of 401 KAR 35:010, 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 1 of 401 KAR 34:080 and Section 7 of 401 KAR 35:010. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility:

_____]

4. [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 *Kentucky,* EPA or any state through the financial test or any other financial assurance mechanism specified in [Section 1 of] 401 KAR 34:080 *through 401 KAR 34:176* and [Section 7 of] 401 KAR *35:080 through 401 KAR 35:130* [35:010] 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 *in Schedule 4 which is attached.* [:

_____]

This owner or operator (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 ends on (month, day). The figures for the following items marked with an asterisk are derived from this owner's or operator'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 6(1)(a) of 401 KAR 34:120 *or Section 6(1)(a) of 401 KAR 35:120* are used. Fill in Alternative II if the criteria of Section 6(1)(b) of 401 KAR 34:120 *or Section 6(1)(b) of 401 KAR 35:120* are used.)

Alternative I

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

*2. Current assets $_____

*3. Current liabilities $_____

*4. Net working capital (line 2 minus line 3) $_____

*5. Tangible net worth $_____

*6. If less than 90 percent of assets are located in *United States* [Kentucky], give total *United States* [Kentucky] assets $_____

*7. Ten (10) percent of equity: $_____

(Answer yes or no to questions 8 through 12.)

8. Is line 5 at least $10 million? _____
9. Is line 4 at least six (6) times line 1? _____
10. Is line 5 at least six (6) times line 1? _____
*11. Are at least ninety (90) percent of assets located in *United States* [Kentucky]? If not, complete line 12. _____
12. Is line 6 at least six (6) times line 1? _____

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated: $_____
2. Current bond rating of most recent issuance 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 *United States* [Kentucky] (required only if less than ninety (90) percent of assets are located in *United States* [Kentucky]) $_____
*7. Ten (10) percent of equity: $_____
(Answer yes or no to the questions 8 through 11.)
8. Is line 5 at least $10 million? _____
9. Is line 5 at least six (6) times line 1? _____
*10. Are at least ninety (90) percent of assets located in *United States* [Kentucky]? If not, complete line 11. _____
11. Is line 6 at least six (6) 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 8(1)(a) of 401 KAR 34:090 or Section 8(1)(a) of 401 KAR 34:100 and Section 6(1)(a) of 401 KAR 34:120 are used or if the criteria of Section 7*(1)(a)* [(4) or (6)] of 401 KAR *35:090 or Section 7(1)(a) of 401 KAR 35:100* [35:010 which incorporate 40 CFR 265.143(e)(1)(i) and 265.145(e)(1)(i) respectively] and Section 6(1)(a) of 401 KAR *35:120* [34:120] are used. Fill in Alternative II if the criteria of Section 8(1)(b) of 401 KAR 34:090 or Section 8(1)(b) of 401 KAR 34:100 and Section 6(1)(b) of 401 KAR 34:120 are used or if the criteria of Section 7*(1)(b) of 401 KAR 35:090 or Section 7(1)(b) of 401 KAR 35:100* [(4) or (6) of 401 KAR 35:010 which incorporate 265.143(e)(1)(ii) and 265.145(e)(1)(ii) respectively] and Section 6(1)(b) of 401 KAR *35:120* [34:120] are used.

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 *United States* [Kentucky] (required only if less than ninety (90) percent of assets are located in *United States* [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 *United States* [Kentucky]? If not, complete line 17. _____
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 *United States* [Kentucky] (required only if less than 90 percent of assets are located in *United States* [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 *United States* [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 401 KAR 34:162 as such regulations were constituted on the date shown immediately below.

Signature: _____
Name (typed): _____
Title (typed): _____
Date (typed): _____

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:172. Wording of the instrument for a liability endorsement.

RELATES TO: KRS 224.033, 224.071, *224.830 through 224.877, 224.994* [224.835, 224.842, 224.855, 224.860, 224.866]

PURSUANT TO: KRS 13.082, *13.083*, 224.017, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866

requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes the wording of the instrument for a hazardous waste facility liability endorsement.

Section 1. Liability Endorsement Instrument. A hazardous waste facility liability endorsement as required by 401 KAR 34:120 *or 401 KAR 35:120* must be *executed on a form provided by the cabinet which is* worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Hazardous Waste Facility Liability Endorsement

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 401 KAR 34:120 *or under 401 KAR 35:120.* The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden 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 nonsudden accidental occurrences, and which are insured for both).

(Fill in Alternative A for primary liability coverage. Fill in Alternative B for excess liability coverage.)

Alternative A

The limits of liability are (insert the dollar amount of the *primary policy for* "each occurrence") *each occurrence* and *(insert the dollar amount of the primary policy for* "annual aggregate" [limits of the Insurer's liability]) *annual aggregate*, exclusive of legal defense costs.

Alternative B

The limits of liability are (insert the dollar amount of the excess policy for "each occurrence") each occurrence and (insert the dollar amount of the excess policy for "annual aggregate") annual aggregate, which is exclusive of legal defense costs, in excess of the primary policy limits of (insert dollar amount of the primary policy for "each occurrence") each occurrence and (insert the dollar amount of the primary policy for "annual aggregate") annual aggregate, exclusive of legal defense costs.

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 subparagraphs (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 6 of 401 KAR 34:120 *or Section 6 of 401 KAR 35:120.*

(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 a signed duplicate original of the policy and all endorsements.

(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.

Attached to and forming part of Policy No. _____ issued by (name of Insurer), herein called the Insurer, of (address of Insurer), to (name of insured) of (address) 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 401 KAR 34:172 as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance *in the Commonwealth of Kentucky or, if exempted by KRS 304.11-030, the insurer is licensed to transact the business of primary insurance in one (1) state,* or *is licensed* [eligible] to provide insurance as an excess or surplus lines insurer *in one (1) state* [, 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)

(Recodified from 401 KAR 2:063, Section 16(7), eff. 3-1-83.)

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:176. Wording of the instrument for a certificate of liability insurance.

RELATES TO: KRS 224.033, 224.071, 224.835, 224.842, 224.855, 224.860, 224.866

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet to establish standards for these permits, to require adequate financial responsibility, *and* to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste

sites or facilities. This regulation establishes the wording of the instrument for a hazardous waste facility certificate of liability insurance.

Section 1. Certificate of Liability Insurance Instrument. A certificate of liability insurance as required in 401 KAR 34:120 *or 401 KAR 35:120* must be *executed on a form provided by the cabinet which is* 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. (*insert* name of Insurer), the "Insurer," of (*insert* address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (*insert* name of Insured), the "Insured," of (*insert* address of Insured) in connection with the Insured's obligation to demonstrate financial responsibility under 401 KAR 34:120 or [Section 7 of] 401 KAR *35:120* [35:010]. The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden 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 nonsudden accidental occurrences, and which are insured for both.

(Fill in Alternative A for primary liability coverage. Fill in Alternative B for excess liability coverage.)

Alternative A

The limits of liability are (insert the dollar amount of the *primary policy for* "each occurrence") *each occurrence* and *(insert the dollar amount of the primary policy for* "annual aggregate" [limits of the Insurer's liability]) *annual aggregate*, exclusive of legal defense costs.

Alternative B

The limits of liability are (insert the dollar amount of the excess policy for "each occurrence") each occurrence and (insert the dollar amount of the excess policy for "annual aggregate") annual aggregate, which is exclusive of legal defense costs, in excess of the primary policy limits of (insert dollar amount of the primary policy for "each occurrence") each occurrence and (insert the dollar amount of the primary policy for "annual aggregate") annual aggregate, exclusive of legal defense costs.

The coverage is provided under policy number *(insert the 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 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 6 of 401 KAR 34:120 *or Section 6 of 401 KAR 35:120.*

(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 401 KAR 34:176 as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of *primary* insurance *in the Commonwealth of Kentucky or, if exempted by KRS 304.11-030, the insurer is licensed to transact the business of primary insurance in one (1) state*, or *is licensed* [eligible] to provide insurance as an excess or surplus lines insurer *in one (1) state* [, 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)

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 34:240. Incinerators.

RELATES TO: KRS 224.033, 224.071, 224.835, 224.842, 224.855, 224.860, 224.866
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the Cabinet 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 chapter establishes minimum standards for [new] hazardous waste sites or facilities *except as 401 KAR Chapter 35 applies.* This regulation establishes minimum standards for incinerators.

Section 1. Applicability. (1) This regulation applies to owners and operators of hazardous waste sites or facilities that incinerate hazardous waste, except as Section 1 of 401 KAR 34:010 provides otherwise.

(2) After consideration of the waste analysis included with Part B of the permit application, the cabinet, in establishing the permit conditions, may exempt the applicant from all requirements of this regulation except Sections 2 and 8:

(a) If the cabinet finds that the waste is to be burned is:

1. Listed as a hazardous waste in 401 KAR 31:040 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

2. Listed as a hazardous waste in 401 KAR 31:040 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 4(1)(d) and (e) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone; or

3. A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under 401 KAR 31:030; or

4. A hazardous waste solely because it possesses any of the reactivity characteristics described by Section 4(1)(a), (b), (c), (f), (g), and (h) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone; and

(b) If the waste analysis shows that the waste contains none of the hazardous constituents listed in 401 KAR 31:170, which would reasonably be expected to be in the waste.

(3) If the waste to be burned is one which is described by subsection (2)(a)1, 2, 3, or 4 of this section and contains insignificant concentrations of the hazardous constituents listed in 401 KAR 31:170,

[(2) If the cabinet finds, after an examination of the waste analysis included with Part B of the applicant's permit application, that the waste to be burned:]

[(a) Is either: listed as hazardous waste in 401 KAR 34:040, Section *2* [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 31:030, Section 8, and that it meets only the ignitability characteristic; and]

[(b) That the waste analysis included with Part B of the permit application includes none of the hazardous constituents listed in 401 KAR 31:170,] then the cabinet may, *but is not required to,* in establishing the permit conditions, exempt the applicant from all requirements of this regulation except Section 2 and 8 of this regulation, *after consideration of the waste analysis included with Part B of the permit application, unless the cabinet finds that the waste will pose a threat to human health and the environment when burned in an incinerator.*

(4) [(3)] The owner or operator of an incinerator may conduct trial burns, subject only to the requirements of *Section 3 of* 401 KAR *38:060* [38:080, Section 7].

Section 2. Waste Analysis. (1) As a portion of a trial burn plan required by Section *3* [2] of 401 KAR *38:060* [34:040] 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 *38:060 or 401 KAR 38:090* [38:080, Sections 5 or 7]. *Owners or operators of new hazardous waste incinerators must provide the information required by Section 3(2) of 401 KAR 38:060 and 401 KAR 38:090. If an owner or operator demonstrates to the satisfaction of the cabinet that any information required in 401 KAR 38:060 or 401 KAR 38:090 cannot reasonably be attained, the cabinet may waive the requirement to submit the information in accordance with Section 2 of 401 KAR 30:020.*

(2) Throughout normal operation the owner or operator must conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit under Section 6(2) of this regulation.

Section 3. Principal Organic Hazardous Constituents (POHCs). (1) Principal organic hazardous constituents (POHCs) in the waste feed must be treated to the extent required by the performance standards of Section 4 of this regulation.

(2) (a) One (1) or more POHCs will be specified in the facility's permit from among those constituents listed in *401 KAR 31:170* [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.

(b) Trial POHCs will be designated for performance of trial burns in accordance with the procedures specified in 401 KAR *38:060* [38:080], Section *3* [7], for obtaining trial burn permits.

Section 4. Performance Standards. An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 6 of this regulation, it will meet the following performance standards:

(1) An incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of ninety-nine and ninety-nine hundredths (99.99) percent for each principal organic hazardous constitutent (POHC) designated (under Section 3 of this regulation) 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.

(2) An incinerator burning hazardous waste *and producing stack emissions of more than 1.8 kilograms per hour (four (4) pounds per hour) of hydrogen chloride (HCl) must control HCl emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one percent (1%) of the HCl in the stack gas prior to entering any pollution control equipment.* [containing more than five tenths (0.5) percent chlorine must remove ninety-nine (99) percent of the hydrogen chloride from the exhaust gas.]

(3) 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 *the amount of oxygen in the stack gas according to the formula:* [twelve (12) percent CO_2 using the procedures presented in 401 KAR 59:020.]

$$P_c = P_m \times \frac{14}{21-Y}$$

When P_c is the corrected concentration of particulate matter, P_m is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method of oxygen analysis of dry flue gas, presented in 401 KAR 59:020, New incinerators. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities the cabinet will select an appropriate correction procedure to be specified in the facility permit.

(4) For purposes of permit enforcement, compliance with the operating requirements specified in the permit (under Section 6 of this regulation) will be regarded as compliance with this section. 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 *2* [3] of 401 KAR 38:040.

Section 5. *Hazardous Waste Incinerator Permits* [New Wastes: Trial Burns or Permit Modifications]. (1) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under Section 6 of this regulation except:

(a) In approved trial burns under 401 KAR *38:060* [38:080], Section *3* [7]; or

(b) Under exemptions created by Section 1 of this regulation.

(2) 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 *38:090* [38:080, Section 5].

(3) The permit for a new hazardous waste incinerator must establish appropriate conditions for each of the applicable requirements of this regulation, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of Section 6 of this regulation, sufficient to comply with the following standards:

(a) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in paragraph (b) of this subsection, not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 4 of this regulation, based on the cabinet's engineering judgment. The cabinet may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(b) For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the performance standards of Section 4 of this regulation and must be in accordance with the approved trial burn plan;

(c) For the period immediately following completion of the trial burn and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant and review of the trial burn results and modification of the facility permit by the cabinet, the operating requirements must be those most likely to ensure compliance with the performance standards of Section 4 of this regulation based on the cabinet's engineering judgment.

(d) For the remaining duration of the permit, the operating requirements must be those demonstrated, in a trial burn or by alternative data specified in Section 2(3) of 401 KAR 38:090, as sufficient to ensure compliance with the performance standards of Section 4 of this regulation.

Section 6. Operating Requirements. (1) 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 Section 5(2) of this regulation and included with Part B of a facility's permit application) to be sufficient to comply with the performance standards for Section 4 of this regulation.

(2) Each set of operating requirements will specify the composition of the waste feed (including acceptable variations in the physical or chemical properties of the waste feed) which will not affect compliance with the performance requirement of Section 4 of this regulation to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(a) Carbon monoxide (CO) level in the stack exhaust gas;

(b) Waste feed rate;

(c) Combustion temperature;

(d) *An appropriate indicator of combustion gas velocity as specified by the cabinet* [Air feed rate to the combustion system];

(e) Allowable variations in incinerator system design or operating procedures; and

(f) Such other operating requirements as are necessary to ensure that the performance standards of Section 4 of this regulation are met.

(3) During start-up and shut-down of an incinerator, hazardous waste (except ignitable waste exempted in accordance with Section 1 of this regulation) 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.

(4) Fugitive emissions from the combustion zone must be controlled by:

(a) Keeping the combustion zone totally sealed against fugitive emissions; or

(b) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(c) 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.

(5) 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 subsection (1) of this section.

(6) An incinerator must cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

Section 7. Monitoring and Inspections. (1) The owner or operator must conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(a) Combustion temperature, waste feed rate, and *the indicator of combustion gas velocity specified in the facili-*

ty permit [air feed rate] must be monitored on a continuous basis.

(b) 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.

(c) Upon request by the cabinet, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the performance standards of Section 4 of this regulation.

(2) The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be *subjected to thorough visual inspection* [completely inspected] at least daily, for leaks, spills, and fugitive emissions, *and signs of tampering.* [All emergency waste feed cut-off controls and system alarms must be checked daily to verify proper operation.]

(3) The emergency waste feed cutoff system and associated alarms must be tested at least weekly to verify operability, unless the applicant demonstrates to the cabinet that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing must be conducted at least monthly.

(4) [(3)] This monitoring and inspection data must be recorded and the records must be placed in the operating log required by Section 4 of 401 KAR 34:050.

Section 8. Closure. At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 35:050. Manifest system, recordkeeping and reporting (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of both on-site and off-site facilities, except as Section 1 of 401 KAR 35:010 provides otherwise. Sections 2, 3 and 7 of this regulation do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

Section 2. Use of Manifest System. (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator (or his agent) must:

(a) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(b) Note any significant discrepancies in the manifest (as defined in Section 3(1) of this regulation) on each copy of the manifest;

(c) Immediately give the transporter at least one (1) copy of the signed manifest;

(d) Within thirty (30) days after the delivery, send a copy of the manifest to the generator; and

(e) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

(2) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator (or his agent) must:

(a) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(b) Note any significant discrepancies (as defined in Section 3(1) of this regulation) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

(c) Immediately give the rail or water (bulk shipment) transporter at least one (1) copy of the manifest or shipping paper (if the manifest has not been received);

(d) Within thirty (30) days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty (30) days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

(e) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three (3) years from the date of delivery.

(3) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of the facility must comply with the requirements of 401 KAR Chapter 32.

Section 3. Manifest Discrepancies. (1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(a) 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.

(b) Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepan-

cy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator must immediately submit to the cabinet a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Section 4. Operating Record. (1) The owner or operator must keep a written operating record at his facility.

(2) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(a) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage or disposal at the facility as required by 401 KAR 35:290;

(b) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste 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 (see Section 9 of 401 KAR 35:070, Section 6 of 401 KAR 35:220 and Section 3 of 401 KAR 35:230 for related requirements);

(c) Records and results of waste analysis and trial tests performed as specified in:

1. Section 4 of 401 KAR 35:020;
2. Section 3 of 401 KAR 35:190;
3. Section 4 of 401 KAR 35:200;
4. Section 3 of 401 KAR 35:210;
5. Section 3 of 401 KAR 35:220;
6. Section 2 of 401 KAR 35:240;
7. Section 3 of 401 KAR 35:250; and
8. Section 3 of 401 KAR 35:260.

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 35:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 35:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing or analytical data where required by:

1. Section 1 of 401 KAR 35:060;
2. Section 4 of 401 KAR 35:060 (requires monitoring data at disposal facilities must be kept throughout the post-closure period);
3. Sections 4, 5 and 7(4)(a) of 401 KAR 35:220;
4. Section 4 of 401 KAR 35:240; and
5. Section 4 of 401 KAR 35:250.

(g) All closure cost estimates under Section 1 of 401 KAR 35:090 and for disposal facilities, all post-closure cost estimates under Section 1 of 401 KAR 35:100.

Section 5. Availability, Retention, and Disposition of Records. (1) All records, including plans, required under this chapter must be furnished upon request, and made available at all reasonable times for inspection by any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the site or facility or as requested by the cabinet.

(3) A copy of records of waste disposal locations and quantities under Section 4(2)(b) of this regulation must be submitted to the cabinet and local land authority upon closure of the facility (see Section 9 of 401 KAR 35:070).

Section 6. Annual Report. The owner or operator must prepare and submit a single copy of an annual report to the cabinet by March 1 of each year. The report form and instructions *designated by the cabinet* [in 401 KAR 35:300] must be used for this report. The annual report must cover site or facility activities during the previous calendar year and must include the following information:

(1) The EPA identification number, name and address of the facility;

(2) The calendar year covered by the report;

(3) For off-site facilities, the 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, number and address of the foreign generator;

(4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) Monitoring data under Sections 5(1)(b)2 and 3, and 5(2)(b) of 401 KAR 35:060, where required;

(7) The most recent closure cost estimate under Section 1 of 401 KAR 35:090 and for disposal facilities, the most recent post-closure cost estimate under Section 1 of 401 KAR 35:100; and

(8) The certification signed by the owner or operator of the facility or his authorized representative.

Section 7. Unmanifested Waste Report. If a facility accepts for treatment, storage or disposal any hazardous waste from an off-site source without accompanying manifest, or without an accompanying shipping paper as described in Section 1(5)(b) of 401 KAR 33:020, and if the waste is not excluded from the manifest requirement by Section 5 of 401 KAR 31:010, then the owner or operator must prepare and submit a single copy of a report to the cabinet within fifteen (15) days after receiving the waste. The report form and instructions *designated by the cabinet* [in 401 KAR 35:300] must be used for this report. The report must include the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

Section 8. Additional Reports. In addition to submitting the annual report and unmanifested waste reports described in Sections 6 and 7 of this regulation, the owner or operator must also report to the cabinet:

(1) Releases, fires and explosions as specified in Section 7(10) of 401 KAR 35:040;

(2) Groundwater contamination and monitoring data as specified in Sections 4 and 5 of 401 KAR 35:060; and

(3) Facility closure as specified in Section 6 of 401 KAR 35:070.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 35:090. Closure financial requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the closure financial requirements.

Section 1. Cost Estimate for Facility Closure. (1) On May 19, 1981, the owner or operator of an interim status facility must prepare a written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan as specified in Section 3 of 401 KAR 34:070. 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.

(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 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.

(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.

(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 2. 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 Sections 3 through 8 of this regulation.

Section 3. Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by establishing a closure trust fund which conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the director. 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.

(2) The trust agreement must be executed on the form provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 2 of 401 KAR 34:140). 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.

(3) Payments to the trust fund must be made annually by the owner or operator over twenty (20) years beginning with October 8, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

(a) The first payment must be made by October 8, 1982, except as provided in subsection (5) of this section. The first payment must be at least equal to the current closure cost estimate (see Section 1 of this regulation), except as provided in Section 9 of this regulation, 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 this formula:

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

Where CE is the current 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.

(4) 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 (3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this regulation, 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 subsection (3) of this section.

(6) After the pay-in period is completed, whenever the current 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. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days of 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 closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current 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 closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this regulation 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.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (7) and (8) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(10) 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, 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 Section 11 of this regulation, that the owner or operator is no longer required to maintain financial assurance for closure.

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

(a) An owner or operator substitutes alternate financial assurance for closure as specified in this section; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 4. Surety Bond Guaranteeing Payment into a Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the director. 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.

(2) The surety bond must be executed on the form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Until the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current closure cost estimates;

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

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

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

(a) 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

(b) 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 secretary or by circuit court or other court of competent jurisdiction pursuant to KRS Chapter 224, or within fifteen (15) days after issuance of a notice of termination of the permit pursuant to 401 KAR Chapter 38; or

(c) Provide alternate financial assurance as specified in this regulation 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.

(5) 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.

(6) The penal sum of the bond must be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 9 of this regulation.

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the penal sum, the owner or operator 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 regulation to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the director.

(8) Under the terms of the bond, the surety may cancel the bond 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.

(9) 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 regulation.

Section 5. Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of this regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the director. 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.

(2) The wording of the letter of credit must be identical to the wording specified in Section 1 of 401 KAR 34:152.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating the Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current closure cost estimates;

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

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

(4) 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 (see Section 1 of 401 KAR 34:152 for an example).

(5) 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.

(6) The letter of credit must be issued for at least the amount of the current closure cost estimate except as provided in Section 9 of this regulation.

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

(8) 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 interim status requirements when required to do so, the director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this regulation 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 regulation and obtain written approval of such assurance from the director.

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 6. Closure Insurance. (1) An owner or operator may satisfy the requirements of this regulation by obtaining closure insurance which conforms to the requirements of this section and by submitting a certificate of such insurance to the director. By October 8, 1982, the owner or operator must submit to the director a letter from the insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this section to the owner or operator. By January 8, 1983, the owner or operator must submit the certificate of insurance to the director or establish other financial assurance as specified in this regulation. Each insurance policy providing primary coverage must be issued by an insurer who is licensed to transact the business of insurance in the Commonwealth of Kentucky *except as KRS 304.11-030 provides otherwise.* Each insurance policy providing excess coverage must be issued by an insurer who is licensed to transact the business of insurance in a state.

(2) The certificate of insurance must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156.

(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 Section 9 of this regulation. 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 Section 11 of this regulation, 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 subsection (10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this regulation, 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) Interim status is terminated or revoked; 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 regulation 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 regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 7. Financial Test and Corporate Guarantee for Closure. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of either paragraph of this subsection:

(a) The owner or operator must have:

1. 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

2. 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

3. Tangible net worth of at least $10 million; and

4. Assets in the *United States* [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:

1. 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

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

3. Tangible net worth of at least $10 million; and

4. Assets located in the *United States* [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 subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (see 401 KAR 34:159).

(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 executed on the form provided by the cabinet, signed by the owner's or operator's chief financial officer and worded as specified in 401 KAR 34:159; 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:

1. 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

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

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to October 8, 1982 and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by October 8, 1982, a letter to the director. This letter from the chief financial officer must:

(a) Request the extension;

(b) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(c) Specify for each facility to be covered by the test the EPA identification number, name, address and current closure and post-closure estimates to be covered by the test;

(d) Specify the date ending the owner's or operator's last complete fiscal year before October 8, 1982;

(e) Specify the date, no later than ninety (90) days after the end of such fiscal year, when he will submit the documents specified in subsection (3) of this section; and

(f) Certify that the year-end financial statements of the owner or operator for such fiscal year will be submitted by an independent certified accountant.

(5) After the initial submission of items specified in subsection (3) of this section, 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 subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must send notice to the director of intent to establish alternate financial assurance as specified in this regulation. 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 subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator must provide alternate financial assurance as specified in this regulation 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 subsection (3)(c) of this section). 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 regulation within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (3) of this section when:

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation;

(b) The director releases the owner or operator from the requirements of this regulation by terminating the financial requirements in accordance with Section 11 of this regulation.

(10) An owner or operator may meet the requirements of this regulation 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 subsections (1) through (8) of this section and must comply with the terms of the corporate guarantee. The corporate guarantee must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165. The corporate guarantee must accompany the items sent to the director as specified in subsection (3) of this section. 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 interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Section 3 of this regulation 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 regulation 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.

Section 8. Cash Account and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of this regulation by submitting to the director a bond guaranteeing compliance with KRS Chapter 224 and regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement. The bank or financial institution holding the cash account or certificate(s) of deposit in escrow must be regulated and examined by a federal or state agency.

(2) The bond must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168. The escrow agreement for the cash account or certificate(s) of deposit must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.

(3) The cabinet must be the beneficiary of the escrow agreement for the cash account or certificate(s) 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 requirements.

(4) The sum of the cash account or certificate(s) of deposit must be in an amount at least equal to the amount of the current closure cost estimate, except as provided in Section 9 of this regulation.

(5) After each interest period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual evaluation of the cash accounts or the certificate(s) of deposit. If the value of the cash accounts or the certificate(s) of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, must either deposit an amount into the cash account or the certificate(s) of deposit so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain

other financial assurance as specified in this section to cover the difference.

(6) If the value of the cash account or the certificate(s) of deposit is greater than the total amount of the current 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 closure cost estimate.

(7) Under the terms of the cash account or certificate(s) of deposit, the bank or financial institution may cancel the cash account or certificate(s) 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.

(8) The owner or operator may terminate the cash account or certificate(s) 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 regulation.

(9) 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, 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 Section 11 of this regulation, that the owner or operator is no longer required to maintain financial assurance for closure.

Section 9. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this regulation by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, insurance, certificate(s) of deposit and cash accounts. The mechanisms must be as specified in Sections 3, 4, 5, 6, and 8, respectively, of this regulation, 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 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. The director may use any or all of the mechanisms to provide for closure of the facility.

Section 10. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this regulation to meet the requirements of this regulation for more than one (1) facility. 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 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.

Section 11. Release of the Owner or Operator from the Requirements of this Regulation. Within sixty (60) days after receiving certifications from the owner or operator and an independent professional engineer who is registered in Kentucky that closure has been accomplished in accordance with the closure plan (see Section 6 of 401 KAR 35:070 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 regulation 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.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 35:100. Post-closure financial requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the post-closure financial requirements.

Section 1. Cost Estimate for Facility Post-Closure Care. (1) On May 19, 1981, the owner or operator of a disposal facility must prepare 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 Sections 7 through 10 of 401 KAR 35:070. 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 401 KAR 35:070.

(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.

(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 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.

(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 2. Financial Assurance for Post-Closure Care. By October 8, 1982, the owner or operator of each disposal facility must establish financial assurance for post-closure care of the facility. Financial assurance must be established as specified in Sections 3 through 8 of this regulation.

Section 3. Post-Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by establishing a post-closure trust fund which conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the director. 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.

(2) The trust agreement must be executed on the form provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement must be accompanied by a formal certification of acknowledgement (for an example, see Section 2 of 401 KAR 34:140). 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.

(3) Payments to the trust fund must be made annually by the owner or operator over the twenty (20) year period beginning with October 8, 1982, 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:

(a) The first payment must be made by October 8, 1982, except as provided in subsection (5) of this section. The first payment must be at least equal to the current post-closure cost estimate, except as provided in Section 9 of this regulation, 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 this formula:

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

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.

(4) 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 (3) of this section.

(5) If the owner or operator establishes a post-closure trust fund after having used one (1) or more alternate mechanisms specified in this regulation, his first payment must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of subsection (3) of this section.

(6) 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 regulation to cover the difference.

(7) 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.

(8) If an owner or operator substitutes other financial assurance as specified in this regulation 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.

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (7) and (8) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(10) 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.

(11) 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.

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 4. Surety Bond Guaranteeing Payment into a

Post-Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the director. 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.

(2) The surety bond must be executed on the form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Until the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current post-closure cost estimates;

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

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

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

(a) 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

(b) 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

(c) Provide alternate financial assurance as specified in this regulation, 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.

(5) 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.

(6) 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 Section 9 of this regulation.

(7) 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 regulation 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.

(8) Under the terms of the bond, the surety may cancel the bond by sending a 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.

(9) 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 regulation.

Section 5. Post-Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of this regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the director. 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.

(2) The wording of the letter of credit must be identical to the wording specified in Section 1 of 401 KAR 34:152.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this regulation 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 Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating the Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current post-closure cost estimates;

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

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

(4) 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 (see Section 1 of 401 KAR 34:152 for an example).

(5) 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.

(6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in Section 9 of this regulation.

(7) 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 regulation 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.

(8) 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.

(9) 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.

(10) If the owner or operator does not establish alternate financial assurance as specified in this regulation 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 regulation and obtain written approval of such financial assurance from the director.

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 6. Post-Closure Insurance. (1) An owner or operator may satisfy the requirements of this regulation by obtaining post-closure insurance which conforms to the requirements of this section and submitting a certificate of such insurance to the director. By October 8, 1982, the owner or operator must submit to the director a letter from an insurer stating that the insurer is considering issuance of post-closure insurance conforming to the requirements of this section to the owner or operator. By January 8, 1983, the owner or operator must submit the certificate of insurance to the director or establish other financial assurance as specified in this regulation. Each insurance policy providing primary coverage must be issued by an insurer who is licensed to transact the business of insurance in the Commonwealth of Kentucky *except as KRS 304.11-030 provides otherwise.* Each insurance policy providing excess coverage must be issued by an insurer who is licensed to transact the business of insurance in a state.

(2) The certificate of insurance must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156.

(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 Section 9 of this regulation. 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 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 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 subsection (11) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this regulation, 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) Interim status is terminated or revoked; 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 regulation 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 regulation; or

(b) The director releases the owner or operator from the requirements in accordance with Section 11 of this regulation.

Section 7. Financial Test and Corporate Guarantee for Post-Closure Care. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The owner or operator must have:

1. 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

2. 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

3. Tangible net worth of at least $10 million; and

4. Assets in the *United States* [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:

1. 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

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

3. Tangible net worth of at least $10 million; and

4. Assets located in the *United States* [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 subsection (1) of this section refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (see 401 KAR 34:159).

(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 executed on the form provided by the cabinet, signed by the owner's or operator's chief financial officer and worded as specified in 401 KAR 34:159; 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:

1. 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

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

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to October 8, 1982 and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by October 8, 1982, a letter to the director. This letter from the chief financial officer must:

(a) Request the extension;

(b) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(c) Specify for each facility to be covered by the test the EPA identification number, name, address and the current closure and post-closure cost estimates to be covered by the test;

(d) Specify the date ending the owner's or operator's latest complete fiscal year before October 8, 1982;

(e) Specify the date, no later than ninety (90) days after the end of such fiscal year, when he will submit the documents specified in subsection (3) of this section; and

(f) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified accountant.

(5) After the initial submission of items specified in subsection (3) of this section, 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 subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must send notice to the director of intent to establish alternate financial assurance as specified in this regulation. 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 subsection (1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (3) of this section. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (1) of this section, the owner or operator must provide alternate financial assurance as specified in this regulation 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 examina-

tion of the owner's or operator's financial statements (see subsection (3) of this section). 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 regulation 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 subsection (3) of this section when:

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation;

(b) The director releases the owner or operator from the requirements of this regulation by terminating the financial requirements in accordance with Section 11 of this regulation.

(11) An owner or operator may meet the requirements of this regulation 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 subsections (1) through (9) of this section and must comply with the terms of the corporate guarantee. The corporate guarantee must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165. The corporate guarantee must accompany the items sent to the director as specified in subsection (3) of this section. 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 interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Section 3 of this regulation 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 regulation 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.

Section 8. Cash Account and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of this regulation by submitting to the director a bond guaranteeing compliance with KRS Chapter 224 and regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement. The bank or other financial institution holding the cash account or certificate(s) of deposit in escrow must be regulated and examined by a federal or state agency.

(2) The bond must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168. The escrow agreement for the cash account or certificate(s) of deposit must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.

(3) The cabinet must be the beneficiary of the escrow agreement for the cash account or certificate(s) 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.

(4) The sum of the cash account or certificate(s) of deposit must be in an amount at least equal to the amount of the current post-closure cost estimate, except as provided in Section 9 of this regulation.

(5) After each interest period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual evaluation of the cash accounts or the certificate(s) of deposit. If the value of the cash accounts or the certificate(s) of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, must either deposit an amount into the cash account or the certificate(s) of deposit so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(6) If the value of the cash account or the certificate(s) of deposit is greater than the total amount of the current 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 closure cost estimate.

(7) Under the terms of the cash account or certificate(s) of deposit, the bank or financial institution may cancel the cash account or certificate(s) 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.

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

(9) 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 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.

Section 9. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this regulation by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, insurance, cash accounts and certificate(s) of deposit. The mechanisms must be as specified in Sections 3, 4, 5, 6, and 8, respectively, of this regulation, 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.

Section 10. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this regulation to meet the requirements of this regulation 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. 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.

Section 11. Release of the Owner or Operator from the Requirements of this Regulation. 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 regulation to maintain financial assurance for post-closure care of the particular facility.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 35:120. Liability requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.862, 224.866
NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes the liability requirements.

Section 1. Coverage for Sudden Accidental Occurrences. By October 8, 1982, 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 sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage 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 subsections (1), (2), and (3) of this section.

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

(a) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The liability endorsement must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172. The certificate of liability insurance must be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176. 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.

(b) Each primary insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of primary insurance in Kentucky *except as KRS 304.11-030 provides otherwise.* Each excess insurance policy must be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

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

(3) 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 regulation. The amounts of coverage demonstrated must total at least the minimum amounts required by this section.

Section 2. Coverage for Nonsudden 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 nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain additional liability coverage for nonsudden accidental occurrences in the amount of at least $5,000,000 per occurrence with an annual aggregate of at least $10,000,000, exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subsections (1), (2), and (3) of this section:

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

(a) Each insurance policy must be amended by attachment of the hazardous wwste facility liability endorsement or evidenced by a certificate of liability insurance. The liability endorsement must be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:172. The certificate of liability insurance must be on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:176. 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.

(b) Each primary insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of primary insurance in Kentucky *except as KRS 304.11-030 provides otherwise.* Each excess insurance policy must be issued by an insurer which, at a minimum, is licensed to provide insurance as an excess or surplus lines insurer in one (1) state.

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

(3) 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 regulation. The amounts of coverage demonstrated must total at least the minimum amounts required by this section.

(4) The required liability coverage for nonsudden 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 October 8, 1982, will determine which of the dates apply. 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:

(a) For an owner or operator with sales or revenues totaling $10,000,000 or more, February 24, 1983.

(b) For an owner or operator with sales or revenues greater than $5,000,000 but less than $10,000,000, February 24, 1984.

(c) For all other owners or operators, February 24, 1985.

Section 3. Adjustments by the Director. If the director determines that the levels of financial responsibility required by Sections 1 and 2 of this regulation 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 the level of financial responsibility required under Sections 1 and 2 of this regulation as may be necessary to protect human health and the environment. This adjusted level will 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. In addition, if the director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences from the operations of a facility 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 Section 2 of this regulation. 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 Section 2(1)(e) of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to adjust the level or type of required coverage.

Section 4. Request for a Variance. If an owner or operator can demonstrate to the satisfaction of the director that the increased level of financial responsibility required by Section 3 of this regulation is not consistent with the degree and duration of tasks associated with the treatment, storage, or disposal at each facility or group of facilities, the owner or operator may obtain a variance from the director. The request for a variance must be submitted to the director in writing. The director shall not grant any requests for a variance which seek to decrease the level of financial responsibility below the minimums required by KRS 224.866(3)(c). 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 Sections 1 and 2 of this regulation. Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Section 2 of 401 KAR 38:040 and subject to the procedures of Section 2 of 401 KAR 38:050. Notwithstanding any other provision, the cabinet may hold a public hearing at its discretion or whenever the cabinet finds, on the basis of requests for a public hearing, a significant degree of public interest in a tentative decision to grant a variance.

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

Section 6. Liability Self-Insurance. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. 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 paragraph (a) or (b) of this subsection:

(a) The owner or operator must have:

1. Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

2. Tangible net worth of at least $10 million; and

3. Assets in the *United States* [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 appropriate liability coverage to be demonstrated by this test.

(b) The owner or operator must have:

1. 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

2. Tangible net worth of at least $10 million; and

3. Tangible net worth at least six (6) times the amount of the liability coverage to be demonstrated by this test; and

4. Assets located in the *United States* [Commonwealth of Kentucky] amounting to either, at least, ninety (90) percent of his total assets or at least six (6) times the amount of the liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in subsection (1) of this section refers to the annual aggregate amounts for which coverage is required under Sections 1 and 2 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 executed on a form provided by the cabinet which is worded as specified in 401 KAR 34:162;

(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:

1. 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

2. 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 subsection (3) of this section 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 subsection (3) of this section, 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 subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must obtain insurance for the entire amount of required liability coverage as specified in this regulation. 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.

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

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 35:200. Surface impoundments (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.866

NECESSITY AND FUNCTION: KRS 224.866 requires that persons engaging in the storage, treatment, and disposal of hazardous waste obtain a permit. KRS 224.866 requires the cabinet to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for hazardous waste sites or facilities qualifying for interim status. This regulation establishes minimum standards for surface impoundments.

Section 1. Applicability. The requirements in this regulation apply to owners and operators of sites or facilities that use surface impoundments to treat, store or dispose of hazardous waste, except as Section 1 of 401 KAR 35:010 provides otherwise.

Section 2. General Operating Requirements. A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There must be at least sixty (60) centimeters (approximately two (2) feet) of freeboard.

Section 3. Containment System. All earthen dikes must have a protective cover, such as grass, shale or rock, to minimize wind and water erosion and to preserve their structural integrity.

Section 4. Waste Analysis and Trial Tests. In addition to the waste analyses required by Section 4 of 401 KAR 35:020, whenever a surface impoundment is to be used to:

(1) Chemically treat a hazardous waste which is substantially different from waste prevously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment, the owner or operator must, before treating the different waste or using the different process:

(a) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot scale tests); or

(b) Obtain written, documented information on similar treatment of similar waste under similar operating condi-

tions, to show that this treatment will comply with Section 8(2) of 401 KAR 35:020.

Section 5. Inspections. The owner or operator must inspect:

(1) The freeboard level at least once each operating day to ensure compliance with Section 2 of this regulation; and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least a week to detect any leaks, deterioration or failures in the impoundment.

Section 6. Closure and Post-Closure Care. (1) At closure, the owner or operator may elect to remove from the impoundment:

(a) Standing liquids;

(b) Waste and waste residues;

(c) The liner, if any; and

(d) Underlying and surrounding contaminated soil.

(2) If the owner or operator removes all the impoundment materials in subsection (1) of this section, or can demonstrate under Sections 3(3) and 3(4) of 401 KAR 31:010 that none of the materials listed in subsection (1) of this section remaining at any stage of removal are hazardous wastes, the impoundment is not further subject to the requirements of this chapter.

(3) If the owner or operator does not remove all the impoundment materials in subsection (1) of this section, or does not make the demonstration in subsection (2) of this section, he must close the impoundment and provide post-closure care as for a landfill under 401 KAR 35:070 and Section 4 of 401 KAR 35:230. If necessary to support the final cover specified in the approved closure plan, the owner or operator must treat remaining liquids, residues and soils by removal of liquids, drying or other means. If the owner or operator did not specify in the original Part A application that the impoundment is a disposal facility, the requirements of 401 KAR 38:500 must be satisfied in order for the surface impoundment to become a disposal facility.

Section 7. Special Requirements for Ignitable or Reactive Waste. Ignitable or reactive waste must not be placed in a surface impoundment unless:

(1) The waste is treated, rendered or mixed before [or immediately after] placement in the impoundment so that: the resulting waste mixture no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; *or* [and]

(2) The surface impoundment is used solely for emergencies.

Section 8. Special Requirements for Incompatible Wastes. Incompatible wastes or incompatible wastes and materials (see 401 KAR 35:330 for examples) must not be placed in the same surface impoundment.

Section 9. Recordkeeping. The owner or operator must record the level of liquid in the surface impoundment every day with respect to a fixed reference elevation.

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:010. General provisions for permitting.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, *224.830 through* [224.835, 224.842, 224.855, 224.860, 224.862, 224.864, 224.866, 224.868, 224.871, 224.873, 224.874, 224.876,] 224.877, *224.994*

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.866

NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet.

Coverage. The permit regulations of this chapter establish provisions for the hazardous waste permit program under KRS Chapter 224. The regulations of this chapter cover the basic permitting requirements, including application requirements, standard permit conditions, and monitoring and reporting. The regulations of this chapter are part of a regulatory scheme implementing the hazardous waste provisions of KRS Chapter 224. Additional requirements are in different Chapters of the Kentucky Administrative Regulations. The following table indicates where the regulations implementing the hazardous waste provisions of KRS Chapter 224 appear in the Kentucky Administrative Regulations:

Section of KRS Chapter 224	*Coverage*	*Final Regulation*
KRS Chapter 224	*Overview, definitions and general provisions*	*401 KAR Chapter 30*
KRS 224.864	*Identification and listing of hazardous waste*	*401 KAR Chapter 31*
KRS 224.864	*Generators of hazardous waste*	*401 KAR Chapter 32*
KRS 224.873	*Transporters of hazardous waste*	*401 KAR Chapter 33*
KRS 224.830-224.877	*Standards for hazardous waste sites or facilities*	*401 KAR Chapters 34 and 35 [; 401 KAR 30:030]*
KRS Chapter 224	*Permit requirements for hazardous waste sites or facilities*	*401 KAR Chapter 38*
KRS 224.871	*Fees for registration and permits*	*401 KAR Chapter 39*
KRS Chapter 224	*Enforcement and compliance monitoring*	*401 KAR Chapter 40*

The hazardous waste permit program relies upon technical requirements which are contained in 401 KAR Chapters 34 and 35. The technical regulations are used by the cabinet to determine what conditions are applicable to each permit and to determine compliance with KRS Chapter 224.

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 Chapter 31 (identifying and listing hazardous wastes) all generators and transporters of hazardous waste and all owners or operators of hazardous waste treatment, storage, 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 Chapter 31 regulations, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is pro-

hibited. A permit application consists of two (2) parts, Part A (see [Section 8 of] 401 KAR *38:080* [38:070]) and Part B (see [Sections 9 and 10 of] 401 KAR *38:090 through 38:210* [38:070 and Sections 1 through 6 of 401 KAR 38:080]). For "existing hazardous waste 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 a Permit) to the cabinet until the cabinet sets the date for submitting Part B of the application. [(Part A consists of Forms 1 and 3 of the Federal Consolidated Permit Application Forms.)] Timely submission of both notification under KRS Chapter 224 and the Part A application form 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 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 *Chapter 35* [35:010]. 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 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 [Sections 9 and 10 of] 401 KAR *38:090, 38:100, and the applicable requirements in 401 KAR 38:150 through 38:210* [38:070] and *the applicable requirements in* [Sections 1 through 6 of] 401 KAR *38:150 through 38:210* [38:080]. Owners or operators of new hazardous waste sites or facilities must submit Part A, or its equivalent, and Part B of the permit application at least 180 days before physical construction is expected to commence. This chapter establishes the permitting process for hazardous waste sites or facilities. This regulation establishes the general provisions for permitting.

Section 1. *Scope of the Permit Requirements. (1) The permit program has separate additional regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located in 401 KAR 30:020 and Chapters 34 and 35.*

(2) This section sets forth the specific requirements for the hazardous waste site or facility permitting program. KRS 224.866 requires a permit for the "treatment," "storage," or "disposal" of any "hazardous waste" as identified or listed in 401 KAR Chapter 31. The terms "treatment facility," "storage facility," and "disposal facility," are defined in 401 KAR 30:010. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, and, for any unit which closes after January 26, 1983, during any post-closure care period required under Section 8 of 401 KAR 34:070 and during any compliance period specified under Section 7 of 401 KAR 34:060, including any extension of that compliance period under Section 7(3) of 401 KAR 34:060.

(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, or dispose of hazardous waste (see Section 5 of 401 KAR 38:060). However, the owner and operator with a UIC permit issued by the cabinet 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 1(2) of 401 KAR 38:060 (permit by rule for injection wells).

2. Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit or KPDES permit when the cabinet program is approved by EPA. 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 1(3) of 401 KAR 38:060 (permit by rule for POTW's).

3. Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment, or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a permit for ocean disposal for the barge or vessel itself if they comply with the requirements of Section 1(1) of 401 KAR 38:060 (permit by rule for ocean disposal barges and vessels).

(b) Specific exclusions. 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 Section 5 of 401 KAR 32:030.

2. Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 2 of 401 KAR 32:050.

3. Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this chapter by Section 4 of 401 KAR 31:010 or Section 5 of 401 KAR 31:010 (small generator exemption).

4. Owners or operators of totally enclosed treatment facilities as defined in 401 KAR 30:010.

5. Owners and operators of elementary neutralization units or of waste water treatment units as provided in Section 1(5) of 401 KAR 38:010.

6. Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 1 of 401 KAR 32:030, at a transfer facility for a period of ten (10) days or less.

7. Persons adding absorbent material to waste in a container (as defined in Section 1 of 401 KAR 30:010) and persons adding waste to absorbent material in a container provided that these actions occur at the time waste is first placed in the container; and Section 8(2) of 401 KAR 34:020, and Sections 2 and 3 of 401 KAR 34:180 of this chapter are complied with.

(c) Further exclusions.

1. A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

a. A discharge of a hazardous waste;

b. An imminent and substantial threat of a discharge of hazardous waste;

c. A discharge of a material which, when discharged, becomes a hazardous waste.

2. Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable re-

quirements of this chapter for those activities.

(d) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

[Permit by Rule. Notwithstanding any other provision of this chapter the following shall be deemed to have a permit by rule if the conditions listed are met:]

[(1) 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:]

[(a) Has a permit for ocean disposal issued by the U.S. EPA;]

[(b) Complies with the conditions of that permit; and]

[(c) Complies with the following hazardous waste regulations:]

[1. 401 KAR 34:020, Section 2, Identification number;]

[2. 401 KAR 34:050, Use of manifest system;]

[3. 401 KAR 34:050, Section 3, Manifest discrepancies;]

[4. 401 KAR 34:050, Section 4, Operating record;]

[5. 401 KAR 34:050, Section 6, Annual report; and]

[6. 401 KAR 34:050, Section 7, Unmanifested waste report.]

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

[(a) Has a permit for underground injection issued by the U.S. EPA, and]

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

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

[(a) Has an NPDES permit;]

[(b) Complies with the conditions of that permit; and]

[(c) Complies with the following regulations:]

[1. 401 KAR 34:020, Section 2, Identification number;]

[2. 401 KAR 34:050, Use of manifest system;]

[3. 401 KAR 34:050, Section 3, Manifest discrepancies;]

[4. 401 KAR 34:050, Section 4, Operating record;]

[5. 401 KAR 34:050, Section 6, Annual report;]

[6. 401 KAR 34:050, Section 7, Unmanifested waste report; and]

[(d) 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.]

Section 2. Considerations of Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable federal laws. These laws may include:

(1) The Wild and Scenic Rivers Act. 16 USC 1273, et seq. Section 7 of the Act prohibits the assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(2) The National Historic Preservation Act of 1966. 16 USC 470, et seq. Section 106 of the Act and implementing regulations (36 CFR Part 800) require the adoption measures before issuing a license, when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with state historic preservation officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(3) The Endangered Species Act. 16 USC 1531, et seq. Section 7 of the Act and implementing regulations (50 CFR Part 402) require that in consultation with the Secretary of the Interior or Commerce, any action authorized is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(4) The Fish and Wildlife Coordination Act. 16 USC 661, et seq. requires that, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion or other control or modification of any body of water, consult with the appropriate state agency exercising jurisdiction over wildlife resources to conserve those resources.

Section *3.* [2.] Effect of a Permit. (1) Compliance with a *hazardous waste* 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 Sections 3 and 4 of 401 KAR 38:040 *and in 401 KAR Chapter 40.*

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

(3) 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.

[Section 3. Transfer of Permits. Except as provided in Section 2 of this regulation, 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 3 of 401 KAR 38:040) or a minor modification made (to allow for a change in ownership or operational control of a facility where the cabinet 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) to identify the new permittee and incorporate such other requirements as may be necessary under KRS Chapter 224 and the waste management regulations.]

[Section 4. Emergency Permits. Notwithstanding any other provision of this regulation, in the event the cabinet finds an imminent and substantial endangerment to human health or the environment, the cabinet may issue an emergency permit to allow temporary treatment, storage, or disposal of hazardous waste for a non-permitted facility, thus granting the non-permitted facility an effective temporary 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:]

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

[(2) Shall not exceed ninety (90) days in duration.]

[(3) Shall clearly specify the hazardous wastes to be

received, and the manner and location of their treatment, storage, or disposal.]

[(4) May be terminated by the cabinet at any time without process if the cabinet determines that termination is appropriate to protect human health and the environment.]

[(5) Shall be accompanied by a public notice published under Section 2 of 401 KAR 38:050 including:]

[(a) Name and address of the office granting the emergency authorization;]

[(b) Name and location of the permitted hazardous waste site or facility;]

[(c) A brief description of the wastes involved;]

[(d) A brief description of the action authorized and reasons for authorizing it; and]

[(e) Duration of the emergency permit.]

[(6) Shall incorporate to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter, and 401 KAR Chapter 34 and Section 1 of 401 KAR 30:030.]

[(7) 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 1 of 401 KAR 34:080.]

[(8) Shall specify that failure to comply with the conditions of the emergency permit shall cause the cabinet to sue for the recovery of the cost of proper closure (see Section 2 of 401 KAR 34:070 for closure performance standards and KRS Chapter 224 for the appropriate fines and penalties).]

[Section 5. Scope of the Permit Requirements. This section sets forth the specific requirements for the hazardous waste site or facility permitting program. KRS 224.866 requires a permit for the "treatment," "storage," or "disposal" of any "hazardous waste" as identified or listed in 401 KAR Chapter 31. The terms "treatment facility," "storage facility," and "disposal facility" are defined in 401 KAR 30:010.]

[(1) 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:]

[(a) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see Section 6 of this regulation). However, the owner or operator with a UIC permit issued by the cabinet 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 7 of 401 KAR 38:070 (permit by rule for injection wells).]

[(b) Treatment, storage, 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 1(3) of this regulation (permit by rule for POTWs).]

[(c) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment, or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a permit for ocean disposal for the barge or vessel itself if they comply with the requirements of Section 1(1) of this regulation (permit by rule for ocean disposal barges and vessels).]

[(2) 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:]

[(a) Generators who accumulate hazardous waste onsite for less than ninety (90) days, as provided in 401 KAR 32:030.]

[(b) Farmers who dispose of hazardous waste pesticides from their own use as provided in 401 KAR 32:050, Section 2.]

[(c) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under 401 KAR 31:010 (small generator exemption).]

[(d) Owners or operators of totally enclosed treatment facilities as defined in 401 KAR 30:010.]

[(e) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 401 KAR 32:030, at a transfer facility for a period of ten (10) days or less.]

[(3) 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:]

[(a) Owners and operators of elementary neutralization units as defined in 401 KAR 30:010.]

[(b) Owners and operators of wastewater treatment units as defined in 401 KAR 30:010.]

[Section 6. Interim Permits for UIC Wells. The cabinet 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 35:010 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 under a UIC program to issue or deny a UIC permit for the facility.]

Section 4. [7.] Prohibition of Use of Unpermitted Facility. (1) Restrictions. No person shall deliver hazardous waste to a facility for treatment, storage, or disposal unless the owner/operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980; or

(b) Been granted a hazardous waste site or facility permit by the cabinet.

(2) Permit required. No person shall engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet as specified in KRS 224.866(1).

(3) Issuance of a federal permit to own or operate a hazardous waste site or facility will not relieve the owner or operator of the responsibility to comply with the requirements of this chapter.

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:030. Conditions applicable to all permits.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.835, 224.842, 224.855, 224.860, 224.862, 224.864, 224.866, 224.868, 224.871, 224.873, 224.874, 224.876, 224.877

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.866

NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes the conditions applicable to all permits.

[Section 1. Requirements for Recordkeeping and Reporting of Monitoring Results. All permits shall specify:]

[(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);]

[(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;]

[(3) 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.]

Section *1.* [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.

(1) 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. *However,* [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 of 401 KAR 38:010).

(2) 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.

(3) 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.

(4) Duty to mitigate. *In the event of noncompliance with the permit,* the permittee shall take all reasonable steps to minimize *releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health and the environment* [or correct any adverse impact on the environment resulting from noncompliance with this permit].

(5) 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.

(6) 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.

(7) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish the cabinet, within a reasonable time, any information which the cabinet 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 upon request copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the cabinet or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) 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;

(b) Have access to and copy at reasonable times any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facility's equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) 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.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) 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 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.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(11) Signatory requirement. All applications, reports, or information submitted to the cabinet shall be signed and certified (see Section 7 of 401 KAR 38:070).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the cabinet 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, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility until:]

[1. The permittee has submitted to the cabinet, 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]

[2. The cabinet 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 suparagraph 1 of this paragraph, the permittee has not received notice from the cabinet of its intent to inspect, prior inspection is waived and the permittee may commence treatment, storage or disposal of hazardous waste.]

(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. *In addition, for a new hazardous waste site or facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility until:*

1. The permittee has submitted to the cabinet, by certified mail or hand delivery, a letter signed by the permittee and a professional engineer registered in Kentucky stating that the facility has been constructed or modified in compliance with the permit; and

2. The cabinet 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 subparagraph 1 of this paragraph, the permittee has not received notice from the cabinet of its intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(c) Transfers. This permit is not transferable to any person except after notice to the cabinet. The cabinet 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 3 of this regulation; in some cases, modification or revocation and reissuance is mandatory).

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in this permit.

(e) 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.

(f) Immediate reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within two (2) 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) hours:

1. Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies, including both surface water and groundwater used for public drinking water supplies.
2. 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:

a. Name, address, and telephone number of the owner or operator;
b. Name, address, and telephone number of the facility;
c. Date, time and type of incident;
d. Name and quantity of material(s) involved;
e. The extent of injuries, if any;
f. An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and
g. Estimated quantity and disposition of recovered material that resulted from the incident. The cabinet may waive the five (5) day written notice requirement in favor of a written report within fifteen (15) days.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (a), (d), (e) and (f) of this subsection at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) The following reports required by 401 KAR Chapter 34 shall be submitted:

1. 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 (see Section 3 of 401 KAR 34:050).
2. Unmanifested waste report. Must be submitted to the cabinet within fifteen (15) days of receipt of unmanifested waste (see Section 7 of 401 KAR 34:050).
3. Annual report. An annual report must be submitted covering facility activities during the previous calendar year (see Section 6 of 401 KAR 34:050).

(i) 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, he shall promptly submit such facts or information.

(j) All permits issued by the cabinet will be subject to any future statutory or regulatory changes whose purpose

is the protection of the health and welfare of the citizens of the Commonwealth or their environment.

Section 2. Requirements for Recordkeeping and Reporting of Monitoring Results. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring:

(3) 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.

Section 3. Establishing Permit Conditions. (1) In addition to conditions required in Section 1 of this regulation, the cabinet shall establish conditions as required on a case-by-case basis in permits under Section 1 of 401 KAR 38:040 (duration of permit), 401 KAR 38:060 (schedule of compliance), and Section 2 of 401 KAR 38:060 (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 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.

(2) Individual programs.

(a) In addition to conditions required in all permits for a particular program, the cabinet 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.

(b) 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 3 of 401 KAR 38:040.

(c) New or reissued permits, and to the extent allowed under Section 3 of 401 KAR 38:040 (modified and revoked and reissued permits), shall incorporate each of the applicable requirements referenced in Section 4 of 401 KAR 38:030.

Section 4. *General. (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the appropriate statute and regulations.* [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.]

(a) Time for compliance. Any schedules of compliance under this regulation shall require compliance as soon as possible.

(b) Interim dates. Except as provided in subsection (2)(a)2 of this regulation, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interm 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 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; and for treatment and storage hazardous waste sites or facilities, closing pursuant to the applicable requirements, and, for disposal hazardous waste sites or facilities, closing and conducting post-closure care pursuant to the applicable requirements), 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 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 paragraph (a) of this subsection 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, such as a resolution of the board of directors of a corporation.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:040. *Changes to permits; expiration of permits.* [Duration, termination, renewal and deadlines.]

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, *224.830 through* [224.835, 224.842, 224.855, 224.860, 224.862, 224.864, 224.866, 224.868, 224.871, 224.873, 224.874, 224.876,] 224.877, *224.994*
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.866
NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes permitting standards on duration, termination, renewal and deadlines.

Section 1. Transfer of Permits. 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 2(2)(b) of this regulation) or a minor modification made (under Section 3(4) of this reguation) to identify the new permittee and incorporate such other requirements as may be necessary under KRS Chapter 224 and the waste management regulations.

Section *2.* [3.] *Major* [Justification for] Modification or Revocation and Reissuance of Permits. When the cabinet receives any information (for example, if the cabinet inspects the facility, receives information submitted by the permittee as required in the permit under Section *1* [2] of 401 KAR 38:030, receives a request for modifiction or revocation and reissuance under Section 2 of *401 KAR 38:050* [this regulation], or conducts a review of permit file), the cabinet may determine whether or not one (1) or more of the causes listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both exist. If cause exists, the cabinet may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (3) of this section 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 2*(4)* of *401 KAR 38:050* [this regulation]). If cause does not exist under this section or Section *3* [2(3)] of this regulation, the cabinet shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section *3* [2(5)] of this regulation 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 *401 KAR 38:050 and, if applicable, 401 KAR 38:500* [this regulation] followed.

(1) Causes for modification. *Paragraphs (a) through (e) of this subsection* [The following] are causes for modification but not revocation and reissuance of permits. *Paragraphs (a) through (d) of this subsection may be causes for revocation and reissuance as well as modification, when the permittee requests or agrees.*

(a) 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 different or absent in the existing permit.

(b) Information. The cabinet has received *new* 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.

(c) New regulations. The standards or regulations on which the permit was based have been changed by promulgation of *new or* amended standards or regulations *or* by judicial decision after the permit was issued. *Except as provided in paragraph (e) of this subsection,* permits may be modified during their terms for this cause [only] as follows:

1. For promulgation of *new or* amended standards or regulations, when:

a. The permit condition requested to be modified was based on an effective hazardous waste management regulation; and

b. The cabinet has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and

c. A permittee requests modification in accordance with Section 2 of *401 KAR 38:050* [this regulation] within ninety (90) days after notice of the action on which the request is based.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed cabinet 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 2 of *401 KAR 38:050* [this regulation] within ninety (90) days of judicial remand.

(d) Compliance schedules. The cabinet 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 *3* [2(5)] of this regulation on minor modifications).

(e) The cabinet may modify a permit:

1. When modification of a closure plan is required under 401 KAR 34:070, Section 3(2) or 4(2).

2. When the cabinet receives notification of expected closure under 401 KAR 34:070, Section 4, and finds that any of the following previously granted permit conditions are no longer warranted:

a. Extension of the ninety (90) or 180 day periods under 401 KAR 34:070, Section 4;

b. Modification of an extended post-closure care period under 401 KAR 34:070, Section 7;

c. Continuation of security requirements under 401 KAR 34:070, Section 7(2); or

d. Permission to disturb the integrity of the containment system under 401 KAR 34:070, Section 7(3).

3. When the permittee has filed a request under 401 KAR 34:120, Section 4 for a variance to the level of financial responsibility or when the secretary demonstrates under 401 KAR 34:120, Section 5 that an upward adjustment of the level of financial responsibility is required.

4. When the corrective action program specified in the permit under Section 11 of 401 KAR 34:060 has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable period of time.

5. To include a detection monitoring program meeting the requirements of Section 9 of 401 KAR 34:060, when the owner or operator has been conducting a compliance monitoring program under Section 10 of 401 KAR 34:060 or a corrective action program under Section 11 of 401 KAR 34:060 and the compliance period ends before the end of the post-closure care period for the unit.

6. When a permit requires a compliance monitoring program under Section 10 of 401 KAR 34:060, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard.

7. To include the conditions applicable to units at a facility that were not previously included in the site or facility's permit.

8. When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

9. To include conditions applicable in new or amended standards or regulations.

10. When modification is necessary to protect the public health or the environment.

11. To include conditions applicable as result of a hearing or enforcement action as specified in 401 KAR Chapter 40.

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) Cause exists for termination under Section 4 of this regulation and the cabinet determines that modification or revocation and reissuance is appropriate.

(b) The cabinet has received notification (as required in the permit in Section *1(12)(c) of 401 KAR 38:030* [2(3) of this regulation]) 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 3 of 401 KAR 38:010) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.]

(3) 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.

[Section 2. Requests for Modification, Revocation and Reissuance, or Termination. (1) 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 initiative. However, a permit may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 3 and 4 of this regulation and following the procedures of 401 KAR Chapter 40. All requests shall be in writing and shall contain facts or reasons supporting the request.]

[(2) If the cabinet decides the request is not justified, the cabinet 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.]

[(3) If the cabinet tentatively decides to modify or revoke and reissue a permit under Section 3 of this regulation, the cabinet shall prepare a draft permit under Section 1 of 401 KAR 38:050 incorporating the proposed changes. The cabinet 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 shall require the submission of a new application.]

[(4) In a permit modification under this section, 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 Sections 2 through 4 of this regulation, 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.]

[(5) "Minor modifications" are not subject to the requirements of this section. Minor modifications may only:]

[(a) Correct typographical errors;]

[(b) Require more frequent monitoring or reporting by the permittee;]

[(c) 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;]

[(d) Allow for a change in ownership or operational control of a facility as referenced in Section 3 of 401 KAR 38:010.]

[(e) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan; or]

[(f) Change estimates of maximum inventory under Section 3(1)(b) of 401 KAR 34:070; change estimates of expected year of closure or schedules for final closure under Section 3(1)(d) of 401 KAR 34:070; or approve periods longer than ninety (90) days or 180 days under Section 4(1) and (2) of 401 KAR 34:070.]

[(6) If the cabinet tentatively decides to terminate a permit under Section 4 of this regulation, 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 1 of 401 KAR 38:050.]

[(7) All draft permits (including notices of intent to terminate) prepared under Sections 2 through 4 of this regulation shall be based on the administrative record.]

Section 3. Minor Modifications of Permits. Upon the consent of the permittee, the cabinet may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 38:050. Any permit modification not processed as a minor modification under this section must be made for cause and with a 401 KAR 38:050 draft permit, public notice as required in Section 2 of this

regulation and, if applicable, compliance with 401 KAR 38:500 must be demonstrated. 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; or

(4) Allow for a change in ownership or operational control of a site or facility where the cabinet determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, financial coverage and liability between the current and new permittees has been submitted to the cabinet.

(5) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan;

(6) Change estimates of maximum inventory under Section 3(1)(b) of 401 KAR 34:070; or

(7) Change estimates of expected year of closure or schedules for final closure under Section 3(1)(d) of 401 KAR 34:070;

(8) Approve periods longer than ninety (90) days or 180 days under Section 4(1) and (2) of 401 KAR 34:070.

(9) Change the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the change is minor.

(10) Change the operating requirements set in the permit for conducting a trial burn, provided that the change is minor.

(11) Grant one (1) extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste.

(12) Change the treatment program requirements for land treatment units under Section 2 of 401 KAR 34:220 to improve treatment of hazardous constituents, provided that the change is minor.

(13) Change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with Section 8 of 401 KAR 38:080, provided that the change is minor.

(14) Allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by Section 3(1) of 401 KAR 34:220, provided the conditions of the second demonstration are substantially the same as the conditions for the first demonstration.

Section 4. Termination of Permits. (1) The cabinet may terminate a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with any condition of the permit;

(b) 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]

(c) 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; *or*

(d) A violation of any requirement of KRS Chapter 224 or the respective regulations promulgated pursuant thereto (including 401 KAR 40:040).

(2) The cabinet shall follow the applicable procedures in this regulation and in 401 KAR *38:050* [Chapter 38] and *401 KAR Chapter* 40 in terminating any permit under this section.

Section *5.* [1.] 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 *5* [6] of 401 KAR *38:060* [38:010], Interim permits for UIC wells.)

(2) Modification of term of permit. Except as provided in Section *6* [2] of this regulation, 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 may issue any permit for a duration that is less than the full allowable term under subsection (1) of this section.

[Section 5. 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 no later than November 19, 1980. Where other existing facilities must begin complying with 401 KAR 35:010 at a later date because of revisions to the waste management regulations, the cabinet 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 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 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 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 401 KAR Chapter 38 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 401 KAR Chapter 38.]

[(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 34:180 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 34:180 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 30:010) 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 34:180 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. 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, as necessary to comply with the provisions of 401 KAR 38:020.]

[(b) The owner or operator of a facility who fails to comply with the updating requirements of paragraph (a) of this subsection 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. (The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit).]

Section 6. Continuation of Expiring Permits. (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) The permittee has submitted a timely application under 401 KAR 38:090 and 38:100 and the applicable requirements in 401 KAR 38:150 through 38:210 and which is a complete (under Section 1(3) of 401 KAR 38:070) application for a new permit, paid the appropriate fees due (under 401 KAR Chapter 39); and

(b) The cabinet through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resources constraints).

(2) Effect. Permits continued under this section remain fully effective and enforceable.

(3) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the cabinet may choose to do any or all of the following:

(a) Initiate enforcement action based upon the permit which has been continued;

(b) Issue a notice of intent to deny the new permit under Section 3 of 401 KAR 38:050. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(c) Issue a new permit under 401 KAR 38:050 with appropriate conditions; or

(d) Take other actions authorized by 401 KAR Chapters 30 through 40.

(4) State continuation. As provided in 40 CFR 270.51(d), an EPA issued permit shall not continue in force beyond its expiration date under federal law if at that time the cabinet is the RCRA permitting authority.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:050. Public information procedures [and confidentiality].

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, *224.830 through* [224.835, 224.842, 224.855, 224.860, 224.862, 224.864, 224.866, 224.868, 224.871, 224.873, 224.874, 224.876,] 224.877, *224.994*

PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.866

NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes standards on public information procedures and confidentiality.

Section 1. Application for a Permit. (1)(a) Any person who requires a hazardous waste site or facility permit under KRS Chapter 224 shall complete, sign, and submit to the cabinet an [two (2)] application for each permit required under Section 1 of 401 KAR 38:010. [If the application for a permit includes an incinerator or a facility which requires groundwater monitoring, three (3) applications must be submitted to the cabinet. Additional copies may be required prior to permit issuance.] Applications are not required for hazardous waste site or facility permits by rule (Section 1 of 401 KAR 38:060) or underground injections authorized by rule.

(b) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit (see Sections 1 through 6 of 401 KAR 38:070, 401 KAR 38:080 and the applicable requirements in 401 KAR 38:150 through 38:210).

(c) Permit applications must comply with the signature and certification requirements of Section 7 of 401 KAR 38:070.

(2) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. When the application is for an existing hazardous waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet may notify the applicant that the application is complete upon receiving this information.

(3) If an applicant fails or refuses to correct deficiencies in the application or if the applicant fails or refuses to submit additional information, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision.

(4) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, a representative of the cabinet shall notify the applicant and a date shall be scheduled.

(5) The effective date of an application is the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (2) of this section.

(6) For each application, the cabinet shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing; and

(d) Issue a final permit.

Section 2. Modification, Revocation and Reissuance, or Termination of Permits. (1) 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 initiative. However, a permit may only be modified, revoked and reissued, or terminated for the reasons specified in Sections 2 and 4 of 401 KAR 38:040 and following the procedures of 401 KAR Chapter 40. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet 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.

(3) (a) If the cabinet tentatively decides to modify or revoke and reissue a permit under Section 2 of 401 KAR 38:040, the cabinet shall prepare a draft permit under Section 3 of this regulation incorporating the proposed changes. The cabinet 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 shall require the submission of a new application.

(b) In a permit modification under this section, only those conditions to be modified shall be reopended 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.

(c) "Minor modifications" as defined in Section 3 of 401 KAR 38:040 are not subject ot the requirements of this section.

(4) If the cabinet tentatively decides to terminate a permit under Section 4 of 401 KAR 38:040, 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 3 of this regulation.

(5) All draft permits (including notices of intent to terminate) prepared under Sections 3 through 5 of this regulation shall be based on the administrative record as defined in Section 6 of this regulation.

Section *3.* [1.] Draft Permits. (1) Once an application is complete, the cabinet shall tentatively decide whether to prepare a draft permit or to deny the application. In making this determination the cabinet shall consider the requirements specified in the waste management regulations and in KRS 224.866.

(2) If the cabinet 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 subsection (4)). If the cabinet's final decision is that the tentative decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

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

(a) All conditions under Sections *1* [2] and 3 of 401 KAR 38:030;

(b) All compliance schedules under *Section 4 of* 401 KAR *38:030* [38:060]; [and]

(c) All monitoring requirements under Section *2* [1] of 401 KAR 38:030*; and*

(d) Standards for treatment, storage or disposal, and other permit conditions under Section 1 of 401 KAR 38:030.

(4) All draft permits prepared by the cabinet under this section shall be accompanied by a *statement of basis (see Section 4 of this regulation) or* fact sheet *(see Section 5 of this regulation) and shall be based on the administrative record (see Section 6 of this regulation) and publicly noticed (see Section 7 of this regulation),* and shall be made available for public comment *(see Section 8 of this regulation).* The cabinet shall give notice of the opportunity for a public hearing as required by KRS 224.855 *(see Section 9 of this regulation), issue a final decision* and respond to comments *(see Section 11 of this regulation). An appeal may be taken under KRS 224.081. Draft permits shall be accompanied by a fact sheet if required under Section 5 of this regulation.*

Section 4. Statement of Basis. The cabinet shall prepare a statement of basis for every draft permit for which a fact sheet under Section 5 of this regulation is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

Section 5. Fact Sheet. (1) 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 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 shall send this fact sheet to the applicant and, on request, to any other person.

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

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) 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 *required by Section 6 of this regulation*;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedure for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 7 [6] of this regulation and the address where comments will be received;

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

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

(f) Name and telephone number of a person to contact for additional information.

Section 6. Administrative Record for Draft Permits. (1) The provisions of a draft permit prepared by the cabinet under Section 3 of this regulation shall be based on the administrative record defined in this section.

(2) For preparing a draft permit under Section 3 of this regulation, the record shall consist of:

(a) The application, if required, and any supporting data furnished by the applicant;

(b) The draft permit or notice of intent to deny the application or to terminate the permit;

(c) The statement of basis (see Section 4 of this regulation) or fact sheet (see Section 5 of this regulation);

(d) All documents cited in the statement of basis or the fact sheet; and

(e) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the cabinet's office or published material that is generally available, and that is included in the administrative record under this subsection and subsection (2) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(4) This section applies to all draft permits when public notice was given after the effective date of these regulations.

Section 7. [6.] Public Notice of Permit Application and Public Comment Period. (1) Scope.

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

1. A permit application has been tentatively denied under Section *3(2)* [1] of this regulation;

2. A draft permit has been prepared under Section *3(3)* [1] of this regulation;

3. A hearing has been scheduled under Section *9* [3] of this regulation; and

4. An appeal has been granted under 401 KAR 40:030.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Section *2(2)* of *this regulation* [401 KAR 38:040]. Written notice of that denial shall be given to the requester and to the permittee.

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

(2) Timing.

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

(b) 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.)

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

(a) 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):

1. The applicant;

2. Any other agency which the cabinet knows has issued or is required to issue an environmental permit for the same facility or activity (including United States Environmental Protection Agency);

3. 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;

4. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

c. 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 may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.) [; and]

5. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

6. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) 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.

(c) Any other method reasonably calculated to give actual notice of the action in question to the persons poten-

tially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this chapter shall contain the following minimum information:

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

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

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

4. 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;

5. A brief description of the comment procedures required by Sections *8 and 9* [2 and 3] of this regulation 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;

6. The location of the administrative record *required by Section 6 of this regulation*, 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;

7. The statement contained in KRS 224.855(3)(e); and

8. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in subsection (4)(a) of this section, the public notice of a hearing under Section *9* [3] of this regulation shall contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) In addition to the general public notice described in subsection (4)(a) of this section, all persons identified in subsection (3)(a) of this section 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 shall charge for duplication cost and postage.

[Section 7. Confidentiality of Information. (1) Claims of confidentiality. In accordance with KRS 224.036, any information submitted to the cabinet 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 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.]

Section *8.* [2.] Public Comments and Requests for Public Hearings. During the public comment period provided under Section *7* [6] of this regulation, 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 *11* [4] of this regulation.

Section *9.* [3.] Public Hearings. (1)(a) The cabinet shall hold a public hearing on the basis of requests, when a significant degree of public interest in a draft permit(s) is found.

(b) The cabinet 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.

(c) *1.* The cabinet 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 *7(2)(a)* [6] of this regulation is received.

2. Whenever possible the cabinet 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.

(d) Public notice of the hearing shall be given as specified in Section *7* [6] of this regulation.

(2) 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.

(3) 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 *7* [6] of this regulation shall automatically be extended to the close of any public hearing under this regulation. The hearing officer may also extend the comment period by so stating at the hearing.

(4) 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.

Section 10. Reopening of the Public Comment Period. (1) If any data, information or arguments submitted during the public comment period (including information or arguments that any condition of the draft permit or permit denial is inappropriate) appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this regulation;

(b) Prepare a revised statement of basis under Section 4 of this regulation and reopen the comment period under this section; or

(c) Reopen or extend the comment period under Section 7 of this regulation to give interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 7 of this regulation shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

(4) Public notice of any of the above actions shall be issued under Section 7 of this regulation.

Section *11.* [4.] Response to Comments. (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments when a final permit is issued. This response shall:

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

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

(2) For cabinet 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 may document its response to those matters by adding new materials to the administrative record.

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

(4) In the case of a hazardous waste disposal site or facility, no permit shall be approved or issued by the cabinet prior to the *approvals* [notification] specified in KRS 224.855(5) and (6). *401 KAR 38:500 details the procedures that the applicant must use in obtaining local government approval or for land disposal facilities the approval of the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.*

Section 12. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 7 of this regulation on a draft permit, the cabinet shall issue a final permit decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective on the date issued by the cabinet.

Section 13. Past Performance Considered in Review. Past performance of the owner or operator will be considered in the review and in the determination of any requirement for specialized conditions.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:070. Application procedures.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, *224.830 through* [224.835, 224.842, 224.855, 224.860, 224.862, 224.864, 224.866, 224.868, 224.871, 224.873, 224.874, 224.876,] 224.877, *224.994*

PURSUANT TO: KRS 13.082, *13.083, 224.033,* [224.017,] 224.866

NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes *the* [standards on] application procedures.

Section 1. *General Application Requirements. (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 as described in Sections 1 through 6 of this regulation and 401 KAR 38:020. Persons currently authorized with interim status under 401 KAR 38:020 shall apply for permits when required by the cabinet. Persons covered by permits by rule, Section 1[(1)] of 401 KAR *38:060* [38:010], need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in Section *2* [4] of 401 KAR *38:060* [38:010].

(2) [Section 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) [Section 3.] Completeness. The cabinet shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the cabinet receives an application form and any supplemental information which is *required* [completed] to *determine the merits of the application* [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) [Section 4.] Information requirements. All applicants for permits shall provide the *applicable* [following] information *in compliance with 401 KAR 38:080 through 401 KAR 38:210* to the cabinet, using the application form provided by the cabinet [(additional information required of applicants is set forth in Sections 8 through 10 of this regulation and Sections 1 through 6 of 401 KAR 38:080)].

[(1) The activities conducted by the applicant which require him to obtain permits.]

[(2) Name, mailing address, and location of the facility for which the application is submitted.]

[(3) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.]

[(4) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.]

[](5) *Number of copies. Any person who requires a hazardous waste site or facility permit shall submit two (2) copies of the application. If the application for a permit includes an incinerator or a facility which requires groundwater monitoring, three (3) copies of the application must be submitted to the cabinet. Additional copies may be required prior to permit issuance.* [Whether the facility is located in Indian lands.]

[(6) A listing of all permits or construction approvals received or applied for under any of the following programs:]

[(a) Hazardous waste management program under the Resource Conservation and Recovery Act (RCRA);]

[(b) UIC program under the Safe Drinking Water Act (SDWA);]

[(c) NPDES program under the Clean Water Act (CWA);]

[(d) Prevention of significant deterioration (PSD) program under the Clean Air Act (CAA);]

[(e) Nonattainment program under the Clean Air Act;]

[(f) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Clean Air Act;]

[(g) Ocean disposal permits under the Marine Protection Research and Sanctuaries Act;]

[(h) Dredge or fill permits under Section 404 of CWA; and]

[(i) Other relevant environmental permits, including air pollution, water quality and solid waste permits issued by the cabinet.]

[(7) 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, 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.]

[(8) A brief description of the nature of the business.]

Section 2. Existing Hazardous Waste Sites or Facilities. (1) 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 no later than November 19, 1980 or thirty (30) days after the date they first become subject to the standards set forth in 401 KAR Chapter 35, whichever first occurs.

(2) The cabinet 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 or its equivalent if the cabinet finds that:

(a) There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

(b) Such confusion is attributable to ambiguities in the waste management regulations.

(3) The cabinet 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.

(4) Any time after promulgation of the appropriate regulatory requirement 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.

(5) 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 401 KAR 38:050.

Section 3. New Hazardous Waste Sites or Facilities. (1) Except as provided in subsection (3) of this section, no person shall begin physical construction of a new hazardous waste site or facility without having submitted Part A or its equivalent and Part B of the permit application and received an effective hazardous waste site or facility permit (see Section 12 of 401 KAR 38:050).

(2) 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 at any time after promulgation of the standards in 401 KAR 34:180, et seq., applicable to such facility. The application shall be filed with the cabinet. Except as provided in subsection (3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

(3) After November 19, 1980, but prior to the effective date of those standards in 401 KAR 34:180, 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 30:010) without having received an effective hazardous waste site or facility permit, if prior to beginning physical construction, such person has:

(a) Obtained the federal, state and local approvals, permits, or certificates necessary to begin physical construction;

(b) Submitted Part A of the permit application or its equivalent; and

(c) 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 34:180, 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). Such person must not operate the new hazardous waste site or facility without having receivd an effective hazardous waste site or facility permit.

Section 4. Updating Permit Applications. (1) 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:

(a) No later than the effective date of regulatory provisions listing or designating wastes as hazardous in addition to those listed or designated previously in 401 KAR Chapter 31, if the facility is treating, storing or disposing of any of the newly listed or designated waste; or

(b) As necessary to comply with Section 3 of 401 KAR 38:020 for changes during interim status.

(2) The owner or operator of a facility who fails to comply with the updating requirements of subsection (1) of this section does not receive interim status as to the wastes not covered by a duly filed Part A application or its equivalent.

Section 5. 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. (The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

Section *6.* [5.] Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Section 1*(4)* [through 6 and 8 through 10] of this regulation and [Sections 1 through 6 of] 401 KAR 38:080 *through*

38:210, for a period of at least three (3) years from the date the application is signed.

[Section 6. Permit Requirements. (1) Any person who requires a hazardous waste site or facility permit under KRS Chapter 224 shall complete, sign, and submit to the cabinet an application for each permit required. Applications are not required for hazardous waste site or facility permits by rule (Section 1 of 401 KAR 38:010) or underground injections authorized by rule.]

[(2) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.]

[(3) Permit applications must comply with the signature and certification requirements of Section 7 of this regulation.]

Section 7. Signatures to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a *responsible corporate officer. For the purpose of this section, a responsible corporate officer means:* [principal executive officer of at least the level of vice-president;]

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(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. *For purposes of this section, a principal executive officer of a federal agency includes:*

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

(2) Reports. All reports required by permits, and other information requested by the cabinet, 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.

(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 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 *this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.* [I have personally examined and am familiar with the information submitted in this document and all attachments and that,] Based on my inquiry of *the person or persons directly* [those individuals immediately] responsible for *gathering* [obtaining] the information, *the information submitted is, to the best of my knowledge and belief,* [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 *for knowing violations.*"

Section 8. *Confidentiality of Information.* [Contents of Part A Application or its equivalent. In addition to the information in Sections 1 through 6 of this regulation, Sections 5 and 7 of 401 KAR 38:010, and Section 5 of 401 KAR 38:040, Part A of the hazardous waste site or facility permit application or its equivalent (Registration of Intent to Apply for Permit) shall include the following information:]

(1) *Claims of confidentiality. In accordance with KRS 224.036, any information submitted to the cabinet 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 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.* [Location. The latitude and longitude of the facility.]

(2) *Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential will be denied.* [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, and disposal areas.]

[(5) Photographs. For existing facilities, photographs of the facility clearly delineating all existing structures: existing treatment, storage, and disposal areas; and sites of future treatment, storage and disposal areas.]

[(6) Process description. A description of the processes to be used for treating, storing and disposing of hazardous waste, and the design capacity of these items.]

[(7) Information on wastes. A specification of the hazardous wastess listed or designated under 401 KAR Chapter 31 to be treated, stored, or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.]

[Section 9. Contents of Part B Application. Part B information requirements presented below reflect the information requirements necessary for the cabinet to determine compliance with 401 KAR Chapter 34 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 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 and signed in accordance with requirements in Section 7. 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 information requirements in Section 10 of this regulation and Sections 1 through 6 of 401 KAR 38:080.]

[Section 10. General Information Requirements. The following information is required for all hazardous waste sites or facilities, except as 401 KAR 34:010, Section 1 provides otherwise:]

[(1) A general description of the facility.]

[(2) 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, or dispose of the wastes properly in accordance with 401 KAR Chapter 34.]

[(3) A copy of the waste analysis plan required by 401 KAR 34:020, Section 4(2) and, if applicable, Section 4(3) of 401 KAR 34:020.]

[(4) A description of the security procedures and equipment required by 401 KAR 34:020, Section 5, or a justification demonstrating the reasons for requesting a waiver of this requirement.]

[(5) A copy of the general inspection schedule required by 401 KAR 34:020, Section 6(2) including, where applicable, as part of the inspection schedule, specific requirements in Section 5 of 401 KAR 34:180, Section 4 of 401 KAR 34:190, Section 5 of 401 KAR 34:200, and Section 5 of 401 KAR 34:210.]

[(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of 401 KAR 34:030.]

[(7) A copy of the contingency plan required by 401 KAR 34:040, including, where applicable, as part of the contingency plan, specific requirements in 401 KAR 34:200 and 34:210.]

[(8) A description of procedures, structures, or equipment used at the facility to:]

[(a) Prevent hazards in unloading operations (for example, ramps, special forklifts);]

[(b) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);]

[(c) Prevent contamination of water supplies;]

[(d) Mitigate effects of equipment failure and power outages; and]

[(e) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).]

[(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with 401 KAR 34:020, Section 8, including documentation demonstrating compliance with 401 KAR 34:020, Section 8(3).]

[(10) 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).]

[(11) Facility location information:]

[(a) In order to determine the applicability of the seismic standard, 401 KAR 34:020, Section 9(1), 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.]

[(b) If the facility is proposed to be located in an area listed in 401 KAR 34:340, 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, 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, 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, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses the location of any faults found.]

[(c) 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.]

[(d) 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 paragraph (c) of this subsection, 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 Chapters 34, 35 and 38; 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.]

[(e) Existing facilities NOT in compliance with 401 KAR 34:020, Section 9(2) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.]

[(f) The owner or operator of a facility shall demonstrate compliance with Section 5 of 401 KAR 35:010 and with 401 KAR 30:030. 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 35:010.]

[(12) 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 34:020, Section 7. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in 401 KAR 34:020, Section 7(1)(c).]

[(13) A copy of the closure plan and, where applicable, the post-closure plan required by Sections 3 and 8 of this regulation.]

[(14) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Section 10 of 401 KAR 34:070.]

[(15) The most recent closure cost estimate for the facility prepared in accordance with Section 1 of 401 KAR 34:090 plus a copy of the financial assurance mechanism adopted in compliance with 401 KAR 34:090, Sections 2 through 12.]

[(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with Section 1 of 401 KAR 34:100 plus a copy of the financial assurance mechanism adopted in compliance with 401 KAR 34:100, Sections 2 through 12.]

[(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of 401 KAR 34:120. For a new facility, documentation showing the amount of insurance meeting the specification of 401 KAR 34:120, Section 1, and if applicable, 401 KAR 34:120, Section 2, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, 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 34:120.]

[(18) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (approximately one (1) inch) equal to not more than 61.0 meters (approximately 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 (approximately five (5) feet), if relief is greater than 6.1 meters (approximately twenty (20) feet), or an interval of 0.6 meters (approximately two (2) feet), if relief is less than 6.1 meters (approximately 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:]

[(a) Map scale and date;]

[(b) 100-year floodplain area;]

[(c) Surface waters including intermittent streams;]

[(d) Surrounding land uses (residential, commercial, agricultural, recreational);]

[(e) A wind rose (i.e., prevailing windspeed and direction);]

[(f) Orientation of the map (north arrow);]

[(g) Legal boundaries of the hazardous waste site or facility;]

[(h) Access control (fences, gates);]

[(i) Injection and withdrawal wells both on-site and off-site;]

[(j) Buildings; treatment, storage, 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.);]

[(k) Barriers for drainage or flood control; and]

[(l) Location of operational units within the hazardous waste site or facility where hazardous waste is (or will be) treated, stored, or disposed (including equipment cleanup areas).]

[(19) 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:]

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

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

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

[(d) An evaluation of mitigation procedures to alleviate problems identified in paragraphs (a), (b), and (c) of this subsection (see KRS 224.866(1)(d)); and]

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

[(20) Applicants may be required to submit such information as may be necessary to enable the cabinet to carry out its duties under other state laws as required in this chapter.]

[Section 11. Specific Information Requirements. Sections 1 through 6 of 401 KAR 38:080 contains additional

information 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.]

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:090. General contents of Part B application.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.866
NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes the general contents of the Part B application.

Section 1. Contents of Part B Application. Part B of the permit application consists of the general information requirements of this regulation and the specific informational requirements in 401 KAR 38:100 through 38:210 applicable to the facility. Part B information requirements presented below reflect the information requirements necessary for the cabinet to determine compliance with 401 KAR Chapter 34 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 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 and signed in accordance with requirements in Section 2 of 401 KAR 38:070. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a professional engineer registered in Kentucky.

Section 2. General Information Requirements. The following information is required for all hazardous waste sites or facilities, except as Section 1 of 401 KAR 34:010 provides otherwise:

(1) A general description of the facility.

(2) 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, or dispose of the wastes properly in accordance with 401 KAR Chapter 34.

(3) A copy of the waste analysis plan required by Section 4(2) of 401 KAR 34:020 and, if applicable, Section 4(3) of 401 KAR 34:020.

(4) A description of the security procedures and equipment required by Section 5 of 401 KAR 34:020, or a justification demonstrating the reasons for requesting a variance of this requirement.

(5) A copy of the general inspection schedule required by Section 6(2) of 401 KAR 34:020. Include where applicable, as part of the inspection schedule, specific requirements in Section 5 of 401 KAR 34:180, Section 4 of 401 KAR 34:190, Section 4 of 401 KAR 34:200, Section 5 of 401 KAR 34:210, Section 4 of 401 KAR 34:220, and Section 4 of 401 KAR 34:230.

(6) A justification of any request for a variance(s) of the preparedness and prevention requirements of 401 KAR 34:030.

(7) A copy of the contingency plan required by 401 KAR 34:030; include, where applicable, as part of the contingency plan, specific requirements in 401 KAR 34:200 and 34:210.

(8) A description of procedures, structures, or equipment used at the facility to:

(a) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(b) Prevent run-off from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(c) Prevent contamination of water supplies;

(d) Mitigate effects of equipment failure and power outages; and

(e) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive or incompatible wastes as required to demonstrate compliance with Section 8 of 401 KAR 34:020 including documentation demonstrating compliance with Section 8(3) of 401 KAR 34:020.

(10) 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).

(11) Facility location information:

(a) In order to determine the applicability of the seismic standard, Section 9(1) of 401 KAR 34:020, 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.

(b) If the facility is proposed to be located in an area listed in 401 KAR 34:340 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 evaluation seismic activity. The information submitted must show that either:

1. No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have had displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

a. Published geologic studies,

b. Aerial reconnaissance of the area within a five (5) mile radius from the facility,

c. An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

d. If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility; or

2. 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, 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 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, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses the location of any faults found.

(c) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain, floodway or seasonal high water tables in accordance with Section 9(2) of 401 KAR 34:020. 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. Note: Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.

(d) Owners and operators of facilities located in the 100-year floodplain must proivde the following information:

1. Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood;

2. Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood prevention devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout and inundation of the waste;

3. If applicable, and in lieu of subparagraphs 1 and 2 of this paragraph a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

a. 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;

b. 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 Chapters 34 through 38;

c. The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use; and

d. The potential for accidental discharges of the waste during movement.

(e) Existing facilities NOT in compliance with Section 9(2) of 401 KAR 34:020 shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) 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 Section 7 of 401 KAR 34:020. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in Section 7(1)(c) of 401 KAR 34:020.

(13) A copy of the closure plan and, where applicable, the post-closure plan required by Sections 3 and 8 of 401 KAR 34:070. Include where applicable as part of the plans, specific requirements in Section 9 of 401 KAR 34:180, Section 5 of 401 KAR 34:190, Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:200, Section 6 of 401 KAR 34:230, and Section 8 of 401 KAR 34:240.

(14) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Section 10 of 401 KAR 34:070.

(15) The most recent closure cost estimate for the facility prepared in accordance with Section 1 of 401 KAR 34:090 plus a copy of the financial assurance mechanism adopted in compliance with 401 KAR 34:090.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with Section 1 of 401 KAR 34:100 plus a copy of the financial assurance mechanism adopted in compliance with 401 KAR 34:100.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of 401 KAR 34:120. For a new facility, documentation showing the amount of insurance meeting the specification of Section 1 of 401 KAR 34:120 and if applicable, Section 2 of 401 KAR 34:120 that the owner or operator plans to have in effect before initial receipt of hazardous waste for the treatment, storage, 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 34:120.

(18) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (approximately one (1) inch) equal to not more than 61.0 meters (approximately 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 (approximately five (5) feet), if relief is greater than 6.1 meters (approximately twenty (20) feet), or an interval of 0.6 meters (approximately two (2) feet), if relief is less than 6.1 meters (approximately 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:

(a) Map scale and date;

(b) One-hundred year floodplain area and, if applicable, floodway and areas of seasonal high water table;

(c) Surface waters including intermittent streams;
(d) Surrounding land uses (residential, commercial, agricultural, recreational);
(e) A wind rose (i.e., prevailing windspread and direction);
(f) Orientation of the map (north arrow);
(g) Legal boundaries of the hazardous waste site or facility;
(h) Access control (fences, gates);
(i) Injection and withdrawal wells both on-site and off-site;
(j) Buildings, treatment, storage, or disposal operations; or other structures (recreation areas, run-off control systems, groundwater monitoring systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.);
(k) Barriers for drainage or flood control; and
(l) Location of operational units within the hazardous waste site or facility where hazardous waste is (or will be) treated, stored, or disposed (including equipment cleanup areas).

(19) 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:
(a) An evaluation of alternatives including other site locations and treatment, storage and disposal approaches (see KRS 224.866(1)(a));
(b) An evaluation of the public health, safety and environmental aspects on the affected community (see KRS 224.866(1)(b));
(c) An evaluation of the social and economic impacts of the proposal on the affected community (see KRS 224.866(1)(b));
(d) An evaluation of mitigation procedures to alleviate problems identified in paragraphs (a), (b), and (c) of this subsection (see KRS 224.866(1)(d)); and
(e) An evaluation of the relationship of the proposal to local planning and existing development (see KRS 224.866(1)(e)).
(f) In the case of hazardous waste landfills or other sites or facilities for the land disposal of hazardous waste the provisions of paragraphs (c) and (e) of this subsection shall be determined by the local unit of government pursuant to KRS 224.855(5); in the case of a regional integrated waste treatment and disposal demonstration facility the provisions of paragraphs (c) and (e) of this subsection shall be determined by the siting board established pursuant to KRS 224.2203.

(20) A showing of the past compliance record for both the applicant and any other individual or entity designated to own or operate the hazardous waste site or facility (as required by KRS 224.866(1) as follows:
(a) Organizational structure:
1. If the applicant is a proprietorship, a detailed listing of:
a. The proprietors and their respective interests, whether ownership or otherwise.
b. Any partnership (general or limited), joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest (whether ownership or otherwise).
2. If the applicant is a partnership, either general or limited, a detailed listing of:
a. Each of the partners and their respective interests, whether ownership or otherwise.
b. Any corporation, joint venture, partnership (general or limited), or proprietorship in which any of the constituent partners of the applicant holds as much as or more than twenty-five (25) percent interest (whether ownership or otherwise);
c. Any corporation, joint venture, proprietorship, or partnership (general or limited) which holds as much as or more than a twenty-five (25) percent interest (whether ownership or otherwise) in any of the non-individual constituent partners comprising the applicant.
3. If the applicant is a corporation, a detailed listing of:
a. The officers, directors, and major stockholders;
b. Any corporation of which the applicant is either a subsidiary or which holds as much as or more than a twenty-five (25) percent interest (either in stock or assets) in the applicant;
c. Any corporations which are either subsidiaries of the applicant or in which the applicant holds as much as or more than a twenty-five (25) percent interest (either in stock or assets);
d. Any proprietorship, partnership (general or limited), or joint venture in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise.
4. If the applicant is a joint venture, a detailed listing of:
a. All other joint venturers, and the respective interests (whether ownership or otherwise) of each;
b. Any proprietorship, partnership (general or limited), joint venture or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest (whether ownership or otherwise).
(b) For the purposes of paragraph (c) of this subsection, the listing of violations of laws, rules or regulations should include the following areas:
1. Solid or hazardous waste management;
2. Air pollution;
3. Water;
4. OSHA with respect to hazardous materials or hazardous substances; and
5. Transportation with respect to hazardous materials or hazardous substances.
(c) For each and every individual or other entity listed in paragraph (a) of this subsection, a detailed listing of all violations of federal or state laws, rules or regulations concerning the areas listed in paragraph (b) of this subsection (whether either judicial or administrative proceedings are pending or completed) that have resulted or could result in either criminal convictions or civil or administrative fines as much as or more than 1,000 dollars.
(d) For each and every individual or other entity listed in paragraph (a) of this subsection, a current financial statement prepared by a certified public accountant.
(e) Hazardous waste sites or facilities which have been regulated under interim status shall be exempt from the requirements of this subsection unless the cabinet specifies otherwise in writing.

(21) An evaluation of subsurface geologic formations and surface topography for solution or karst features. [If the facility is located in a county which is not listed in

paragraph (d) of this subsection, the requirements of this subsection are not applicable. If the facility is located in a county listed in paragraph (d) of this subsection,] The owner or operator shall demonstrate compliance with either paragraph (a) or (b) of this subsection.

(a) If the owner or operator demonstrates to the satisfaction of the cabinet that the facility is not underlain by soluble limestone, he is exempt from all of the requirements of this subsection.

(b) If the owner or operator does not make the demonstration of paragraph (a) of this subsection, the owner or operator must satisfy the requirements in paragraph (c)1 or (c)2 of this subsection. In addition, the owner or operator shall demonstrate that:

1. The facility has been designed to withstand any gradual or sudden land subsidence which is characteristic of areas underlain by soluble limestone; and

2. No contamination into or through any fractures, channels or solution features will occur.

(c) Except as provided in paragraph (a) of this subsection, the owner or operator shall comply with either subparagraph 1 or 2 of this paragraph.

1. The owner or operator shall:

a. Establish the presence and extent of all fractures, channels and solution features in the bedrock beneath the facility and describe how such features will be sealed, filled, isolated or otherwise neutralized to prevent subsidence; and

b. Describe how such solution features will be monitored to demonstrate compliance with the criteria of paragraph (b)1 and 2 of this subsection; or

2. The owner or operator shall design, operate and maintain a double-liner system which must be installed beneath the facility and which includes a leak detection system that meets the criteria of paragraph (b)1 and 2 of this subsection. The design of the double-lined facility must meet all the specifications of Section 3 of 401 KAR 34:200 (surface impoundments), Section 3 of 401 KAR 34:210 (waste piles) and Section 3 of 401 KAR 34:230 (landfills), as applicable.

[(d) The following is a list of counties in which the evaluation requirements of this subsection must be made redundant:]

[Adair	Allen	Anderson	Barren
Bath	Bell	Boone	Bourbon
Boyle	Bracken	Breckinridge	Bullitt
Butler	Caldwell	Calloway	Campbell
Carroll	Carter	Casey	Christian
Clark	Clinton	Crittenden	Cumberland
Edmonson	Estill	Fayette	Fleming
Franklin	Gallatin	Garrard	Grant
Grayson	Green	Greenup	Hancock
Hardin	Harlan	Harrison	Hart
Henry	Jackson	Jefferson	Jessamine
Kenton	Knox	Larue	Laurel
Lee	Letcher	Lewis	Lincoln
Livingston	Logan	Lyon	McCreary
Madison	Marion	Marshall	Mason
Meade	Menifee	Mercer	Metcalfe
Monroe	Montgomery	Morgan	Muhlenberg
Nelson	Nicholas		
Ohio	Oldham	Owen	Pendleton
Pike	Powell	Pulaski	Robertson
Rockcastle	Rowan	Russell	Scott
Shelby	Simpson	Spencer	Taylor
Todd	Trigg	Trimble	Warren
Washington	Wayne	Whitley	Woodford]

(22) The actual test data showing that the liner is or will be compatible with the waste, if applicable.

(23) Applicants may be required to submit such information as may be necessary to enable the cabinet to carry out its duties under state laws as required in this chapter.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 38:100. Specific Part B requirements for groundwater protection.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994

PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.866

NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the premit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes the additional Part B requirements necessary for the protection of groundwater.

Section 1. Applicability. This regulation applies to all owners or operators of hazardous waste sites or facilities in Kentucky.

Section 2. Part B Requirements for Groundwater Protection. In addition to the information required by 401 KAR 38:080, 38:090, and the applicable requirements of 401 KAR 38:150 through 38:210, the following additional information regarding protection of groundwater is required from owners or operators of hazardous waste surface impoundments, piles, land treatment units, and landfills, except as otherwise provided in Section 1(2) of 401 KAR 34:060.

(1) A summary of the groundwater monitoring data obtained during the interim status period under 401 KAR 35:060, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydroaulically interconnected beneath the facility property, including groundwater flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

(3) On the topographic may required under Section 2(18) of 401 KAR 38:090, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under Section 6 of 401 KAR 34:060, the proposed location of groundwater monitoring wells, as required under Section 8 of 401 KAR 34:060, and to the extent possible, the information required in subsection (2) of this section;

(4) A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application is submitted that:

(a) Delineates the extent of the plume on the topographic map required under Section 2(18) of 401 KAR 38:090; and

(b) Identifies the concentration of each constituent throughout the plume or identifies the maximum concentrations of each constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of Section 8 of 401 KAR 34:060;

(6) If the presence of hazardous constituents has not been detected in the groundwater at the time of permit application, the owner or operator must submit sufficient information, supporting data and analyses to establish a detection monitoring program which meets the requirements of Section 9 of 401 KAR 34:060. This submission must address the following items as specified under Section 9 of 401 KAR 34:060:

(a) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the groundwater;

(b) A proposed groundwater monitoring system;

(c) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(d) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

(7) If the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of Section 10 of 401 KAR 34:060. The owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of Section 11 of 401 KAR 34:060, except as provided in Section 9(8)(e) of 401 KAR 34:060. To demonstrate compliance with Section 10 of 401 KAR 34:060, the owner or operator must address the following items:

(a) A description of the wastes previously handled at the facility;

(b) A characterization of the contaminated groundwater, including concentrations of hazardous constituents;

(c) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with Sections 8 and 10 of 401 KAR 34:060;

(d) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in Section 5 of 401 KAR 34:060;

(e) Detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of Section 8 of 401 KAR 34:060; and

(f) A description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

(8) If hazardous constituents have been measured in the groundwater which exceed the concentration limits established under Section 5 of 401 KAR 34:060 [and Section 2(1) and (2) of 401 KAR 30:030], or if groundwater monitoring conducted at the time of permit application under 401 KAR 35:060 at the waste boundary indicates the presence of hazardous constituents from the facility in the groundwater over established background concentrations, the owner or oeprator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of Section 11 of 401 KAR 34:060.

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

401 KAR 39:020. Delisting *and exemption* fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871

PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fees for a petition to delist a hazardous waste *and for applications for specific exemptions.*

Section 1. Applicability *for Delisting Fees.* A petition to delist a hazardous waste in accordance with Section 1 of 401 KAR 31:040 shall be accompanied by payment of a fee of $1,000 per waste petitioned.

Section 2. Applicability for Exemption Fees. An application for an exemption of a hazardous constituent in a permit in accordance with Section 4(2) of 401 KAR 34:060 or an application to establish alternate concentration limits in accordance with Section 5(2) of 401 KAR 34:060 shall require submittal of a fee to the cabinet. The fee charged shall be the cost of the review. The cost shall not exceed $30,000 for the first constituent reviewed and $7,500 for each additional constituent reviewed. All fees collected shall be used to defray the costs for performing the required review activities to determine whether or not the exemption shall be granted or the alternate concentration limit established. Such fees shall be deposited in the Division of Waste Management's Agency Receipt Account.

Section *3.* [2.] Submittal of Fee. The fee for delisting shall be submitted to the cabinet with the petition for delisting. *The fee for an application for a specific exemption shall be submitted upon the cabinet's request at the completion of the review.* The checks should be made payable to the Kentucky State Treasurer.

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

401 KAR 39:030. Treatment facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for treatment facilities.

Section 1. Applicability. This regulation applies to all treatment facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

Section 2. Schedule of Fees for Part B Permit Applications and Permit Renewals for Treatment Facilities. A fee shall be required in order to obtain a permit for the construction and/or the operation of a hazardous waste treatment facility and for permit renewal. The fee will include a Review of General Facility Requirements Fee of $2,400 assessed for each facility. The Review of General Facility Requirements Fee will be charged once per permit application and will not be charged in duplicate or triplicate for an application for any combination of treatment, storage and disposal activities for the same facility if application for all activities is made at the same time. A fee will be charged for each type of regulated unit at the facility. The fees are as follows:

(1) Incincerator ..... $*4,250* [2,500];
(2) Waste piles ..... $*3,000* [1,700];
(3) Surface impoundments ..... $*3,000* [1,800]; and
(4) Tanks ..... $*2,700* [1,600].

Section 3. Submittal of Fees. The $2,400 Review of General Facility Requirements Fee shall be submitted to the cabinet with the permit application. The cabinet shall notify the applicant of the additional amount owed. All checks should be made payable to the Kentucky State Treasurer.

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

401 KAR 39:040. Storage facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for storage facilities.

Section 1. Applicability. This regulation applies to all storage facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

Section 2. Schedule of Fees for Part B Permit Applications and Renewals for Storage Facilities. A fee shall be required in order to obtain a permit for the construction and/or the operation of a hazardous waste storage facility and for permit renewal. The fee will include a Review of General Facility Requirements Fee of $2,400 assessed for each facility. The Review of General Facility Requirements Fee will be charged once per permit application and will not be charged in duplicate or triplicate for an application for any combination of treatment, storage and disposal activities for the same facility if application for all activities is made at the same time. A fee will be charged for each type of regulated unit at the facility. The fees are as follows:

(1) Containers ..... $*2,600* [1,600];
(2) Tanks ..... $*2,700* [1,600];
(3) Surface impoundments ..... $*3,000* [1,800]; and
(4) Waste piles ..... $*2,700* [1,600].

Section 3. Submittal of Fees. The $2,400 Review of General Facility Requirements Fee shall be submitted to the cabinet with the permit application. The cabinet shall notify the applicant of the additional amount owed. All checks should be made payable to the Kentucky State Treasurer.

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

401 KAR 39:050. Disposal facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for disposal facilities.

Section 1. Applicability. This regulation applies to all disposal facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

Section 2. Schedule of Fees for Part B Permit Applications and Permit Renewals for Disposal Facilities. A fee shall be required in order to obtain a permit for the construction and/or operation of a hazardous waste disposal facility and for permit renewal. The fee will include a Review of General Facility Requirements Fee of $2,400 assessed for each facility. The Review of General Facility Requirements Fee will be charged once per permit application and will not be charged in duplicate or triplicate for an application for any combination of treatment, storage and disposal activities for the same facility if application for all activities is made at the same time. A fee will be charged for each type of regulated unit at the facility. The fees are as follows:
(1) Surface impoundments ..... $*3,700* [2,200];
(2) Land treatment ..... $*4,550* [2,700]; and
(3) Landfill ..... $*5,000* [3,000].

Section 3. Submittal of Fees. The $2,400 Review of General Facility Requirements Fee shall be submitted to the cabinet with the permit application. The cabinet shall notify the applicant of the additional amount owed. All checks should be made payable to the Kentucky State Treasurer.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 39:060. Short-term fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for short-term permits.

Section 1. Applicability. This regulation applies to facilities which require emergency permits, trial burn permits and land treatment demonstration permits.

Section 2. Fees. The fees for short-term permits are as follows:
(1) Emergency permits $250;
(2) Trial-burn permits ..... $*2,000* [1,200]; and
(3) Land treatment demonstration ..... $*3,500* [2,100].

Section 3. Submittal of Fees. The appropriate fee for short-term permits shall be submitted to the cabinet with the permit application. The check should be made payable to the Kentucky State Treasurer.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 39:070. Modification fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13.082, 13.083, 224.017, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste

management. The purpose of this regulation is to establish fees for modification of permits for hazardous waste management.

Section 1. Applicability. (1) This regulation applies to all owners and operators of hazardous waste facilities in Kentucky who require a modification to their hazardous waste management permit as specified in Section 2 of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

(2) In the event modification of a permit is required as a result of changes in Kentucky Statute or the Hazardous Waste Management Regulations, no modification fee shall be imposed.

Section 2. Minor Modifications. A fee of $50 per minor modification must be submitted to the cabinet with the application for minor modification. Minor modifications are defined in Section 2 of 401 KAR 38:050.

Section 3. Major Modifications. Major modifications are defined in Section 2 of 401 KAR 38:040. The fee schedule is set forth below.

(1) Addition of new wastes $1,500;
(2) For treatment facilities:
(a) Tanks ..... $*1,900* [1,200];
(b) Surface impoundments ..... *2,500* [1,500];
(c) Waste piles ..... *2,500* [1,300];
(d) Incinerators ..... *3,250* [2,000];
(3) For storage facilities:
(a) Containers ..... $*2,100* [1,300];
(b) Tanks ..... *1,900* [1,200];
(c) Surface impoundments ..... *2,500* [1,500];
(d) Waste piles ..... *2,500* [1,300];
(4) For disposal facilities:
(a) Surface impoundments ..... $*2,500* [1,800];
(b) Land treatment ..... *3,600* [2,200];
(c) Landfills ..... *4,000* [2,400].

Section 4. Submittal of Fees. The appropriate fee shall be submitted to the cabinet with the application for modification. The checks should be made payable to the Kentucky State Treasurer.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

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

401 KAR 47:020. Solid waste permit process.

RELATES TO: KRS 224.835, 224.842, 224.846, 224.855
PURSUANT TO: KRS 13.082, *13.083,* 224.017, 224.033(24)
NECESSITY AND FUNCTION: KRS 224.855 specifies minimum requisites for issuance of waste disposal permits, and KRS 224.835 and 224.842 prohibit use or operation of a waste disposal site or facility without first obtaining a permit from the Natural Resources and Environmental Protection Cabinet. This chapter establishes standards for solid waste sites or facilities. This regulation specifies the general requirements for all solid waste disposal permits.

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

(2) A permit shall authorize the owner/operator to engage in the disposal of solid waste in a manner prescribed by the cabinet for a period of not more than five (5) years from the date of issuance or renewal.

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

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

(5) Disposers of certain industrial wastes *which are solid wastes* by a practice common to the industry are presumed to hold a permit and can operate pursuant to this permit by rule provided the operation is not in violation of the applicable "Environmental performance standards" of 401 KAR 30:030 [, Section 1(1)], or does not present a threat of imminent hazard to the public health or substantial environmental impact.

(a) A permit by rule is hereby granted for the following disposal facilities or practices:

1. Sawdust piles.
2. Disposal of asphalt residue.
3. Oil production brine pits, and gas and oil drilling mud pits.
4. Disposal of septic tank pumpings by a properly registered septic tank pumping hauler.
5. Disposal of waste from the mining, processing or primary benefication of ores and minerals.
6. Operation of a solid waste incinerator excluding the disposal of the residue from the incinerator.
7. Junkyards.
8. Pits, ponds and lagoons permitted by other environmental programs in the cabinet for the disposal of residual waste from pollution control devices.
9. One (1) time construction material fills at the place of generation.
10. Beneficial reuse or recycling of solid waste except for sludges regulated by 401 KAR 47:050.
11. Inert disposal site of less than one (1) acre.
12. Disposal of demolition waste on the property where demolition occurred.
13. Disposal of land clearing debris on the property where clearing occurred.

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

1. Size of the disposal site or facility.
2. Potential for adverse effects on health and the environment as identified in the "Environmental performance standards," 401 KAR 30:030 [, Section 1].

3. Quantity of waste generated.
4. Chemical and physical characterics of the waste including reactivity and explosivity.
5. Hydrogeological and geologic characterics of the facility including the topography of the area and the proximity to surface waters.
6. Method of disposal.

Section 2. Considerations of Federal Law. The following is a list of federal laws that may apply to the issuance of permits under this chapter. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

(1) The Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq. Section 7 of the Act prohibits the assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(2) The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq. Section 106 of the Act and implementing regulations (36 CFR Part 800) require the adoption measures before issuing a license, when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(3) The Endangered Species Act, 16 U.S.C. 1531 et seq. Section 7 of the Act and implementing regulations (50 CFR Part 402) require that in consultation with the Secretary of the Interior or Commerce, any action authorized is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(4) The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq. requires that, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion or other control or modification of any body of water, consult with the appropriate state agency exercising jurisdiction over wildlife resources to conserve those resources.

Section *3.* [2.] Issuance of Permit. (1) The cabinet shall issue a construction permit, *if after completing a technical review of the administratively complete application, it finds* [upon finding] that the person or state or federal agency desiring the permit has met all the requirements for application and the requirements of KRS 224.855, and has the ability to meet the operational and closure requirements of the solid waste regulations. An application for a permit may be denied or an active permit revoked for failure to comply with applicable state statutes or regulations, including but not limited to any failure to provide or maintain adequate financial responsibility.

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

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

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

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

(c) The required financial responsibility for closure has been established, by posting a bond or establishing an escrow account as required by KRS 224.846 in an amount of $10,000 or greater if so determined by an approved closure plan and cost estimate. The approved cost estimate for closure and corresponding bond shall be reviewed and adjusted at least once every five (5) years.

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

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

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

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

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

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

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

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

Section *6.* [5.] Modification of Operating Methods or Proposed Closure by Owner/Operator. (1) The owner/operator shall submit in writing to the cabinet for preliminary review any proposed change in the approved closure and other plans or any proposed change in the operating methods. "Any change" includes but is not limited to any additional wastes not listed at the time of the

original permit issuance or any other request for a variance from existing permit requirements.

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

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

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

Section 7. [6.] Repealer and Effective Dates. (1) *The regulations in 401 KAR Chapter 47* [401 KAR 47:020 through 401 KAR 47:111] supersede solid waste regulation 401 KAR 2:010.

(2) Existing permitted solid waste disposal sites classified as landfills under 401 KAR 2:010 will be classified as inert landfills upon the effective date of this regulation. Existing permitted solid waste disposal sites classified as sanitary landfills under 401 KAR 2:010 will be classified as residential landfills upon the effective date of this regulation. Existing facilities thus classified will not be required to meet the design, location and construction standards of 401 KAR 47:040 provided that they are in compliance with the "Environmental performance standards" of 401 KAR 30:030 [, Section 1(1)]. Those existing facilities desiring to request a different classification will be required to meet the changed requirements for location, design or construction before the modification in classification is approved by the cabinet.

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

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2:15 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Kentucky Occupational Safety and Health
Amended After Hearing

803 KAR 2:200. Confined space entry.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: Pursuant to the authority granted to the Kentucky Occupational Safety and Health Standards Board by 338.051 and 338.061, the following regulation is adopted. The function of this regulation is to set forth minimum safety and health requirements for those employees who must enter confined spaces for the purposes of performing their duties in the course of their employment.

Section 1. Application and Scope. (1) This regulation applies only to those confined spaces, as defined in Section 2(1) of this regulation, which are not specifically covered by other regulations such as:

(a) 803 KAR 2:020, General industry standards, 29 CFR 1910;

(b) 803 KAR 2:027, Maritime standards, 29 CFR 1915-1919; and

(c) 803 KAR 2:030, Construction industry standards, 29 CFR 1926.

(2) This regulation does not apply to agricultural production operations.

(3) This regulation does not preempt any specific applicable regulation.

Section 2. Definitions. (1) Confined space. A space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the *potential* accumulation of toxic air contaminants, flammable or explosive agents, and/or depletion of oxygen.

(2) Emergency entry. Entry into a confined space necessitated by a sudden and unexpected condition requiring immediate action.

(3) Toxic air contaminants. Those substances listed in Subpart Z of 29 CFR 1910 as adopted by 803 KAR 2:020; and, whenever a substance is not listed in Subpart Z, those substances with exposure limits listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances."

(4) Lower explosive limit (LEL). The minimum concentration of gas or vapor below which propagation of flame does not occur on contact with a source of ignition.

(5) Zero mechanical state (ZMS). The mechanical state of a machine or equipment in which:

(a) Every power source that can produce a machine or equipment member movement has been locked/tagged out as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(b) Pressurized fluid (air, oil, or other) power lockoffs (shut-off valves), if used, will block pressure from the power source and will reduce pressure on the machine or equipment side port of that valve by venting to atmosphere or draining to tank;

(c) All accumulators and air surge tanks are reduced to atmospheric pressure or are treated as power sources to be locked/tagged out, as outlined in National Fire Protection Association Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982;

(d) The mechanical potential energy of all portions of the machine or equipment is at its lowest practical value so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve or lever will not produce a movement which could cause injury;

(e) Pressurized fluid (air, oil, or other) trapped in the machine or equipment lines, cylinders, or other components is not capable of producing a machine motion upon actuation of any valve or lever;

(f) The kinetic energy of the machine or equipment members is at its lowest practical value;

(g) Loose or freely movable machine or equipment members are secured against accidental movement; and

(h) A workpiece or material support, retained or controlled by the machine or equipment, shall be considered as part of the machine or equipment if the workpiece or material can move or can cause machine or equipment movement.

(6) Agricultural production operation. Establishments engaged primarily in the production of crops and/or livestock.

Section 3. Confined Space Entry: Non-emergency and Non-rescue. Except as provided in Section 4 of this regulation, entry into a confined space shall not be made unless the following procedures have been accomplished:

(1) All pipes, lines, or other connections which may carry harmful agents into the confined space have been disconnected or blocked by some means which assures complete closure. In continuous systems, such as but not limited to sewers or utility tunnels, where complete isolation is not possible, written safety procedures to ensure employees' safety and health shall be developed and administered.

(2) Fixed mechanical devices and/or equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). The electrical equipment, excluding lighting, shall be locked out and/or tagged out in accordance with National Fire Protection Pamphlet (NFPA) 70-E-1981, Part II, Chapter 4, or American National Standard Z244.1-1982.

(3) The internal atmosphere of the confined space shall be tested for oxygen content, flammable or explosive agents, and/or any toxic air contaminant(s) of which an employer, who is or should be reasonably familiar with the practices, procedures, and methods of operation in the industry, has or should have knowledge. If the oxygen content is less than nineteen and five-tenths (19.5) percent (148 mm Hg), or if the flammable or exposure agents are detected in excess of twenty-five (25) percent of the lower explosive limit (LEL), or if the toxic air contaminant(s) are present in levels which exceed allowable limits as set forth in 29 CFR 1910, Subpart Z as adopted by 803 KAR 2:020, and whenever a substance is not listed in Subpart Z, the exposure levels listed in the National Institute for Occupational Safety and Health (NIOSH), 1980 "Registry of Toxic Effects of Chemical Substances," the following provisions apply:

(a) The confined space shall be ventilated until the unsafe condition(s) are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition(s) while the confined space is occupied by employee(s).

(b) If oxygen deficiency and/or toxic air contaminant level(s) cannot be eliminated by ventilation, or as an alternative to ventilation, employee(s) may be allowed to enter a confined space only with appropriate respiratory protection. Respirator usage shall be in accordance with the requirements of 29 CFR 1910.134 as adopted by 803 KAR 2:020. Respiratory protection shall be provided and maintained at no cost to employee(s). If a self-contained respirator is used, the wearer shall not be permitted to remain within the confined space, when the primary air system is depleted or being replaced. The reserve air supply shall be used only for escape purposes. Employee(s) shall be allowed to enter a confined space containing explosive or flammable agents exceeding twenty-five (25) percent lower explosive limits (LEL), only during emergency or rescue operations.

(4) Provisions shall be made for constant communications: visual, voice and/or other means, between employee(s) within the confined space and an employee in the immediate vicinity outside the confined space.

(5) Provision shall be made for rescue procedures, including rescue equipment and rescue training, as outlined in Section 4 of this regulation.

(6) Ladders or other safe means shall be used to enter and exit confined spaces exceeding four (4) feet in depth.

Section 4. Confined Space Entry: Emergency and Rescue. (1) The employer shall establish a written procedure for emergency and rescue methods and operations covering all confined space entries. The procedure shall include at a minimum:

(a) An assessment of the hazard(s);

(b) Personnel required to perform the rescue or emergency entry;

(c) Precautions to be taken while in the confined space;

(d) Personal protective equipment to be used;

(e) Rescue equipment such as but not limited to respirators, lifelines, safety belts, safety harnesses, wristlets, hoisting equipment when an employee must be lifted vertically, and other equipment; and

(f) Tools and other equipment to be used.

(2) The employer shall establish a training program to instruct affected employees in the procedures and practices for emergency and rescue confined space entry. The training shall be repeated annually or more often as needed. The employer shall maintain records of the most recent training program conducted. The records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

(3) The employer shall assure that personnel with rescue training, basic first aid, and CPR, in the vicinity of the confined space are readily available to render emergency assistance as may be required.

THELMA L. STOVALL, Commissioner
ADOPTED: September 20, 1983
APPROVED: LEONARD MARSHALL, Secretary
RECEIVED BY LRC: October 3, 1983 at 10:30 a.m.

Proposed Amendments

PUBLIC PROTECTION AND REGULATION CABINET
Crime Victims Compensation Board
(Proposed Amendment)

107 KAR 1:010. Financial hardship standards.

RELATES TO: KRS *346.010,* 346.040, *346.140(3)*
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 346.140(3) provides that the Crime Victims Compensation Board shall establish specific standards by rule for determining serious financial hardships. This regulation provides the basis for determining financial hardship of claimants.

Section 1. In determining financial hardship the board or board member shall consider all the financial resources of the claimant except those items specifically exempted by this regulation.

Section 2. All claimants are therefore required to submit a financial statement under oath on forms supplied by this board in order to be eligible for a final award.

Section 3. If a claimant refuses to submit a financial statement, the board member to whom the claim has been assigned shall refuse to make any award in the claim until the claimant furnishes the required statement.

Section 4. In determining financial hardship, the board and its members shall exempt and not take into consideration the following:
(1) A home and whatever real estate it is located on;
(2) Personal property consisting of clothing and strictly personal effects, except jewelry;
(3) Tools and equipment necessary for claimant's trade, occupation or business;
(4) Household furniture, appliances and equipment, except antiques;
(5) Family automobiles;
[(6) Life insurance in death claims, in the face amount of $1,000 for the claimant and similar sum of $1,000 for the claimant's spouse and for each dependent;]
(6) [(7)] Savings or valuables or additional property in an amount equal to the claimant's annual net income.

LEONARD MARSHALL, Secretary
ADOPTED: September 16, 1983
RECEIVED BY LRC: September 30, 1983 at 8:15 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Addie Stokley, Executive Director, Crime Victims Compensation Board, 113 E. 3rd Street, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Proposed Amendment)

200 KAR 5:308. Small purchase procedures.

RELATES TO: KRS Chapter 45A
PURSUANT TO: KRS 45A.035
NECESSITY AND FUNCTION: The Secretary of the [Department of] Finance *and Administration Cabinet* is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(c) and 45A.100, *relating to small purchase procedures.* This amendment extends application of *small purchase* [such] procedures to *procurements for construction services to aggregate amounts not exceeding $10,000, $5,000 for equipment replacement parts purchased by the Transportation Cabinet, and $5,000 for all other purchases made by the Finance and Administration Cabinet,* [purchases of commodities and services of $5,000 and less by state institutions of higher education] as authorized by *amendments to* KRS 45A.100, *enacted* [as amended] by the 1980 *and 1982* [regular] session*s* of the General Assembly.

Section 1. Small purchase procedures may be used by all agencies *within aggregate amounts prescribed in this regulation* [without prior approval by the Department of Finance where procurement for a total requirement is estimated not to exceed an aggregate amount of $5,000 for construction services, and $1,000 for all other categories of purchases, except that state institutions of higher education may purchase an aggregate amount not to exceed $5,000]. Procurement requirements shall not be parceled, split, divided or purchased over a period of time in order to meet the dollar limitations for use of small purchase procedures. *Aggregate amounts for small purchases are:*
(1) $10,000 for construction services by all agencies;
(2) $5,000 for equipment replacement parts by the Transportation Cabinet;
(3) $5,000 for all other categories of goods and services purchased by state institutions of higher education and by the Finance and Administration Cabinet only;
(4) $1,000 for all other purchases, except construction services, by all other agencies.

Section 2. (1) Agencies shall informally obtain three (3) or more price quotations from qualified sources of supply for all small purchases between *$3,000 and $10,000* [$1,500 and $5,000] for construction services and between $500 and $1,000 for all other purchases, except state institutions of higher education *and the Finance and Administration Cabinet* shall obtain three (3) or more price quotations from qualified sources of supply for [construction services and] other categories of small purchases between *$3,000* [$1,500] and $5,000. The price quotations received, a tabulation of prices offered, and comments by the agency handling the small purchase concerning the basis selected for placing the order, shall be recorded in writing and shall be filed in a small purchase order file to be maintained by the agency.
(2) Small purchases may be made *from any available*

source of supply, without first obtaining price quotations from other sources:

(a) By all agencies for construction services costing $3,000 or less;

(b) By the Transportation Cabinet for equipment replacement parts costing $5,000 or less;

(c) By state institutions of higher education and by the Finance and Administration Cabinet for all other categories of goods and services costing $3,000 or less; and

(d) By all other agencies for all other categories of goods and services costing $500 or less. [by agencies from any available source of supply, without first obtaining quotations from other sources for construction services costing $1,500 or less, and $500 or less for all other purchases except state institutions of higher education may make small purchases of construction service and other categories not to exceed $1,500 without quotations.]

ROBERT L. WARREN, Secretary
ADOPTED: September 22, 1983
RECEIVED BY LRC: September 22, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Cattie Lou Miller, Commissioner, Department for Administration, 238 Capitol Annex Building, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Proposed Amendment)

200 KAR 5:317. Cost principles.

RELATES TO: KRS Chapter 45A
PURSUANT TO: KRS 45A.215
NECESSITY AND FUNCTION: The Secretary of the [Department of] Finance *and Administration Cabinet* is required by KRS 45A.215 to adopt regulations setting forth cost principles to be used as guidelines, inter alia, to determine allowable costs incurred by contractors under cost reimbursement type contracts; where estimated or incurred costs of performing contracts have to be determined; in the negotiation of contracts not subject to competitive bidding; where changes or modifications to contracts are directed or for the settlement of contracts that have been terminated. This regulation sets forth the cost [of] principles to be employed for the aforementioned purposes, or when it may otherwise be necessary or convenient to determine a contractor's costs. *This amendment revises and updates the costs principles adopted and incorporated by reference from Federal Procurement Regulations to conform to changes in the Federal Regulations and adopts and incorporates by reference the administrative requirements and cost principles contained in 45 CFR Part 74, as relates to Social Services and Community Services Block Grants administered by the Cabint for Human Resources.*

Section 1. The cost principles set forth in Chapter 1, Subparts 1-15.101 to *1-15.713-8* [1-15.809-5], inclusive, and in Subparts 1-3.800 to 1-3.814-3, inclusive, of Title 41 CFR, Public Contracts and *Property* Management revised as of *July 1, 1980* [January 1, 1975], are hereby adopted, incorporated in and made a part hereof by reference, the same as if copied verbatim herein.

Section 2. (1) The Cabinet for Human Resources shall administer "Community Services" and "Social Services" Block Grant Funds authorized by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, in accordance with applicable administrative requirements and cost principles specified in Title 45 CFR Part 74, Administration of Grants, dated as of June 9, 1981, which are hereby adopted, incorporated, and made a part hereof by reference, the same as if copied verbatim herein; federal interpretation of said requirements may be used as a guide in the state determination of the applicability of the various Subparts and Appendices of 45 CFR Part 74.

(2) Applicable requirements of Subpart Q, Cost Principles, shall be the basis for determining allowable and unallowable costs for expenditures of Social Services and Community Services Block Grant funds.

(3) The state shall not be required to secure any approvals from the federal granting authority as specified in 45 CFR Part 74 unless it is specifically required by the Omnibus Reconciliation Act of 1981, individual Block Grants, or by changes hereinafter enacted in federal law or regulations. The state shall not apply any part of 45 CFR Part 74 which it determines not to be in the best interest of the Commonwealth. All references to the term "Federal Granting Agency" in 45 CFR Part 74 shall be construed to mean the Cabinet for Human Resources; and the terms "grantees" and "sub-grantees" shall be construed to mean contractors and subcontractors of the Cabinet for Human Resources, including other state agencies receiving Community Services or Social Services Block Grant funds.

(4) The provisions of any other regulation notwithstanding, the exclusive method of determining allowable costs incurred by contractors under cost reimbursement type contracts entered into under Community Services and Social Services Block Grants shall be as provided in this section.

[Section 2. The cost principles hereby adopted shall be used as guidelines in the negotiation of estimated costs or fixed prices when the use of competitive sealed bidding is precluded by the absence of open market competition, for changes or modifications in contracts directed by the state, and for the settlement of contracts which have been terminated by the state; for determining the allowability of incurred costs under cost reimbursement contracts entered into pursuant to KRS 45A.130; and in other cases where the determination of the estimated or the incurred costs of performing contracts may be required.]

Section 3. The cost principles hereby adopted may be used as guidelines in the negotiation of estimated costs or fixed prices when the use of competitive sealed bidding is precluded by the absence of open market competition, for changes or modifications in contracts directed by the state; for determining the allowability of incurred costs under cost reimbursement contracts entered into pursuant to KRS 45A.130; and in other cases where the determination of the estimated or the incurred costs of performing contracts may be required.

ROBERT L. WARREN, Secretary
ADOPTED: September 22, 1983
RECEIVED BY LRC: September 22, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Cattie Lou Miller, Commissioner, Department for Administration, 238 Capitol Annex Building, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
Office for Social Security
(Proposed Amendment)

200 KAR 13:010. Social security reports.

RELATES TO: KRS 61.490
PURSUANT TO: KRS 61.490
NECESSITY AND FUNCTION: *Due to the 1983 amendments to the Social Security Act, the State Office for Social Security finds it necessary with respect to contributions made after December 31, 1983, to revise the due dates for social security contributions and annual reports for all state agencies and political subdivisions.* [The Personnel Security Branch in the Division of Fiscal Services, Office of Administrative Services, Department for Human Resources was abolished, and its functions and duties transferred to the State Office for Social Security established in the Department of Finance by Executive Order Relating to Reorganization No. 80-457, effective June 16, 1980. The State Office for Social Security, Department of Finance finds it necessary, due to federal regulation, to set due dates for social security contributions and reports of monthly contributions by state agencies and political subdivisions.]

Section 1. The due date for social security contributions, to be filed by all state agencies and political subdivisions *prior to December 31, 1983,* shall be on or before the 5th day of the month next following the close of the month. *The due date for social security contributions to be filed by all state agencies and political subdivisions after December 31, 1983, shall be on or before the 20th day of the month with respect to wages paid the first fifteen (15) days of such calendar month; contributions on wages paid beginning with the 16th day of such calendar month shall be due on or before the 5th day of the following month.*

Section 2. The due date for the quarterly summary report of wages paid, to be filed by all state agencies and political subdivisions, shall be the 10th day of the month next following the close of the calendar quarter and the due date for the annual report of wages paid shall be the 10th day following the close of the calendar year *1983. Effective January 1, 1984, state agencies and political subdivisions will not be required to file quarterly summary reports but within twenty (20) days following the close of each calendar year shall file with the State Office for Social Security an annual report of wages paid.*

ROBERT L. WARREN, Secretary
ADOPTED: September 22, 1983
RECEIVED BY LRC: September 22, 1983 at 3 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Martha Belwood, Executive Director, State Office for Social Security, Post Office Box 557, Frankfort, Kentucky 40601.

FINANCE AND ADMINISTRATION CABINET
State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:040. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To establish a schedule of fees for licenses and services rendered by the State Board of Medical Licensure. This regulation, as amended, is necessary to establish fees which are used to defray the increasing costs incurred by the Board in the performance of its statutory responsibilities pursuant to KRS Chapter 311.

Section 1. Fee schedule:
(1) Admission to any complete examination given for the purpose of qualifying for licensure (includes initial licensure fee; charge for partial examination shall be prorated according to the number of sections taken.) ... $225.
(2) Regular license by [reciprocity or] endorsement $150.
(3) Limited license [by examination] ..... $50.
(4) Certification of Kentucky licensee to licensing agency of another state ..... $20.
(5) Certification of Kentucky licensee's examination grades to licensing agency of another state ..... $10.
[(6) Renewal of limited license ..... $20.]
(6) [(7)] Duplicate license certificate ..... $10.
(7) [(8)] Regular license by endorsement from National Board of Medical Examiners for graduates of Kentucky medical schools ..... $100.
(8) [(9)] Temporary permit (Pursuant to KRS 311.575(2) this fee will be credited upon the prescribed fee for a regular license if subsequently issued by the board) ... $50.
(9) [(10)] Emergency permit ..... $15.
(10) [(11)] Copy of the "Kentucky Medical Directory" (Kentucky medical licensees, hospitals, medical and osteopathic schools, and other official licensing boards are exempted) ..... $5.
(11) [(12)] Annual registration and renewal of license *for all licensees* [of resident licensee] ..... *$65* [35].
[(13) Annual registration and renewal of nonresident licensee $15.]

C. WILLIAM SCHMIDT, Assistant Secretary
ADOPTED: September 22, 1983
RECEIVED BY LRC: October 13, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: C. William Schmidt, Assistant Secretary, Kentucky State Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

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

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.340, 150.450
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking of bait species in order to

utilize and conserve the populations. *This amendment is necessary in order to extend the use of seines to additional waters.*

Section 1. *Definitions.* (1) Live bait includes minnows, shad, herring, crayfish, salamanders, all frogs except bullfrogs, all tadpoles, native lampreys, Asiatic clam (Corbicula sp.) and aquatic organisms except mussels.

(2) "Minnows" means all fishes under six (6) inches in length, except basses (largemouth, small mouth or Kentucky), rock bass or goggle-eye, trout, crappie, walleye, sauger, pikes, white bass, yellow bass, rockfish (saltwater striped bass) and muskellunge.

Section 2. Live bait may be taken with the following gear for personal use only, and any other species except live bait taken with this gear must be returned immediately to the water:

(a) Seines: Maximum size ten (10) ft. long, four (4) ft. deep, ¼ in. mesh, legal statewide; maximum size thirty (30) ft. long, six (6) ft deep, ¼ in. mesh, legal in Ohio and Mississippi Rivers *and Kentucky and Barkley Lakes* only.

(b) Minnow Traps: Maximum size three (3) ft. long, eighteen (18) in. diameter, one (1) in. openings for catching, legal statewide.

(c) Dip Nets: Maximum size three (3) ft. diameter, legal in Ohio, Tennessee and Mississippi Rivers, Cumberland River below Barkley Dam, Kentucky River below Lock #14, and all lakes over 1,000 acres.

(d) Sport Cast Nets: Maximum size nine (9) ft. diameter, 3/8 in. mesh, legal in Tennessee, Ohio and Mississippi Rivers, Cumberland River below Barkley Dam, Kentucky River below Lock #14, and all lakes over 1,000 acres.

Section 3. No mussels may be taken for use as bait except Asiatic clams (Corbicula sp.). Sport fishermen may have in their possession no more than:

(1) 500 minnows;
(2) 500 crayfish;
(3) 100 salamanders (spring lizards);
(4) 100 frogs (other than bullfrogs);
(5) 100 tadpoles;
(6) 100 native lampreys (mud eels);
(7) 500 aquatic invertebrates other than mussels;
(8) 500 shad or herring; and
(9) Any number of Asiatic clams (Corbicula sp.).

CARL E. KAYS, Commissioner
ADOPTED: August 26, 1983
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 14, 1983 at 12:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Fish and Wildlife, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

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

301 KAR 2:080. Propagation of game; pet permits.

RELATES TO: KRS *150.010,* 150.025, 150.180, 150.280, 150.290, 150.305, 150.320, 150.330, 150.360, 150.370, 150.470
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the buying, selling, transporting, propagating, and possessing of all native or exotic, resident or migratory, wildlife. This regulation is necessary to control the indiscriminate capture and possession of wildlife and to insure that wildlife is treated humanely and properly cared for; to protect the public and our native wildlife from contracting wildlife-borne diseases and to prevent the introduction of wildlife that might be detrimental to our native fauna and flora. The function of this regulation is to provide for the prudent taking and possession of wildlife by persons for legitimate purposes [and to prevent the introduction of wildlife species that might be harmful to our citizens and native flora and fauna]. *This amendment is necessary to shorten and clarify the regulation and to prohibit the importation of the raccoon dog (Nyctereutes procyonoides) into Kentucky, except for specified purposes.*

Section 1. Rules for Taking and Possessing Wildlife. The only wildlife which can be held in captivity is that which is legally taken or possessed. Any person holding live wildlife must apply for a permit within ten (10) days after the wildlife is acquired.

Section 2. Types of Permits and Conditions. (1) Commercial pet and propagation permit. No person shall buy, sell, possess, propagate or exhibit any wildlife for commercial purposes except that which is listed in Section 3 without obtaining an annually renewable (from date of issue) permit from the department. Wildlife must be legally obtained from a permitted or qualified source as determined by the commissioner. Determination of wildlife permitted to be possessed, transported, bought, sold or exhibited will be made by the commissioner or his appointed representative, based upon the merits of each case.

(2) Non-commercial pet and propagation permit. No person shall possess, purchase or propagate any wildlife without obtaining an annually renewable (from date of issue) permit from the department within ten (10) days after the wildlife is acquired. Wildlife must be legally obtained from the wild or from a permitted or qualified source as determined by the commissioner.

(3) Transportation permit. Any person, resident or nonresident, importing or transporting any live wildlife into Kentucky or receiving shipment into the state, must first obtain a free transportation permit by application through any conservation officer; or if living out of state, but receiving or picking up wildlife shipments into the state, may apply directly to the [Kentucky] department [of Fish and Wildlife Resources, Frankfort, Kentucky 40601].

[(a) Transported by vehicle. Wildlife transported by vehicle into the state from without the state must be accompanied by a transportation permit.]

(a) [(b)] Importation prohibited. The following wildlife cannot be imported *or* [and] possessed [by residents of Kentucky] except for certain educational, scientific, exhibition or research purposes approved by the commissioner: wild hog, jack rabbit, monk parakeet, javelina, nutria,

wild turkey, San Juan rabbit, bear, bobcat, cougar, *raccoon dog (Nyctereutes procyonoides)* and *wolf* [wolves].

(b) [(c)] Health certificate. All shipments of wildlife must be accompanied by a veterinarian's certificate stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the veterinarian's certificate.

Section 3. Exemptions from Pet or Propagation Permit. Possessing, buying, selling, or exhibiting any of the following wildlife does not require a pet or propagation permit: Love-birds, cockatiels, white rats, exotic finches, hamsters, guinea pigs, canaries, mice, reptiles, mynah birds, gerbils, toucans, and primates (monkeys).

Section 4. Applying for Permits, Inspections and Facilities. (1) Applying for Permits. All applications for a pet or propagation permit shall be made on standard forms obtained from any conservation officer [when obtaining or holding any native or exotic, resident or migratory wildlife, except those exempted in Section 3]. The person applying for a pet or propagation permit must indicate the source of supply [to the conservation officer]. After the permit is issued, a bill of sale or other written proof must be retained to show that the wildlife was obtained from legal source. This bill of sale or written proof must be shown to the conservation officer upon request.

(2) Confining facilities and inspections. The confining facilities must be large enough to allow reasonable space for exercise, shelter, and maintenance of sanitary conditions. [If the application is approved by the conservation officer, it shall be returned to the Department of Fish and Wildlife Resources with the required annual fee.] The holder of a pet or propagation permit must allow inspection of facilities by a conservation officer at any reasonable time. If at any time inspection by the conservation officer reveals that wildlife is being kept under unsanitary or inhumane conditions, the officer shall immediately notify the permit holder and the commissioner of the department [of Fish and Wildlife Resources]. After ten (10) days, the officer shall make a second inspection, and if the unsatisfactory conditions have not been corrected, the permit shall be revoked and all captive wildlife shall be confiscated immediately. If it becomes apparent that an application was not made in good faith, or if the permit holder is convicted of any law violation concerning the species for which he holds a permit, the pet or propagation permit shall be revoked and all wildlife confiscated. Fees will not be refunded for permits which are revoked.

Section 5. Conditions for Selling Wildlife. Wildlife or parts thereof produced at or on a licensed propagation facility may be sold at any time, except that the carcasses of deer, *wild* turkey, wild rabbit or squirrel may not be sold. The pelts or furbearers may be sold during the regular open season and at other times by written permission of the commissioner. All wildlife sold alive for propagation purposes or to commercial shooting preserves shall bear a tag on each crate stating the name and address of the propagator and permit number. The tags may be obtained from the department [of Fish and Wildlife Resources, Frankfort, Kentucky 40601, at cost]. All propagated wildlife to be sold for food purposes shall be tagged with tags obtained [at cost] from the department.

Section 6. Sale of Bobwhite Quail for Food Purposes. (1) Food purposes permit. In order to sell bobwhite quail as described in Section 2, the seller must have a food purposes permit obtainable upon application from the department [of Fish and Wildlife Resources]. This food purposes permit is valid for one (1) year from date of issue. This permit shall be in addition to all other permits required for the operation of propagation farms.

(2) Receipts and reporting. The seller holding a food purposes permit shall present to the buyer, in three (3) copies, an invoice reflecting the number of birds and the date of sale. The seller shall have such invoice signed by the purchaser and one (1) copy [thereof] shall be retained by the seller, one (1) copy [thereof shall be] mailed by the seller to the department [of Fish and Wildlife Resources], and one (1) copy [thereof] kept by the purchaser. Said invoice shall be kept by the seller and the purchaser, available for inspection, for a period of not less than one (1) year.

(3) Sale for food certificate. *Any restaurant or store serving or selling bobwhite quail for food shall possess and display a valid sale for food certificate. The sale of bobwhite quail for food purposes to restaurants or stores which do not possess a valid sale for food certificate is prohibited.* [No sale shall be made hereunder to any restaurant or store at any time unless the purchaser for said restaurant or store shall present a certificate allowing sale of bobwhite quail for food, obtained from the Department of Fish and Wildlife Resources. Said certificate shall be issued in duplicate annually, and one (1) copy shall be posted in said restaurant or store.]

CARL E. KAYS, Commissioner
ADOPTED: August 26, 1983
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 14, 1983 at 12:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Fish and Wildlife, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

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

301 KAR 2:140. Spring gun and archery season for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.175, 150.176, 150.305, 150.320,150.330, 150.360, 150.365, 150.390
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: This regulation pertains to the spring gun and archery season and limits for wild turkey. The Commissioner with the concurrence of the Commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. *This amendment is necessary to designate currently appropriate turkey hunting seasons for specific counties and wildlife management areas.*

Section 1. Seasons and Counties Open to Wild Turkey Hunting. (1) Seasons and Counties: [Season dates are]

April *14* [16] through April *27* [29] in Bath; [Rowan;] Pike; Letcher; Menifee; Harlan; Butler; Crittenden*; Boyle; Casey; Marion; McCreary; Pulaski* and Leslie Counties. [The season dates are] April *14* [16] through April *20* [22] in Ballard *County* [; Boyle; Casey; McCreary; Pulaski and Marion Counties;] and that portion of Christian County east of Highway 41.

(2) All other counties and wildlife management areas are closed to wild turkey hunting unless specified below.

Section 2. Seasons on Wildlife Management Areas. (1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties. [Season:] March *24 and 25* [19 and 20], March *31* [26] and *April 1* [27], April *7 and 8* [2 and 3], April *14 and 15* [9 and 10], April *21 and 22* [16 and 17], April *28 and 29* [23 and 24], depending upon military training priorities.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties. [Season dates are] April *11* [13] through *April 29* [May 1].

(3) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. [Season dates are] April *14* [16] through April *27* [29].

(4) Pine Mountain Wildlife Management Area located in Letcher County. [Season dates are] April *14* [16] through April *27* [29].

(5) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. [Season dates are] April *7* [9] through *29* [24] with no hunting on Mondays and Tuesdays.

(6) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties. [Season dates are] April *14* [16] through April *27* [22].

(7) Redbird Wildlife Management Area located in Leslie and Clay Counties. [Season dates are] April *14* [16] through April *27* [29].

(8) *Cranks Creek Wildlife Management Area located in Harlan County. April 14 through April 27.* [Blue Grass Depot Activity Wildlife Management Area located in Madison County. Season dates are April 9 through April 30.]

Section 3. Bag and Possession Limits [for Wild Turkey Hunting]. Only one (1) turkey gobbler with visible beard per hunter per calendar year may be taken, except that two (2) turkeys may be taken if one (1) is taken on Fort Knox, Fort Campbell [, Blue Grass Depot Activity] or Land Between the Lakes. A second Kentucky wild turkey permit must be obtained before hunting a second turkey.

Section 4. Requirements and Restrictions [for Gun and Archery Turkey Hunting in All Designated Counties and Wildlife Management Areas]. (1) The use of dogs [in turkey hunting] is prohibited.

(2) All turkey hunters must have in their possession a valid wild turkey permit and a valid annual Kentucky hunting license, unless exempted by KRS 150.170(3), (5) or (6).

(3) Turkey may be taken from one-half (½) hour before sunrise until 12:00 noon except at Land Between the Lakes and Fort Campbell Wildlife Management Areas, where hunting is allowed from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Permitted and prohibited weapons. (See exceptions under Wildlife Management Areas.)

(a) [Guns.] Turkey may be taken with breech-loading shotguns, muzzle-loading shotguns, and muzzle-loading rifles. Shotguns must be no larger than 10-gauge or no smaller than 20-gauge. Only Number 2 shot or smaller may be used. Handguns are prohibited [for taking turkeys] except for muzzle-loading handguns on Pioneer Weapons Wildlife Management Area. Buckshot and slugs may not be possessed while turkey hunting.

(b) [Bows and arrows.] Turkey may be taken with any longbows and compound bows which do not have devices to hold an arrow at full draw without human aid. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(c) [Crossbows.] Crossbows are permitted only on the Pioneer Weapons Wildlife Management Area. Crossbows must be of at least 100 pounds pull with a working safety. *Bolts* [Arrows] must be barbless with broadhead points at least seven-eighths (7/8) inch wide.

(6) [Mandatory turkey check stations.] Any hunter harvesting a wild turkey must have it checked at the nearest check station or by the nearest available conservation officer no later than 5:00 p.m. on the day the turkey is taken except as required on specified wildlife management areas. The hunter must complete the wild turkey permit and attach the tag portion to the turkey immediately after taking.

(7) Turkeys may be taken with the aid of decoys. Live turkeys may not be used as decoys.

(8) Turkeys may not be hunted on any baited area. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for ten (10) days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

Section 5. Exceptions. (1) Land Between the Lakes Wildlife Management Area. Wild turkey may be taken on the Kentucky portion of Land Between the Lakes only in designated areas. A current Land Between the Lakes hunting permit is required. All rifles are prohibited. All turkeys [taken] must be checked *before leaving* [at] Land Between the Lakes and must be tagged with a Land Between the Lakes [area] tag.

(2) Fort Knox Wildlife Management Area. All turkeys [harvested] must be checked at Building 7334 by 2:00 p.m. on the day harvested. Muzzle-loading rifles smaller than .32 caliber *and* 10-gauge shotguns [and archery equipment] are prohibited. *Archery hunting is permitted in designated areas only.*

(3) Pioneer Weapons Wildlife Management Area. Turkeys may not be taken with breech-loading shotguns.

(4) Fort Campbell Wildlife Management Area. A post combination hunting-fishing permit is required. Muzzle-loading rifles are prohibited.

CARL E. KAYS, Commissioner
ADOPTED: August 26, 1983
APPROVED: W. BRUCE LUNSFORD, Secretary
RECEIVED BY LRC: October 14, 1983 at 12:15 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Commissioner, Department of Fish and Wildlife, Ar-

nold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:026. Classification of waters.

RELATES TO: KRS 224.020, 224.060
PURSUANT TO: KRS 13.082, 224.033(17)
NECESSITY AND FUNCTION: This regulation applies the use classifications found in Section 4 of 401 KAR 5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria specified in Section 3 of 401 KAR 5:031.

Section 1. Classification to Designated Uses. Waters classified under this regulation shall be designated for all legitimate uses listed in KRS 224.020(1) except as specified in 401 KAR 5:031, Section 6. Until reclassified in accordance with the procedures of this regulation, the criteria which are indicated for these classifications shall be applicable in all cases unless otherwise ordered by the *cabinet* [department] pursuant to 401 KAR 5:031, Section 9. Outstanding resource waters may have unique water quality characteristics which shall be maintained even beyond the water's designated classification.

Section 2. Reclassification. The reclassification of waters of the Commonwealth which establishes a different classification than is established under this regulation shall be adopted only upon affirmative findings by the *cabinet* [department] pursuant to Sections 5 and 6 of this regulation. If a water body is designated for a more stringent use than is currently being attained, the *cabinet* [department] may reclassify the water body (segment) upon demonstration that the designated use is unattainable due to natural background; irretrievable person-induced conditions; or that existing "point" sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035 and imposition of such extra controls would result in "substantial" adverse economic and social impact. Implementation of this section will be consistent with 401 KAR 5:029, Section 2.

Section 3. Priority for Implementation. Except as provided in subsection (4) of this section, the priorities for reclassification of the waters of the Commonwealth are:

(1) Waters receiving (or proposed to receive) discharges from publicly-owned treatment works and/or serving as public water supply sources in the following order of priority:

(a) Any local units of government with a pending public construction permit application for installation or upgrading of a sewage treatment plant and/or public water treatment plant.

(b) Any local units of government in the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant, in an order of priority consistent with their priority project list rank.

(c) Any local units of government which request consideration prior to their entering into either their own construction project, a NPDES *or KPDES* permit action, or the 201 Construction Grants Program for installation or upgrading of a sewage treatment plant.

(d) Other local units of government.

(2) Waters receiving (or proposed to receive) discharges from any other (private or semi-public) treatment works, in the following order of priority:

(a) New NPDES *or KPDES* permit applicants or proposed NPDES *or KPDES* permit modifications to waterways which may potentially be classified for a beneficial use of cold-water aquatic habitat.

(b) All other segments with private or semi-public facilities, on a first-come, first-serve basis.

(3) All other surface waters which do not have any existing or proposed point source dischargers.

(4) These priorities may be varied in a particular case pursuant to an administrative hearing.

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is outlined in Section 5 of this regulation.

(1) The *cabinet* [department] shall provide supporting documentation for the reclassification of waters on which are located (or proposed to be located) facilities which are either:

(a) Publicly-owned treatment works;

(b) Outstanding resource waters on publicly owned land; or

(c) New NPDES *or KPDES* permit applicants or proposed NPDES *or KPDES* permit modifications for waters which may potentially be classified for a beneficial use of outstanding resource waters.

(2) Any applicant filing for reclassification in circumvention of the priority system contained in Section 3 of this regulation shall provide classification documentation for waters on which discharges from private or semi-public treatment works are located (or proposed to be located). In these cases the applicant sustains the burden of proof that the reclassification is appropriate and necessary.

(3) The *cabinet* [department] shall provide documentation for all other waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation. This section outlines the documentation required to support the reclassifications of surface waters of the Commonwealth as follows:

(1) A USGS 7.5 minute map will be prepared showing those waters or stream segments to be classified. A description consisting of a river mile index with existing and proposed discharge points.

(2) Existing uses and water quality data for the proposed waters or stream segments for which the reclassification is proposed. Where adequate data are unavailable, additional studies may be required by the *cabinet* [department].

(3) General land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.) as well as specific land uses adjacent to the waters for the length of the segment for which the reclassification is proposed.

(4) The existing and designated uses of the receiving waters into which the segment under consideration discharges and the downstream uses of those receiving waters.

(5) General physical characteristics of the stream segment including, but not limited to width, depth, bottom composition, and slope.

(6) The frequency of occasions when there is no natural flow in the segment, the low flow in the segment and low flow in adjacent segments.

(7) The first milepoint at which the low flow exceeds one (1) cfs.

(8) An assessment of the existing and potential aquatic life habitat in the stream segment under consideration and the adjacent upstream segment. The existing aquatic life in the area must be documented as well as an assessment of livestock and natural wildlife dependence upon the stream segment.

(9) The existing and proposed designated uses for the stream segment(s) in question.

(10) In addition, for downgrading, information must be supplied pursuant to Section 2, specifically:

(a) An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation; or

(b) An assessment of the adverse social and economic impacts of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures by which use classifications will be assigned. Procedures for designating the use classification of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3 of this regulation.

(1) For each of the waters for which a reclassification is proposed, the *cabinet* [department] or applicant as defined in Section 4(2) of this regulation, shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the waters proposed for specified use classifications, including the location of existing and proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which demonstrates that said classification is appropriate;

(e) The appropriate water quality criteria for the segment(s) based on the proposed designated use(s);

(f) The treatment requirements proposed for discharges to the waters in question if designated for the proposed use(s);

(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the waters in question;

(h) The procedure by which the designation will be made.

(2) Based upon all available information, the staff shall make its recommendation of use classifications of the waters in question to the secretary.

(3) The secretary shall cause to be prepared a list of segments and their classification to be published as an administrative regulation.

(4) Upon completing the review period and the procedures for promulgation under adminstrative rule making, all designated waters and their use classifications shall be attached as an addendum to this regulation.

Section 7. The provisions of this regulation shall not be severable with 401 KAR 5:029, 401 KAR 5:031, and 401 KAR 5:035.

Section 8. Stream Use Classifications. (1) Listed in the attached tables are the use classifications and additional criteria for specific waters of the Commonwealth. The county column indicates the county in which the mouth of the stream is located. The identifying symbols for use classifications are as follows:

WAH—Warmwater Aquatic Habitat
CAH—Coldwater Aquatic Habitat
PCR—Primary Contact Recreation
SCR—Secondary Contact Recreation
DWS—Domestic Water Supply
ORW—Outstanding Resource Water

(2) Waters not specifically listed in this section are designated for the use of warmwater aquatic habitat, recreation and domestic water supply (at existing points of public water supply withdrawal) in accordance with Section 1 of this regulation.

Stream	*Zone*	*County*	*Use Classification and Additional Criteria*
Elkhorn Creek	*Main stem, confluence of north and south forks to Kentucky River*	*Franklin*	*WAH, PCR, SCR, ORW1*
North Elkhorn Creek	*Main stem, confluence of Cane Run to Elkhorn Creek*	*Franklin*	*WAH, PCR, SCR, DWS2, ORW1*
North Elkhorn Creek	*Basin, source to Cane Run*	*Scott*	*WAH, PCR, SCR, DWS2*
South Elkhorn Creek	*Basin*	*Franklin*	*WAH, PCR, SCR*

ADDITIONAL CRITERIA

1. *At a minimum, water shall be maintained and protected at existing quality, unless it is shown by the discharger to the satisfaction of the cabinet that limited degradation is economically and environmentally justified. In no event may degradation of water quality interfere with or become injurious to existing instream uses.*

2. *Associated numerical criteria applicable at existing points of public water supply withdrawal.*

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Robert W. Ware, Manager, Program Development Branch, Division of Water, 18 Reilly Road, Fort Boone Plaza, Frankfort, Kentucky 40601.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:015. Documents incorporated by reference.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection

Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of documents referred to within these regulations.

Section 1. Code of Federal Regulations. (1) The following documents from the "Code of Federal Regulations" which are in effect at the time of the effective date of this regulation, are incorporated herein by reference:

(a) 40 CFR 50:

1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

2. Appendix B: Reference Method for the Determination of Suspended Particulates in the Atmosphere (High Volume Method).

3. Appendix C: Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Spectrometry).

4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of *Ozone in the Atmosphere* [Photochemical Oxidants Corrected for Interferences due to Nitrogen Oxides and Sulfur Dioxide].

5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.

6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

8. Appendix H: Interpretation of the National Ambient Air Quality Standards for Ozone.

(b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(c) 40 CFR 60:

1. Appendix A: Reference Methods:

a. Method 1—Sample and Velocity Traverses for Stationary Sources.

b. Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).

c. Method 2A—Direct Measurement of Gas Volume through Pipes and Small Ducts.

d. Method 2B—Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators.

e. [c.] Method 3—Gas Analysis for Carbon Dioxide, *Oxygen,* Excess Air, and Dry Molecular Weight.

f. [d.] Method 4—Determination of Moisture in Stack Gases.

g. [e.] Method 5—Determination of Particulate *Matter* [Emissions] from Stationary Sources.

h. Method 5A—Determination of Particulate Emissions from the Asphalt Processing and Asphalt Roofing Industry.

i. [f.] Method 6—Determination of Sulfur Dioxide Emissions from Stationary Sources.

j. Method 6A—Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources.

k. Method 6B—Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions from Fossil Fuel Combustion Sources.

l. [g.] Method 7— Determination of Nitrogen Oxide Emissions from Stationary Sources.

m. [h.] Method 8—Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.

n. [i.] Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources.

o. [j.] Method 10—Determination of Carbon Monoxide Emissions from Stationary Sources.

p. [k.] Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.

q. [l.] Method 12—Determination of Inorganic Lead Emissions from Stationary Sources.

r. [m.] Method 13A—Determination of Total Fluoride Emissions from Stationary Sources—SPADNS Zirconium Lake Method.

s. [n.] Method 13B—Determination of Total Fluoride Emissions from Stationary Sources—Specific Ion Electrode Method.

t. [o.] Method 14—Determination of Fluoride Emissions from Potroom Roof Monitors of Primary Aluminum Plants.

u. [p.] Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.

v. [q.] Method 16—Semicontinuous Determination of Sulfur Emissions from Stationary Sources.

w. [r.] Method 17—Determination of Particulate Emissions from Stationary Sources (Instack Filtration Method).

x. [s.] Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.

y. [t.] Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.

z. Method 21—Determination of Volatile Organic Compounds Leaks.

aa. Method 22—Visual Determination of Fugitive Emissions from Material Processing Sources.

bb.[u.] Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

cc. Method 24A—Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings.

dd.[v.] Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.

ee. Method 25A—Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

ff. Method 25B—Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer.

gg. Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test.

2. Appendix B: Performance Specifications:

a. Performance Specification 1—[Performance] Specifications and [specification] test procedures for *opacity* [transmissometer systems for] continuous *emission monitoring systems in stationary sources* [measurement of the opacity of stack emissions].

b. Performance Specification 2—[Performance] specifications and [specification] test procedures for [monitors of] sulfur dioxide and nitric oxides *continuous emission monitoring systems in* [from] stationary sources.

c. Performance Specification 3—[Performance] Specifications and [specification] test procedures for [monitors of carbon dioxide and] oxygen *and carbon diox-*

ide continuous emission monitoring systems in [from] stationary sources.

d. Performance Specification 5—Specifications and test procedures for TRS continuous emission monitoring systems in stationary sources.

(d) 40 CFR 61:

1. Appendix B: Test Methods:

a. [1.] Method 101—[Reference method for] Determination of particulate and gaseous mercury emissions from *chlor-alkali plants* [stationary sources] (air streams).

b. Method 101A—Determination of particulate and gaseous mercury emissions from sewage sludge incinerators.

c. [2.] Method 102—[Reference method for] determination of particulate and gaseous mercury emissions from *chlor-alkali plants* [stationary sources] (hydrogen streams).

d. [3.] Method 103—Beryllium screening method.

e. [4.] Method 104—Reference method for determination of beryllium emissions from stationary sources.

f. [5.] Method 105—Method for determination of mercury in wastewater treatment plant sewage sludges.

g. [6.] Method 106—Determination of vinyl chloride from stationary sources.

h. [7.] Method 107—Determination of vinyl chloride content of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

i. Method 107A—Determination of vinyl chloride content of solvents, resin-solvent solution, polyvinyl chloride resin, resin slurry, wet resin, and latex samples.

2. Appendix C: Quality Assurance Procedures:

a. Procedure 1—Determination of adequate chromatographic peak resolution.

b. Procedure 2—Procedures for field auditing GC analysis.

(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of Official Analytical Chemists is incorporated herein by reference:

(1) Method 9—Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the Association of Official Analytical Chemists, 11th Edition.

(2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20014; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate annual "Book of ASTM Standards" from the American Society for Testing and Materials are incorporated herein by reference:

(1) ASTM Standards:

(a) A 99-66(71) Standard Specification for Ferromanganese.

(b) A 100-69(74) Standard Specification for Ferrosilicon.

(c) A 101-73 Standard Specification for Ferrochromium.

(d) A 482-66(71) Standard Specification for Ferrochrome-Silicon.

(e) A 483-64(74) Standard Specification for Silicomanganese.

(f) A 495-64(70) Standard Specification for Calcium-Silicon and Calcium-Manganese-Silicon.

(g) D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(h) D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.

(i) D 388-66(72) Standard Specification for Classification of Coals by Rank.

(j) D 1072-56(75) Standard Test Method for Total Sulfur in Fuel Gases.

(k) D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.

(l) D 1475-60(74) Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

(m) D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.

(n) D 1826-64(75) Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

(o) D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.

(p) D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.

(q) D 2015-66(72) Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.

(r) D 2369-73 Standard Test Method for Volatile Content of Paints.

(s) D 2880-78 Standard Specification for Gas Turbine Fuel Oils.

(t) D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.

(u) D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.

(v) E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.

(2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

(1) T624 os-68—Analysis of Soda and Sulfate—White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute).

(2) Copies may be obtained from: TAPPI, 1 Dunwood Park, Atlanta, Georgia 30341.

Section 5. EPA. The following documents from the U. S. EPA are incorporated herein by reference:

(1) (a) Guideline on Air Quality Models, EPA-450/2-78-027, OAQPS No. 1.2-080, April, 1978.

(b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.

(c) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.

(d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Control Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.

(e) Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026, OAQPS No. 1.2-082, October, 1977.

(f) Guidelines for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height, EPA-450/4-81-003, PB 82-145327, July, 1981.

(g) Guidelines for Fluid Modeling of Atmospheric Diffusion, EPA-600/8-81-009, PB 81-201410, April, 1981.

(2) Copies may be obtained from: U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 *and the U. S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22161.*

Section 6. American Association of State Highway and Transportation Officials. The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

(1) AASHTO T 59-78 Standard Method of Test for Testing Emulsified Asphalt.

(2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capitol Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

(1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."

(2) Single copies may be obtained from:

(a) General Services Administration Regional Offices; or

(b) Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division of Air Pollution. The following documents from the Kentucky Division of Air Pollution are incorporated herein by reference:

(1) (a) Kentucky Method 50: Kentucky Division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."

(b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of Total Gaseous Organic Emissions from Stationary Sources."

(c) Kentucky Method 91: Kentucky Division of Air Pollution Control Reference Method 91, "Alternate Test Method for the Determination of Total Gaseous Organic Emissions from Stationary Sources."

(d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."

(e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."

(2) Copies may be obtained from: Division of Air Pollution Control, Technical Services, Department for Natural Resources and Environmental Protection, 5th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institute is incorporated herein by reference:

(1) Voluntary Product Standard PS 59-73—Prefinished Hardboard Paneling. This reference is also numbered ANSI A135.5-1973 (American National Standards Institute).

(2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 10. American Public Health Association. The following document from the American Public Health Association, American Water Works Association and Water Pollution Control Federation is incorporated herein by reference:

(1) Method 209B from Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980.

(2) Copies may be obtained from: American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.

See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 50:040. Air quality models.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation specifies general provisions for the use of air quality models.

Section 1. Air Quality Models. (1) All estimates of ambient concentrations required under the regulations of the Division of Air Pollution shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines on Air Quality Models" (OAQPS 1.2-080, U. S. EPA, Office of Air Quality Planning and Standards), *filed by reference in 401 KAR 50:015.*

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted subject to the approval of the department.

[(3) If the source is subject to 401 KAR 51:015, a substitution or modification of a model shall be subject to public comment procedures in accordance with 401 KAR 50:035, Section 3(3), and such substitution or modification of a model must be approved in writing by the department and the U. S. EPA Agency.]

(3) [(4)] Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (*OAQPS No. 1.2-097,* U. S. EPA, Office of Air Quality Planning and Standards), *filed by reference in 401 KAR 50:015,* shall be used to determine the comparability of air quality models.

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.

See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 59:050. New storage vessels for petroleum liquids.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new storage vessels for petroleum liquids.

Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility with a storage capacity less than or equal to 151,400 liters (40,000 gallons) commenced on or after the classification date defined in Section 2(12) of this regulation, which is located:

(a) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(b) In any other county and is a part of a major source of volatile organic compounds.

(2) The provisions of this regulation shall apply to each affected facility with a storage capacity greater than 151,400 liters (40,000 gallons) commenced on or after the classification date defined in Section 2(12) of this regulation.

(3) The provisions of Sections 3(3) and (4), 4(3) and 6 of this regulation shall apply only to each affected facility with a storage capacity greater than 151,400 liters (40,000 gallons) commenced on or after May 19, 1978.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means a storage vessel for petroleum liquids which has a storage capacity of greater than 2,195 liters (580 gallons).

(2) "Storage vessel" means each tank, reservoir, or container used for the storage of petroleum liquids, but does not include:

(a) Pressure vessels which are designed to operate in excess of 204.9 kPa (fifteen (15) pounds per square inch gauge) without emissions to the atmosphere except under emergency conditions;

(b) Subsurface caverns or porous rock reservoirs; or

(c) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.

(3) "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils, gas turbine fuel oil Numbers 2-GT through 4-GT, or diesel fuel oils Numbers 2-D and 4-D as specified by the department.

(4) "Petroleum refinery" means each facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

(5) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

(6) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.

(7) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods specified by the department.

(8) "Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover, or covered floating roof, which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(9) "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

(10) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile petroleum liquids, except liquefied petroleum gases, as determined by methods specified by the department.

(11) "Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean every fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(12) "Classification date" means April 9, 1972.

(13) "Volatile organic compounds (VOC)" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

(14) "Custody transfer" means the transfer of produced petroleum and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(15) "External floating roof" means a storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which rests upon and is supported by the petroleum liquid being contained and is equipped with closure seals to close the space between the roof edge and tank shell.

(16) "Internal floating roof" means a cover or roof in a fixed roof tank which rests upon or is floated upon the petroleum liquid being contained, and is equipped with closure seals to close the space between the roof edge and tank shell.

(17) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the liquid between the tank wall and the floating roof continuously around the circumference of the tank.

(18) "Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

(19) "Metallic shoe seal" includes but is not limited to a metal sheet held vertically against the tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(20) "kPa" means kilopascal.

Section 3. Standard for Volatile Organic Compounds. (1) The owner or operator of any storage vessel commenced on or after April 9, 1972 and prior to May 19, 1978 to which this regulation applies shall store petroleum liquids as follows:

(a) If the storage vessel has a storage capacity greater than 151,400 liters (40,000 gallons) and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than seventy-eight (78) mm Hg (1.5 psia) but not greater than 574 mm Hg (11.1 psia) the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents. If the vessel is equipped with an external floating roof the vessel shall be retrofitted and operated according to the provisions of 401 KAR 61:050, Sections 3(4), 4(3), 6(2) and 7 if the vessel is located:

1. In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

2. In any other county which is designated non-attainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

3. The provisions of 401 KAR 61:050, Sections 3(4) and 4(3) shall not apply to vessels located in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties non-attainment for ozone under 401 KAR 51:010.

(b) If the storage vessel has a storage capacity greater than 151,400 liters (40,000 gallons) and if the true vapor pressure of the petroleum liquid as stored is greater than 574 mm Hg (11.1 psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

(2) The owner or operator of each storage vessel commenced on or after April 9, 1972 to which this regulation applies shall store petroleum liquids as follows: If the storage vessel has a storage capacity greater than 2,195 liters (580 gallons), and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than 10.3 kPa (1.5 psia), as a minimum it shall be equipped with a permanent submerged fill pipe.

(3) The owner or operator of each storage vessel commenced on or after May 19, 1978 with storage capacity greater than 151,400 liters (40,000 gallons) which contains a petroleum liquid which, as stored, has a true vapor pressure equal to or greater than 10.3 kPa (1.5 psia) but not greater than 76.6 kPa (11.1 psia) shall equip the storage vessel with one (1) of the following:

(a) An external floating roof, consisting of a pontoon-type or double-deck-type cover that rests on the surface of the liquid contents and is equipped with a closure device between the tank wall and the roof edge. Except as provided in subparagraph 3 of this paragraph, the closure device is to consist of two (2) seals, one (1) above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal. Each seal is to meet the following requirements:

1. The primary seal is to be either a metallic shoe seal, a liquid-mounted seal, or a vapor-mounted seal.

2. The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in Section 4(3)(c) of this regulation.

3. The owner or operator is exempted from the requirements for secondary seals and the secondary seal gap criteria when performing gap measurements or inspections of the primary seal.

(b) A fixed roof with an internal floating type cover equipped with a continuous closure device between the tank wall and the cover edge.

(c) A vapor recovery system which collects all VOC vapors and gases discharged from the storage vessel, and a vapor return or disposal system which is designed to process such VOC vapors and gases so as to reduce their emission to the atmosphere by at least ninety-five (95) percent by weight.

(d) A system equivalent to those described in paragraphs (a) to (c) of this subsection as determined by the department.

(4) The owner or operator of each storage vessel commenced on or after May 19, 1978 with a storage capacity greater than 151,400 liters (40,000 gallons) which contains a petroleum liquid which, as stored, has a true vapor pressure greater than 76.6 kPa (11.1 psia), shall equip the storage vessel with a vapor recovery system which collects all VOC vapors and gases discharged from the storage vessel, and a vapor return or disposal system which is designed to process such VOC vapors and gases so as to reduce their emission to the atmosphere by at least ninety-five (95) percent by weight.

Section 4. Operating Requirements. (1) There shall be no visible holes, tears, or other opening in the seal, any seal fabric, shoe, or seal envelope.

(2) All openings, except stub drains, automatic bleeder vents, rim space vents, and leg sleeves, shall be equipped with covers, lids, or seals such that:

(a) The cover, lid, or seal is in the closed position at all times (i.e., no visible gap) except when in actual use or as described in subsection (3)(f) of this section;

(b) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports; and

(c) Rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(3) External and internal floating roof tanks commenced on or after May 19, 1978 shall meet the additional requirements:

(a) The roof is to be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill and when the tank is completely emptied and subsequently refilled. The process of emptying and refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished in the minimum time necessary.

(b) For each primary seal associated with an external floating roof tank the accumulated area of gaps between the tank wall and the metallic shoe seal or the liquid-mounted seal shall not exceed 212 sq cm/m (10.0 sq in/ft) of tank diameter and the width of any portion of any gap shall not exceed 3.81 cm (1.5 in).

(c) For each primary and each secondary seal associated with an external floating roof tank the accumulated area of gaps between the tank wall and the vapor-mounted *primary* seal or between the tank wall and the secondary seal *used in combination with a metallic shoe or liquid-mounted primary seal* shall not exceed 21.2 sq cm/m (1.0 sq in/ft) of tank diameter and the width of any portion of any gap shall not exceed 1.27 cm (one-half (½) in). *There shall be no gaps between the tank wall and the secondary seal used in combination with a vapor-mounted primary seal.*

(d) One (1) end of the metallic shoe associated with an external floating roof tank shall extend into the stored liquid and the other end shall extend a minimum vertical

distance of sixty-one (61) cm (twenty-four (24) in) above the stored liquid surface.

(e) Each opening in the roof except for automatic bleeder vents and rim space vents is to provide a projection below the liquid surface.

(f) Each emergency roof drain associated with an external floating roof tank is to be provided with a slotted membrane fabric cover that covers at least ninety (90) percent of the area of the opening.

Section 5. Monitoring of Operations. (1) The owner or operator of any storage vessel with a capacity of greater than 151,400 liters (40,000 gallons) to which this regulation applies shall maintain a record of the petroleum liquid stored, the period of storage, and the maximum true vapor pressure of that liquid during the respective storage period.

(2) Available data on the typical Reid vapor pressure and the maximum expected storage temperatures of the stored product may be used to determine the maximum true vapor pressure as specified by the department, unless the department specifically requests that the liquid be sampled, the actual storage temperature determined, and the Reid vapor pressure determined from the sample(s).

(3) The true vapor pressure of each type of crude oil with a Reid vapor pressure less than 13.8 kPa (2.0 psia) or whose physical properties preclude determination by the recommended method is to be determined from available data and recorded if the estimated true vapor pressure is greater than 6.9 kPa (1.0 psia).

(4) The following are exempt from the requirements of this section:

(a) Each owner or operator of each storage vessel storing a petroleum liquid with a Reid vapor pressure of less than 6.9 kPa (1.0 psia) provided the maximum true vapor pressure does not exceed 6.9 kPa (1.0 psia).

(b) Each owner or operator of each storage vessel equipped with a vapor recovery and return or disposal system in accordance with the requirements of Section 3(1)(a) and (b), (3)(c) and (4) of this regulation.

Section 6. Testing and Procedures. Compliance with the requirements prescribed in Sections 3(3) and (4), and 4(3) of this regulation shall be determined as follows or in accordance with an equivalent procedure as approved by the department. The owner or operator of each storage vessel to which this section applies which has an external floating roof shall meet the following requirements:

(1) Determine the gap areas and maximum gap widths between the primary seal and tank wall, and the secondary seal and the tank wall according to the following frequency and furnish the department with a written report of the results within sixty (60) days of performance of gap measurements:

(a) For primary seals, gap measurements shall be performed within sixty (60) days of the initial fill with petroleum liquid and at least once every five (5) years thereafter. All primary seal inspections or gap measurements which require the removal or dislodging of the secondary seal shall be accomplished in the minimum time necessary and the secondary seal shall be replaced immediately.

(b) For secondary seals, gap measurements shall be performed within sixty (60) days of the initial fill with petroleum liquid and at least once every year thereafter.

(c) If any storage vessel is out of service for a period of one (1) year or more, subsequent refilling with petroleum liquid shall be considered initial fill for the purposes of paragraphs (a) and (b) of this subsection.

(2) Determine gap widths in the primary and secondary seals individually by the following procedures:

(a) Measure seal gaps, if any, at one (1) or more floating roof levels when the roof is floating off the roof leg supports.

(b) Measure seal gaps around the entire circumference of the tank in each place where a one-eighth (1/8) inch diameter uniform probe passes freely (without forcing or binding against seal) between the seal and tank wall and measure the circumferential distance of each such location.

(c) The total surface area of each gap described in paragraph (b) of this subsection shall be determined by using probes of various widths to accurately measure the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually. Divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the appropriate ratio in the standard in Section 4(3)(b) and (c) of this regulation.

(4) Provide the department thirty (30) days prior notice of the gap measurement to afford the department the opportunity to have an observer present.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.
See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution
(Proposed Amendment)

401 KAR 63:005. Open burning.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the [Department for] Natural Resources and Environmental Protection *Cabinet* to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of open burning.

Section 1. Applicability. The provisions of this regulation are applicable to all open burning as defined in Section 2 of this regulation *not elsewhere subject to regulations of the Division of Air Pollution.*

Section 2. Definitions. Terms used in this regulation not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Garbage" means putrescible animal and vegetable matter accumulated by a family in a residence in the course of ordinary day to day living.

(2) "Household rubbish" means waste material and trash, not to include garbage, normally accumulated by a family in a residence in the course of ordinary day to day living.

(3) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the outdoor atmosphere without passing through a stack or chimney.

Section 3. Prohibition of Open Burning. [(1)] *Except as provided in this section* no person shall cause, suffer, or

allow any open burning. *Fires may be set for the following purposes, provided that such fires do not violate any of the provisions of KRS Chapters 149, 150, 227, any other laws of the Commonwealth of Kentucky or any local ordinances* [except as follows]:

(1) [(a)] Fires *set* for the cooking of food for human consumption on other than commercial premises;

(2) [(b)] Fires *set* for recreational or ceremonial purposes;

(3) [(c)] Small fires set by construction and other workers for comfort heating purposes providing excessive or unusual smoke is not created;

(4) [(d)] Fires set for the purpose of weed abatement, disease, and pest prevention;

(5) [(e)] Fires set for prevention of a fire hazard, including the disposal of dangerous materials where no safe alternative is available;

(6) [(f)] Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;

(7) [(g)] Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;

(8) [(h)] Fires set by individual home owners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;

(9) [(i)] Fires *set* for disposal of household rubbish, not to include garbage, originating at dwellings of five (5) family units or less, which fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;

(10) [(j)] Fires set for the purpose of disposing of accidental spills or leaks or crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, where no other economically feasible means of disposal is available and practical and provided permission is obtained from the department prior to burning;

(11) [(k)] Fires set for disposal of natural growth for land clearing, and trees and tree limbs felled by storms, provided that no extraneous material such as tires or heavy oil which tend to produce dense smoke are used to cause ignition or aid combustion and the burning is done on sunny days with mild winds. In regions classified Priority I with respect to particulate matter, the emissions from such fires shall not be equal to or greater than forty (40) percent opacity.

[(2) The open burning specified in subsection (1) of this section is permitted only if it does not conflict with local ordinance. Where necessary, permission shall be obtained from the fire department and fire district having jurisdiction at the place of burning.]

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.
See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 20:060. Steep slopes.

RELATES TO: KRS 350.090, 350.093, 350.100, 350.405, 350.445, 350.465
PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.100, 350.445, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate environmental protection performance standards, specifically including such standards for operations conducted on steep slopes. This regulation sets forth special performance standards and limited variance procedures for operations conducted on steep slopes.

Section 1. Applicability. (1) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this regulation.

(2) The standards of this regulation do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 405 KAR 20:050.

Section 2. Performance Standards. (1) Surface coal mining and reclamation operations subject to this regulation shall comply with requirements of Title 405, Chapter 8 and this section, except to the extent a variance is approved under Section 3.

(2) (a) The permittee shall prevent the following materials from being place or allowed to remain on the downslope:

1. Spoil;
2. Waste materials, including waste mineral matter;
3. Debris, including that from clearing and grubbing of haul road construction; and
4. Abandoned or disabled equipment.

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in Title 405, Chapters 16 and 18 and the material is moved and placed in a controlled manner.

(3) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of Title 405, Chapters 16 and 18, with respect to backfilling and grading, including, but not limited to, the return of the site to the approximate original contour. The permittee must demonstrate to the cabinet, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

(4) Land above the highwall shall not be disturbed unless the cabinet finds that the disturbance facilitates compliance with the requirements of Title 405, Chapters 16 through 20, provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(5) Material in excess of that required by the grading and backfilling provisions of subsection (3) of this section shall

be disposed of in accordance with the requirements of 405 KAR 16:130 or 405 KAR 18:130.

(6) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in subsection 3 of this section. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

Section 3. Limited Variances. (1) Permittees may be granted variances from the approximate original contour requirements of Section 2(3) for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 405 KAR 8:050:

(a) [(2)] The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

(b) [(3)] The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw, by reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw, or by increasing streamflow during times of the year when the stream is normally at low flow or dry conditions and such increase in streamflow is determined by the cabinet to be beneficial to public or private users or the ecology of such streams. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

(c) [(4)] Land above the highwall may be disturbed only to the extent that the cabinet deems appropriate and approves as necessary to facilitate compliance with the provisions of Title 405, Chapters 16 through 20, and provided that the cabinet finds that the disturbance is necessary to:

1. [(a)] Blend the solid highwall and the backfilled material;

2. [(b)] Control surface runoff;

3. [(c)] Provide access to the area above the highwall; or

4. [(d)] Eliminate the highwall where sufficient backfill material is not otherwise available.

(d) [(5)] The landowner of the permit area has requested, in writing, as part of the permit application under 405 KAR 8:050, that the variance be granted.

(e) [(6)] The operations are conducted in full compliance with a permit issued in accordance with 405 KAR 8:050.

(f) [(7)] Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 405 KAR 16:130 or 405 KAR 18:130.

(2) Permittees shall be granted variances from the approximate original contour requirements and highwall elimination requirements of Section 2(3) of this regulation where steep slope contour-mining operations affect previously mined areas that were not reclaimed to the standards of Title 405 of the Kentucky Administrative Regulations, and there is no continuing responsibility to reclaim to such standards, and the volume of all reasonably available spoil is demonstrated in writing to the cabinet to be insufficient to completely backfill the highwall; provided, however, that the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(a) The backfill shall be designed by a qualified registered professional engineer.

(b) The permittee shall demonstrate to the cabinet that the backfill has a minimum static safety factor for stability of at least 1.3.

(c) All spoil shall be retained on the solid portion of existing or new benches.

(d) All reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include all such spoil in the immediate vicinity of the mining operation.

(e) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(f) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(g) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

ELMORE C. GRIM, Commissioner
ADOPTED: August 8, 1983
APPROVED: JACKIE SWIGART, Secretary
RECEIVED BY LRC: September 19, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Elmore C. Grim, Commissioner, Department for Surface Mining Reclamation and Enforcement, Natural Resources and Environmental Protection Cabinet, 18 Reilly Road, Frankfort, Kentucky 40601.

TRANSPORTATION CABINET
Department of Highways
(Proposed Amendment)

603 KAR 3:010. Advertising devices on interstates.

RELATES TO: KRS 177.830 to 177.890
PURSUANT TO: KRS 13.082, 174.050, 177.830 to 177.890
NECESSITY AND FUNCTION: KRS 177.830 to 177.890 authorizes the *Department* [Bureau] of Highways to establish regulations for the control of advertising devices on interstate highways.

Section 1. (1) Except as provided for in this regulation, no person shall erect or maintain any advertising device within any protected area if such device is legible or identifiable from the main traveled way of any interstate highway.

(2) The erection or maintenance of any advertising device located outside of "urban areas" and beyond 660 feet of the right of way which is legible and/or identifiable

from the main traveled way of any interstate highway is prohibited with the exception of:

(a) Directional and official signs and notices;

(b) Signs advertising the sale or lease of property upon which they are located; or

(c) Signs advertising activities conducted on the property on which they are located.

Section 2. Definitions. The following terms when used in this regulation shall have the following meanings:

(1) "Interstate highway" means any highway, road, street access facility, bridge or overpass which is designated as a portion of the National System of Interstate and Defense Highways as may be established by law, or as may be so designated by the Transportation Cabinet, Department of Highways, in joint construction of the system by the Transportation Cabinet, Department of Highways, and the United States Department of Transportation, Federal Highway Administration.

(2) [(1)] "Advertising device" means any billboard, sign, notice, poster, display, or other device intended to attract the attention of operators of motor vehicles on the highway, and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction.

(3) [(2)] "Billboard" advertising devices are those devices that contain a message relating to an activity or product that is foreign to the site on which the device and message is located or is an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(4) [(3)] "On-premise" advertising devices are those devices that contain a message relating to an activity or the sale of a product on the property on which they are located.

(5) [(4)] "Center line of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the center line of the main traveled way of a non-divided highway.

(6) [(5)] "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, *but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of an advertising device.*

(7) "Maintain" means to allow to exist.

(8) [(6)] "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(9) [(7)] "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of a separated roadway for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking area.

(10) [(8)] "Protected areas" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the edge of the right-of-way of all interstate highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected areas" also means all areas inside the boundaries of the Commonwealth which are within 660 feet of the edge of the right-of-way of an interstate highway in an adjoining state.

(11) [(9)] "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing such relationship.

(12) [(10)] "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(13) [(11)] "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting *lanes* [legs] of an interchange.

(14) [(12)] "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(15) [(13)] "Permitted" as used in this regulation means to exist only by permit from the [Department of] Transportation *Cabinet, Department* [Bureau] of Highways.

(16) [(14)] "Allowed" as used in this regulation means to exist without a permit from the [Department of] Transportation *Cabinet, Department* [Bureau] of Highways.

(17) [(15)] "*Zoned* commercial or industrial area" means:

(a) The land use for the area as of September 21, 1959, was clearly established by state law as industrial or commercial and is zoned commercial or industrial at the time of the application, or

(b) The land use for such area was within an incorporated municipality as such boundaries existed on September 21, 1959, and is zoned for commercial or industrial use.

(18) "Unzoned commercial or industrial area" means:

(a) An area which is not zoned by state or local law, regulation or ordinance and on which either a commercial or industrial activity is conducted or a permanent structure therefor is located, together with the area extending along the highway for a distance of 700 feet. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the activities, not from the property lines of the activities, and shall be along or parallel the edge of the pavement of the highway; and

(b) Any portion of the highway is constructed upon any part of right-of-way which was acquired for right-of-way on or before July 1, 1956 (a portion shall be deemed perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956).

(19) [(16)] "Commercial or industrial activities" *for purposes of unzoned industrial and commercial areas* mean[s] those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor advertising structures.

[(b) Hospitals, nursing homes, cemeteries, funeral homes, etc. Professional office buildings and roadside markets not open over three (3) months a year.]

(b) [(c)] Agricultural, forestry, ranching, grazing, farming and related activities, *including but not limited to wayside fresh produce stands.*

(c) Activities normally or regularly in operation less than three (3) months of the year.

(d) Activities conducted in a building principally used as a residence.

(e) Railroad tracks and minor sidings.
(f) *Transient or temporary activities.* [The sale or leasing of property.]
(g) Activities not visible from the main traveled way.
(h) Activities more than 300 feet from the nearest edge of the right-of-way.
(20) [(17)] "Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one (1) state, that part of the urbanized areas in each such state or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Secretary of the United States Department of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. Such urban areas shall be designated by official order of the Kentucky Secretary of Transportation.
(21) [(18)] "Routine maintenance" means that maintenance is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device but not to the extent of adding guys or struts for the stabilization of the sign or structure or substantially changing the sign. Replacement of new or additional panels or facing shall not constitute routine maintenance. The routine changing of messages is considered to be routine maintenance. Routine maintenance includes laminating or preparing panels in a plant or factory for the changing of messages.
(22) [(19)] "Activity boundary line" means regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity.
(23) [(20)] "Abandoned or discontinued" means that for a period of one (1) year or more that the sign:
(a) Has not displayed any advertising matter; or
(b) Has displayed obsolete advertising matter; or
(c) Has needed substantial repairs.
(24) [(21)] "Non-conforming sign" means a sign which was lawfully erected but does not comply with the provisions of state law or regulations passed at a later date or later fails to comply with state law or regulations due to changed conditions, such as but not limited to, zoning change, highway relocation or reclassification, size, spacing or distance restrictions. Performance of other than routine maintenance shall cause a non-conforming sign to lose its status and to become an illegal sign.
(25) [(22)] "Destroyed" means that the sign has sustained damage by any means in excess of sixty (60) percent of the structure and facing or sixty (60) percent of the replacement value of such sign.

Section 3. General Provisions. (1) Erection or existence of the following advertising devices may not be permitted or allowed in protected areas:
(a) Advertising devices advertising an activity that is illegal under state or federal law.
(b) Obsolete advertising devices.
(c) Advertising devices that are not clean and in good repair.
(d) Advertising devices that are not securely affixed to a substantial structure.
(e) Advertising devices illuminated by other than white lights.
(f) Advertising devices which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.
(g) Advertising devices which prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.
(h) Signs which contain, include, or are illuminated by any flashing, intermittent or moving lights, except those giving public service information of time, date, temperature or weather and limited to one (1) cycle of four (4) displays. They may contain no other message. The maximum time limit for the completion of the four display cycle shall be five (5) seconds. Signs which have a continuous revolving or running message shall be limited to the same restrictions as to message content, limited to one (1) cycle and limited to a maximum of five (5) seconds for the completion of the one (1) cycle.
(i) Advertising devices which use lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway or unless it is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.
(j) Advertising devices which move or have any animated or moving parts.
(k) Advertising devices erected or maintained upon trees or painted or drawn upon rocks or other natural features.
(l) Advertising devices exceeding 1,250 square feet in area, including border and trim, but excluding supports.
(m) Advertising devices closer than fifty (50) feet to the edge of the main traveled way of any interstate highway.
(2) An advertising device which is not visible from the main traveled way of the highway may be allowed in protected areas.
(3) Any advertising device which is legible from the main traveled way of any interstate highway must have an approved permit from the [Department of] Transportation *Cabinet, Department* [Bureau] of Highways, to be a legal advertising device.
(4) If the advertising device is legible from more than one (1) highway on which control is exercised, the appropriate criteria applies to all of these highways. (See also: 603 KAR 3:020.)
(5) A non-conforming sign may continue to exist until just compensation has been paid to the owner, only so long as it is:
(a) Not destroyed, abandoned or discontinued; and
(b) Subjected to only routine maintenance; and
(c) A sign conforming to local zoning or sign or building restrictions.

Section 4. Measurements of Distance. (1) In determining protected areas, distances from the edge of a right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the center line of a highway for a distance of 660 feet.
(2) In measuring distances for determination of spacing for advertising devices, two (2) lines shall be drawn perpendicular to the center line of the main traveled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of said highway.
(3) V-shaped or back-to-back type billboard advertising devices shall have no greater distance than fifteen (15) feet apart at the nearest point and must be connected by bracing or maintenance walkway.
(4) The spacing for billboard advertising device structures as described in Section 5(4) of this regulation, shall be measured from the nearest point of each structure to the other.

Section 5. "Billboard" Advertising Device Provisions. (1) "Billboard" advertising devices *limited to a maximum size of 1,250 square feet* may be constructed and maintained in protected areas which are zoned commercial or industrial as defined in Section 2*(17)* [(15)] of this regulation, *or which are unzoned commercial or industrial areas as defined in Section 2(18) of this regulation* and comply with the provisions of this regulation for this type advertising device and other applicable state, county or city zoning ordinances or regulations. [Limited to a maximum of 1,250 square feet subject to other provisions of this regulation.]

(2) V-shaped or back-to-back "billboard" advertising devices will be considered as one (1) advertising device structure and must meet specifications as described in Section 4(3) of this regulation.

(3) "Billboard" advertising devices may contain two (2) messages per facing not to exceed the maximum sized area as set forth in Section 3(1) of this regulation.

(4) No "billboard" advertising device structure shall be erected within 500 feet of any other such advertising device structure on the same side of the highway, unless separated by a building, natural obstruction or roadway in such manner that only one (1) sign located within the required spacing distance is visible from the highway at any one time. (See Measurement of spacing, Section 4(4) of this regulation.) This spacing shall not apply to on-premise advertising devices nor will on-premise advertising devices affect the spacing of other advertising structures. Billboard structures in legal existence on the effective date of this amendment which are less than 500 feet from any other such advertising device structure on the same side of the highway, may continue to remain in place until they are destroyed, abandoned or discontinued as defined in this regulation, as long as only routine maintenance as described in Section 2*(21)* [(18)] of this regulation is performed on them.

(5) "Billboard" advertising devices that were legally erected may remain in place if they meet all criteria except spacing. Only routine maintenance may be performed on the sign and its structure until such time as proper spacing as described in this regulation is attained.

(6) Spacing rights will be issued on a "first come, first served" basis. Proof of lease of a site must accompany the application. Updating of proof of lease and application will be required annually until a sign has been erected.

Section 6. "On-premise" Advertising Devices. (1) "On-premise" advertising devices may have a maximum of 1,250 square feet in area if they qualify as commercial or industrial activities as set forth in Section 2*(19)* [(16)] of this regulation, and are on or within fifty (50) feet of the advertised activity and are within the property boundary lines of such activity.

(2) To qualify as an "on-premise" advertising device, the device must be within the property boundary lines of the advertised activity.

(3) No "on-premise" advertising device may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports, if it is farther than fifty (50) feet from the activity boundary lines (not the property boundary lines).

(4) No "on-premise" advertising device advertising a commercial or industrial activity as set forth in Section 2*(19)* [(16)] of this regulation, shall be located more than 400 feet, measured within the property boundary, from the advertised activity. In using a corridor to reach the location of the device, the corridor must be no less than 100 feet in width and must be an integral part of the property on which the advertised activity is located. No other activity which is in any manner foreign to the advertised activity may be located on or have use of said corridor between the advertised activity and the location of the device. No activity incidental to the primary activity advertised will be considered in taking measurements.

(5) Only one (1) "on-premise" advertising device which is listed as an exception in Section 2*(19)* [(16)] of this regulation, may be located in such a manner that it is legible from the main traveled way.

(6) Only one (1) of the the following "on-premise" advertising devices may be located in such a manner that it is legible from the main traveled way.

(a) The setting forth or indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located; or

(b) The name or type of business or profession conducted on the property on which the advertising device is located; or

(c) Information required or authorized by law to be posted or displayed on such property; or

(d) The sale or leasing of the property upon which the advertising device is located.

1. Advertising devices which are for the purpose of sale or leasing of property by a real estate company or individual will be limited to a six (6) month permit. After the six (6) months, the real estate name must be removed and the message advertising the sale or lease of the property along with the telephone number of the real estate company is all that may remain. This will be a condition of the permit.

2. If the property is for sale by the owner and the owner is other than a real estate company, the message stating the leasing or sale of the property may list the name of the owner (letters of owners' name may be no larger than one-half (½) the size of the letters in the basic message), and the telephone number and will not be restricted to the six (6) month permit.

(e) Advertising customarily used at similar places of business that are not legible from the main traveled way of the highway; or

(f) The advertisement or control of an activity or sale of products on the property where the advertising device is located.

(7) No advertising device referred to in subsections (5) and (6) of this section may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim but excluding supports. Nor will these advertising devices be subject to restrictions as set forth in subsection (4) of this section.

(8) Brand name, "on-premise" advertising devices may advertise only the activities conducted upon the property on which they are located with exceptions as to type as follows:

(a) "Ford," "Chevrolet," "Pontiac," etc.

(b) "A & P," "Kroger," etc.

(c) "Kentucky Fried Chicken," "Bob Evans Restaurants," "Stuckeys," etc.

(9) Brand names such as the following may not be advertised because they are incidental to the primary activity:

(a) "Auto Light," "Delco," etc.

(b) "8 O'Clock Coffee," "Armour Meats," "Clabber Girl Baking Powder," etc.

(c) "Coca-Cola," "Pepsi," "Winstons," etc.

(10) Application for advertising device permits for on-premise signs must give a detailed description of the exact wording of the message to be conveyed on the advertising device. This information may be furnished by either a

photograph or a drawing, and may be changed only upon the approval of the *Department* [Bureau] of Highways or a new application submitted by the permit holder which shows the proposed change in the message.

(11) An exception to subsection (10) of this section is that a marquee type on-premise advertising device, such as a typical theatre or cinema advertising device, may change messages without a new application. This message change may be from one (1) legitimate on-premise activity to another.

DEAN HUFF, Commissioner
ADOPTED: September 15, 1983
APPROVED: JAMES F. RUNKE, Secretary
RECEIVED BY LRC: September 16, 1983 at 4:30 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Steve Reeder, Deputy Secretary for Legal Affairs, Transportation Cabinet, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 1:005. Textbook program plan.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190
PURSUANT TO: KRS 13.082, 156.410, 156.437, 156.447, 156.474, 156.476, 157.100, 157.110, 157.120, 157.130, 157.140, 157.150, 157.160
NECESSITY AND FUNCTION: KRS 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth. KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out such statutory requirements dealing with textbooks.

Section 1. Effective July 15, 1982, and thereafter, the subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into six (6) groups as follows: Group I—Social Studies K-12; Group II—Language Arts K-12 (except Reading K-8 and Literature K-12); Group III—Science K-12; Group IV—Mathematics K-12; Group V—Reading K-8, Music K-12, Industrial Arts 7-12, Business Education 7-12, Vocational Education 7-12, and Trades and Industry 11-12; and Group VI—Literature K-12, Art Education K-12, Foreign Language 3-12, Driver Education 9-12, Health and Physical Education K-12.

Section 2. (1) The Division of Free Textbook Services shall requisition and publishers submitting bids shall ship adequate textbook samples to the Division of Free Textbook Services and individual State Textbook Commission members, reviewers, and curriculum committees during the selection and adoption process. All available textbook samples, program descriptions, list of gratis items for districts adopting or purchasing books, and other pertinent information shall be provided before the bid opening. Samples and information not available at bid opening shall be shipped to the Division of Free Textbook Services, commission members, reviewers and curriculum committees as soon as possible and not later than the date of the commission hearing held under Section 3 of this regulation.

(2) When the selection process has been completed and the individual commission members, reviewers and curriculum committees have no further need for samples in their possession, such shall be disposed of in the following manner:

(a) Reclaimed by publishers;
(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or
(c) Sold by the State Board of Education.

All sales and transfers shall be properly receipted and filed in the Division of Free Textbook Services. Official adoption samples, however, must be disposed of in accordance with KRS 156.470.

Section 3. (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents and representatives and providing an opportunity for agents and representatives to make presentations on textbooks submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but must clearly state:

(a) Name and address of the person or organization requesting the hearing;
(b) Title, author and copyright date of the textbook in question;
(c) Sections of the textbook being questioned and nature of concern;
(d) Anticipated problems that would be created if the textbook is placed in use; and
(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and/or action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 4. (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher has violated this regulation or the Kentucky Revised Statutes; or if the publisher has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of individual publishers with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members and local district selection committee members meals, gifts, trips, entertainment, or any other items of monetary value to assure the listing, adoption, and purchase of their textbooks. If there is sufficient evidence that publishers are guilty of any of the aforementioned, they shall be called before the State Textbook Commission to determine if violations did occur and what course of action should be taken.

(2) Publishers proposing to give local districts free-of-charge items, including but not limited to kits, duplicating masters, workbooks, and extra textbooks, if said district would adopt and purchase their textbooks, shall file a list of gratis items as an official part of their bid. Publishers not complying would be considered in violation of statute and this regulation.

(3) The State Textbook Commission shall have the right to refuse to execute or to cancel a publisher contract upon discovery that said publisher has violated any part of this regulation or does not have the ability to perform all the terms and conditions of the contract.

(4) All bidders for textbook contracts shall file with the Division of Free Textbook Services the name of a Kentucky person, firm, or corporation upon whom process may be served. The name of the process agent, together with such other information concerning said agent, shall be made available to the proper authorities for the purpose of serving process.

Section 5. Publishers and local school districts may agree to pilot new textbook programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The Superintendent of Public Instruction shall approve all piloting programs. *The local school district superintendent shall file the request for approval with the Superintendent of Public Instruction. The request need not be in any prescribed form but shall clearly state:*

(1) The publisher that will conduct the pilot;

(2) The purpose of the pilot;

(3) The subject and grade levels in which the pilot will be conducted;

(4) The schools where the pilot will be conducted;

(5) The name of the school district staff member supervising the pilot;

(6) Beginning and ending date of pilot; and

(7) Brief summary of evaluation procedures.

Section 6. Any school administrator or teacher that receives directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks shall be subject to the penalties of KRS 156.480.

Section 7. (1) The "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturers' Institute, as revised February, 1982, shall apply to all textbooks submitted for adoption in Kentucky. Said edition is incorporated by reference and is on file in and can be obtained from the Division of Free Textbook Services.

(2) Publishers who have filed an old copyright with the official bid on or before July 15 may substitute the revised edition at the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 8. Defective binding, workmanship or material shall be reported as soon as detected. Publishers shall be held responsible for all defective textbooks. Textbooks that show manufacturing defects in the first or second year of use shall be replaced by the publisher on a one-for-one basis. After the first two (2) years of use, replacement agreement must be reached with the publishers. School districts shall start the replacement process as soon as it has been determine that textbooks are defective.

Section 9. (1) Request to substitute revised editions of textbooks under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the book is bid and sold elsewhere in the United States at the date of the substitution approval and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide thirty (30) days prior to date of the commission meeting a sample textbook and a summary description of the revised edition that compares it with the textbook and/or program presently on the State Multiple List.

Section 10. (1) Multi-volume textbook programs for a single subject or a series for more than one (1) grade level is defined as two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.

(2) A district may implement curriculum programs in grades kindergarten through twelve (12) through the purchase of adopted textbooks from one (1), two (2), or three (3) textbook programs for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).

Section 11. (1) The wholesale and exchange prices in Kentucky shall not exceed the lowest wholesale and exchange prices at which textbooks are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks being sold in Kentucky, publishers shall lower the price in Kentucky.

(2) The retail price to used in Kentucky shall not be more than twenty percent (20%) in excess of the publisher wholesale price.

(3) The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.

Section 12. (1) Local school districts are hereby

authorized to use up to thirty percent (30%) of the elementary school textbook funds and up to thirty percent (30%) of the high school textbook funds for the optional purchase of supplementary textbooks, print and non-print media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional textbook funds may be used to purchase basal textbooks or instructional materials to be used in lieu of a basal textbook for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" for which textbooks are not listed on the State Multiple List;

(b) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten programs;

(d) Special education classes; and

(e) Courses and programs requiring State Board of Education annual approval.

Basal programs for the aforementioned courses and basal textbooks for all other subjects in the State Board of Education approved "Program of Studies for Kentucky Schools, Grades K-12" shall be purchased before optional textbook funds are used to purchase supplementary materials.

(2) The following materials are eligible to be purchased with optional textbook funds:

(a) Pre-printed organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List, kits, master units, programmed instructional materials, and similar qualifying materials.

(b) Pre-processed organized audio-visual materials including films, film loops, tapes, slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Pre-printed or pre-processed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds.

(3) The following materials are not eligible to be purchased with optional funds:

(a) Rebinding, equipment other than minor audio-visual, furniture, personnel services, teachers' guides and manuals, testing programs, supplies and materials consumed in initial use and raw and/or blank materials.

(b) Major audio-visual installations such as public address systems, sound laboratories for language, computers, and televisions (including receiving sets and related equipment).

(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Division of Free Textbook Services. Annual approval must be obtained before funds are obligated if there is a need to exceed the designated thirty percent (30%) option. Application to exceed the thirty percent (30%) option of elementary (K-8) and secondary (9-12) textbook funds shall be filed on separate forms. The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.

(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Division of Free Textbook Services on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" must include a copy of the State Board of Education approval of the program and the instructional materials to be used.

Section 13. (1) The school districts shall make textbook adoptions for all the subjects in the six (6) adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and/or programs per subject in any one (1) grade in grades kindergarten through eight (8) and ten (10) textbooks and/or programs per subject in any one (1) grade in grades nine (9) through twelve (12).

(2) School districts shall indicate their tentative first, second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.

(3) Districts may purchase any or all adopted textbooks and/or programs in any number and combination based on identified pupil needs rather than grade level assignment.

Section 14. (1) Pupils in grades kindergarten through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made on forms supplied to local school districts by the Bureau of Education for Exceptional Children, Department of Education.

(3) Request for large print textbooks and material shall be directed to the Division of Materials and Curriculum.

(4) The local board of education shall assume responsibility for the care of textbooks and return them to the Resource Bank Distribution Center when no longer needed.

(5) Large print textbooks and materials purchased by the Division of Free Textbooks Services are not charged to the textbook account of the local school district.

Section 15. (1) The Division of Free Textbook Services shall prepare textbook budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing full basal textbook programs during the first year of each adoption and/or funding. After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.

(2) When allocating funds for the purchase of textbooks, the Division of Free Textbook Services shall use the pupil membership at the close of the first month of the current school year.

(3) A statement of high school funds and a statement of elementary school funds allocated to each school district shall be mailed to the superintendent after March 1. Each

statement shall reflect the balances from the previous year, allotment for the ensuing year, sales and fines for the past year, and growth adjustments.

(4) School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.

Section 16. (1) The Division of Free Textbook Services shall provide Annual Report and requisition forms to all school districts. These forms shall be prepared in duplicate. The original copy shall be sent to the Division of Free Textbook Services and the second copy retained by the district. The Annual Report (FT-8) and requisition (FT-9) may be filed after March 1 and shall be filed by June 30.

(2) The Division of Free Textbook Services, upon receipt and approval of a requisition for textbooks from any school district, shall issue a local purchase order. A copy of the local purchase order shall be sent to the publisher, two (2) copies sent to the local district and two (2) copies retained by the Division of Free Textbook Services.

(3) All adopted textbooks purchased with state textbook funds shall be purchased through the office of the Division of Free Textbook Services.

(4) Publishers shall ship direct to local school districts by prepaid freight or United Parcel Service and issue invoices in triplicate to the Division of Free Textbook Services.

(5) Upon receipt of textbooks, the school district shall check items of shipment against the local purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing one (1) copy of the local purchase order (receiving report), dated and signed to the Division of Free Textbook Services. The Division of Free Textbook Services may then order payment.

(6) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." School districts shall record the purchase date and the issue date on the uniform label.

(7) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed is classified as a used textbook.

(8) A complete record shall be kept by the school district for all free textbooks delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 will be furnished upon request in quantities equal to number of teachers or principals.

(9) When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 will be furnished upon request in quantities equal to pupil membership.

Section 17. The Division of Free Textbook Services shall encourage and facilitate the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Division of Free Textbook Services shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need textbooks on the master list will request the Division of Free Textbook Services to initiate a transfer. The district having possession of the surplus textbooks requested by a district shall ship the books and notify the Division of Free Textbook Services the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district will notify the Division of Free Textbook Services. The Division of Free Textbook Services shall inter-account funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account. The cost to the receiving district of all transferred textbooks shall be fifty percent (50%) of the wholesale price plus transportation.

Section 18. Pupils or parents shall compensate school districts for textbooks lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100% of retail cost for one (1) and two (2) year old textbooks; seventy-five percent (75%) of retail cost for three (3) and four (4) year old textbooks; and twenty-five percent (25%) of retail cost for five (5) and six (6) year old textbooks.

Section 19. (1) Textbooks to be rebound shall not qualify for publisher replacement under Section 8 hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortage and emergencies.

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Division of Free Textbook Services with the Annual Report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Division of Free Textbook Services for payment. Such payments shall not be charged to the textbook account of local school districts.

Section 20. (1) District superintendents shall make an accurate count of all free textbooks under adoption that are suitable for classroom instruction and report same on the Annual Report (FT-8).

(2) The Division of Free Textbook Services shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. A claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.

(3) The local superintendent shall assume responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the unclaimed textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the unclaimed textbooks available to pupils within the district.

(c) Publicize in the local newspaper that unclaimed textbooks are available to individual residents of the local district. Unclaimed textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the unclaimed textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the unclaimed textbooks available to recycling operations.

(f) Destroy unclaimed textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of unclaimed textbooks shall be paid into the state treasury.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Administration and Finance
(Proposed Amendment)

702 KAR 3:070. Teachers' salary scheduling.

RELATES TO: KRS [157.320(13),] 157.390, [157.420(1),(2)]
PURSUANT TO: KRS 13.082, 156.070, [156.160]
NECESSITY AND FUNCTION: *KRS 157.390(2)(a) prescribes that the amount to be included in each school year in the Foundation Program of a school district for teachers' salaries shall be determined by multiplying the number of teachers in each rank, not to exceed the number of classroom units allotted, by the amount set forth in the biennial budget schedule for each rank and experience for a term of 185 days. This regulation* [To] defines teaching experience allowable in Foundation Program salary calculations and [to] defines extra service pay.

Section 1. Each board of education shall adopt and submit for the approval of the State Board of Education a single salary schedule as defined in KRS 157.320.

Section 2. For the purpose of calculating the salary allotment of each school district, experience for all professional personnel shall be defined as follows:

(1) Professional personnel shall have taught or rendered professional service under contract for a complete school year or a minimum of 140 days during a school term in a public or non-public elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the professional experience was rendered. In no case shall more than one (1) year of experience be credited for professional experience during a given school year.

(2) Experience credit shall not be taken into consideration in calculating the salary allotment for a Foundation Program unit under the following circumstances:

(a) Substitute teaching;

(b) Teaching for less than a half day;

(c) Nursery schools.

(3) School psychologist, school social worker, school business administrator and other professional personnel shall have rendered professional service in their present profession and in the employment of a federal, state or local agency. Professional personnel shall have been employed by these agencies for a complete year or a minimum of 190 days during a calendar year. In no case shall more than one (1) year of experience be credited for professional experience during a calendar year.

(4) It will be the responsibility of the local board of education to validate all experience of professional personnel employed in the school district.

(5) Such validation of experience shall be on file in the office of the superintendent.

(6) Units granted to a public school district by the Bureau of Vocational Education for contracted services in an area vocational school or an area vocational school extension center will be calculated on the basis of Rank *II* [III] with four (4) to nine (9) years of experience.

(7) Professional personnel leaving employment of a local board of education after June 16, 1966, shall be granted experience credit when calculating the Foundation Program salary allotment when the employee's career was interrupted to perform military duty, voluntarily or involuntarily, and who has been relieved from such duty under conditions other than dishonorable.

Section 3. Each local board of education may allow increments in pay to members of its professional staff who render services beyond those normally expected of other professional members of the staff when these duties rendered extend beyond the regular school day.

Section 4. Expenditures for increments for extra duties classified as extra service shall be paid from local revenue or funds other than the allotment for instructional salaries in Foundation Program calculations and shall not be counted toward meeting the requirements of KRS 157.420.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:005. Kentucky standards for preparation program approval.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board of Education, and the Kentucky Council on Teacher Education and Certification under KRS Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel is amended by the selective revision of certain standards, the deletion of certain standards, and by the addition of other new standards, and the amended document is hereby incorporated by reference and indentified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised *September* [July], 1983. A copy of this document can be obtained from the Bureau of Instruction, Department of Education, Capital Plaza Tower, Frankfort, Kentucky.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:222. Industrial education teachers.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, [156.030,] 156.070, *161.030* [156.160]
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board *of* [for Elementary and Secondary] Education. This regulation establishes the qualifications for teachers of industrial education-preparation level.

Section 1. The certificate for vocational education is established for issuance and renewal only for vocational teachers employed by the public schools or by the State Department of Education. The certificate may be issued for any health, technical, or trades and industrial occupational area for which programs may be offered under the Kentucky State Plan for Vocational Education. It is intended that these regulations implement the philosphy of industrial education as adopted by the Kentucky State Board *of* [for Elementary and Secondary] Education in December, 1975, by means of the report "Industrial Education—A Merger of Industrial Arts and Trade and Industrial Education."

Section 2. (1) A certificate for teaching vocational education—industrial education, valid for teaching only the subjects stated on the face of the certificate, shall be issued for a duration period of one (1) year upon completion of the following requirements:

(a) High school graduation or its equivalence determined by evidence of an acceptable score on the general education development test administered by an approved testing center.

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught. Adequacy of work experience shall be determined by the Department of Education. One (1) year of occupational experience shall be equated with 2,000 clock hours. A maximum of one (1) year of the required work experience may be satisfied by completion of an accredited preparatory vocational program for the occupation to be taught.

(c) The completion of three (3) semester hours *of* credit in a foundations course in vocational, industrial, or career education and the completion of three (3) semester hours *of* credit in course construction or curriculum development in vocational industrial education.

(2) The certificate shall be renewed for subsequent one (1) year periods upon completion of a minimum of six (6) semester hours *of* credit for each renewal selected from the sixty-four (64) semester hour planned program for the preparation of voactional teachers in industrial education-preparation level. The certificate shall not be subject to renewal more than ten (10) times. Credit granted for occupational proficiency shall not be applied toward the certificate renewal requirements. As a consequence of extenuating circumstances, such as severe illness or death in the family, which prevent the teacher from meeting the certificate renewal requirements, the Department of Education may authorize a renewal one (1) time without the completion of the additional credits when the circumstances are adequately documented and the situation merits approval.

Section 3. A temporary certificate for vocational education-industrial education may be issued to a person who is initially employed during a school year and who meets the qualifications stated in Section 2(1)(a)(b) above. The certificate shall be issued for a duration period to expire on the next June 30 after issuance and shall not be renewed for full-time instructors.

Section 4. (1) A certificate for teaching vocational education-industrial education, valid for teaching only the subjects stated on the face of the certificate, shall be issued for a duration period of five (5) years upon completion of the following requirements:

(a) The completion of a planned program consisting of a minimum of sixty-four (64) semester hours *of* credit distributed as follows:

1. A general education component consisting of twenty (20) semester hours *of* credit selected from the general education component of teacher preparation.
2. A specialization component consisting of twenty-four (24) semester hours *of* credit selected from the specialization component of the curriculum standards for the provisional high school certificate with an area of concentration in industrial education-preparation level.
3. A professional education component consisting of twenty (20) semester hours *of* credit in professional education to include at least twelve (12) semester hours selected from the professional education component of the curriculum standards for the provisional high school cer-

tificate with an area of concentration in industrial education-preparation level. *Successful completion of the methods of instruction course taught by the Department of Education which has as a minimum at least a five (5) day workshop, on-site observation of teaching and evaluation, and a two (2) day reinforcement workshop may be substituted for three (3) of the twenty (20) semester hours currently required in the professional education component.*

(b) The completion of four (4) years of occupational experience in the area to be taught or the completion of a minimum of 4,000 hours of supervised work experience.

(2) The certificate shall be renewed for subsequent five (5) year periods upon completion of any combination of two (2) years *of* teaching or work experience in the occupational specialty plus the completion of an additional six (6) semester hours credit from an approved industrial education program. An additional three (3) semester hours *of* credit may be substituted for any year of renewal experience which may be lacking.

Section 5. A certificate for a vocational education specialist, valid for teaching the specific subject stated on the face of the certificate, shall be issued for a duration period of one (1) year upon the basis of a determination made by the Department of Education that the individual has unique knowledge or experience or special preparation that qualifies the person to be outstanding in the vocational subject to be taught.

Section 6. A certificate for vocational education, valid for a part-time or short-term assignment, and for teaching the specific subject stated on the face of the certificate, shall be issued for a duration period of one (1) year on the basis of high school graduation or its equivalence and four (4) years of responsible work experience in the occupation to be taught.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 20:235. Learning and behavior disorders; teacher's provisional certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, [156.030,] 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education; futhermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the Council and approved by the State Board. This regulation establishes an appropriate provisional certificate for teaching exceptional children with learning and behavior disorders and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teachers of exceptional children—learning and behavior disorders shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

(2) The provisional certificate for teachers of exceptional children—learning and behavior disorders shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth year program.

(3) The provisional certificate for teachers of exceptional children—learning and behavior disorders shall be valid at any grade level for the instruction of exceptional children with learning and behavior disorders and as a provisional elementary certificate valid for classroom teaching in grades one (1) through eight (8).

(4) The provisional certificate for teachers of exceptional children—learning and behavior disorders shall be issued for a one (1) year period to an applicant who holds the provisional elementary certificate or any other certificate of similar validity for elementary classroom teaching and who has completed at least six (6) semester hours *of* credit from the special education component of the approved curriculum. As a prerequisite, the certification application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for no more than three (3) subsequent one (1) year periods upon completion of a minimum of six (6) semester hours additional credit each year after which time the teacher must qualify by having completed the entire curriculum.

(5) [(a) The provisional certificate for teachers of exceptional children—learning and behavior disorders, limited in validity to grades seven (7) through twelve (12), may be issued to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed the approved special education component of twenty-seven (27) semester hours for learning and behavior disorders and in addition thereto, two (2) sequential courses in the teaching of reading and two (2) courses in mathematics for elementary school teachers.]

[(b)] The provisional certificate for teachers of exceptional children—learning and behavior disorders, valid for grades seven (7) through twelve (12), may be issued for a one (1) year period to an applicant who holds the provisional high school certificate or any other certificate of similar validity for secondary classroom teaching and who has completed at least six (6) semester hours *of* credit from the *major in exceptional children—learning and behavior disorders* [special education component of the curriculum described above] and a three (3) semester hour course in reading. As a prerequisite, the certificate application shall be accompanied by a statement from the superintendent of the local school district declaring that an emergency exists as described in the regulations governing emergency teacher certification (704 KAR 20:120) and also describing the special supervisory services that will be provided for this teaching position. The certificate may be renewed for subsequent one (1) year periods upon completion of at least six (6) semester hours *of* credit each year from the approved curriculum.

RAYMOND BARBER
Superintendent of Public Instruction

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EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Vocational Education
(Proposed Amendment)

705 KAR 2:030. Foundation program units.

RELATES TO: KRS 156.070, 157.360, 163.020, 163.030
PURSUANT TO: KRS 13.082, 156.035, 156.070, 163.030
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board of Education the management and control of the common schools; KRS 157.360 requires the Superintendent of Public Instruction to allot to school districts, as a part of the Foundation Program, classroom units for vocational education *for classes meeting state board regulations*; and KRS 163.020 and 163.030 mandate that the state provide for and administer a vocational education program. This regulation establishes methods and procedures to cover the allocation of vocational education units under the Foundation Program.

Section 1. Local school districts shall request vocational education units May 15. The request shall be made only for programs which have been included in the required local plan for vocational education. Request for new units shall be based on plans submitted by the local school district which are developed in conjunction with the regional vocational staff and the Program Development Division, Bureau of Vocational Education.

Section 2. Vocational units shall be allocated to local school districts to provide vocational education programs for the secondary school students in that district. A calculation shall be made to determine the relative number of units per district as compared to their proportionate share of the total statewide secondary, grades 7-12, enrollment. Districts having less than their calculated number of units shall receive priority in the allocation of new units. Only that portion of a teacher's time devoted to vocational education shall be used for calculating vocational units. Vocational units shall be allocated only for those programs that have:

(1) Certified teachers who satisfy the requirements of the Kentucky State Plan for Vocational Education and meet the requirements of the Kentucky Program of Studies.

(2) Facilities and equipment which meet established minimum requirements.

(3) A curriculum which serves at least one (1) of the objectives of vocational education.

Failure to meet any one (1) of these criteria shall be cause to withhold the vocational unit.

Section 3. The following activities shall be approvable for vocational units:

(1) A planning period for up to one-tenth (0.1) vocational unit for teachers with two (2) vocational periods and up to two-tenths (0.2) vocational unit for teachers with three (3) or more vocational periods.

(2) One (1) class period for supervision of cooperative vocational education or work experience programs when there is a minimum of ten (10) and a maximum of fifteen (15) participating students with training agreements on file; two (2) class periods for this purpose when the number of students enrolled is a minimum of sixteen (16) and a maximum of twenty-seven (27). When only one (1) supervision period is provided, the supervision and planning periods shall be scheduled consecutively during the time students are on the job.

(3) One (1) class period for one (1) teacher in each vocational program area to work with activities of integrated and approved vocational student organizations.

(4) One (1) class period for one (1) designated teacher to serve as a vocational department head in a high school with five (5) or more full-time equivalent vocational teachers.

(5) One (1) class period for each agriculture teacher for supervision of occupational work experience programs for a minimum of thirty (30) and a maximum of fifty (50) students; two (2) periods for a teacher with more than fifty (50) students when at least twenty (20) students are juniors or seniors.

(6) Class period(s) for supervision of cooperative work experience and agriculture programs supervision require a prerequisite of at least three (3) vocational teaching periods for the teacher.

Section 4. Class sizes shall be considered in allocating vocational education units. (1) All vocational classes shall have a minimum membership of ten (10) students.

(2) Two (2) sections of the same class shall have a minimum average of twelve (12) students per class; three (3) or more sections of the same class shall have a minimum of fifteen (15).

(3) The maximum number of students per class shall be based on the class setting. For a classroom setting, the maximum enrollment shall be thirty (30). For a laboratory or shop setting, the maximum enrollment shall be twenty-seven (27) or the number for which the facility is equipped, whichever is less. For a supervised out-of-school setting, the maximum enrollment shall be twenty-seven (27).

(4) Approval by the Superintendent of Public Instruc-

tion is required for justification of exceptions. Justifications shall be submitted by the local superintendent concurrent with the professional staff data forms.

Section 5. Vocational classes which are laboratory, shop, or practical exercise classes shall require two (2) consecutive class periods if the gross period of time for one (1) class is less than sixty (60) minutes. Programs having exploratory objectives shall be considered on individual requests as exceptions to the minimum length of class period.

Section 6. The Superintendent of Public Instruction shall calculate units for programs offered in local high schools based on the information provided on the professional staff data (PSD) form which is completed on September 15 and amended as of February 1. The PSD shall be used to determine the amounts of time devoted to vocational programs, services, and activities. Additional justification shall be provided as needed to justify periods not devoted to teaching. Units shall be allocated for each vocational period calculated to the nearest tenth of a unit.

Section 7. The allocation of units to local school districts sending students to state vocational-technical schools and area vocational education centers shall be calculated on the basis of the number of students enrolled as of October 1. A vocational education unit shall be allotted for thirty (30) students attending the school three (3) hours per day, five (5) days per week or equivalent to this amount of student time. Units will be calculated to the nearest one-tenth (0.1) unit. The "contract" vocational unit shall be calculated at the value for a Rank *II* [III] teacher with four (4) to nine (9) years experience and one (1) month extended employment. The unit shall include the foundation program value for salary, capital outlay, and current expenses.

Section 8. The funds calculated from the Foundation Program for students attending state-operated vocational schools shall be divided. Twenty (20) percent shall be transferred to the local school district owning the facility and eighty (80) percent transferred to the Bureau of Vocational Education for operating the program. If the facility is state-owned, 100 percent of the funds shall be transferred to the Bureau of Vocational Education.

RAYMOND BARBER
Superintendent of Public Instruction

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PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:020. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR Part 1910.1 shall read as follows:

"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR Part 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Commissioner of Labor, Commonwealth of Kentucky.

(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

(3) 29 CFR 1910.20 "Access to employee exposure and medical records" is amended as follows:

(a) 29 CFR 1910.20(e)(1)(i) is amended to read "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not later than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(b) 29 CFR 1910.20(e)(1)(ii) is amended to read "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

(c) 29 CFR 1910.20(e)(1)(v) is added and shall read

"Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

[(d) 29 CFR 1910.20(e)(3)(ii) shall read "Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days. OSHA will have access to employee medical records maintained by an employee's personal physician fifteen (15) days after written consent is given to OSHA by the affected employee. The consent must contain a general description of the medical information that is authorized to be released."]

(d) [(e)] 29 CFR 1910.20(g)(1) is amended to read "Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform each employee exposed to toxic substances or harmful physical agents of the following:"

(e) [(f)] 29 CFR 1910.20(g)(2) is amended to read "Each employer shall make readily available to employees a copy of this standard and its appendices, and shall make readily available to employees any informational materials concerning this standard which are provided to the employer by the Assistant Secretary of Labor for Occupational Safety and Health."

(4) Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

(5) 29 CFR 1910.95 "Hearing Conservation Program" paragraphs (c) through (p) and appendices A, B, C, D, E, F, G, H, and I as published in the Federal Register, Volume 48, Number 46, March 8, 1983 *and Volume 48, Number 125, June 28, 1983* are adopted by reference and amended as follows:

(a) 29 CFR 1910.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(b) 29 CFR 1910.95(h)(4) shall read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(c) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(d) 29 CFR 1910.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(e) 29 CFR 1910.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(f) 29 CFR 1910.95(o) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well-drilling and servicing operations, agriculture, or construction.

(g) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This appendix is mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

1. Sound Pressure Output Check.

a. Place the earphone couler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

2. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

3. Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 by ± three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

Table E-1—Reference Threshold Levels for Telephonics—TDH-39 Earphones

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter reading, dB
500	11.5	81.5
1,000	7	77
2,000	9	79
3,000	10	80
4,000	9.5	79.5
6,000	15.5	85.5
8,000	13.0	83.0

Table E-2—Reference Threshold Levels for Telephonics—TDH-49 Earphones

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter reading, dB
500	13.5	83.5
1,000	7.5	77.5
2,000	11	81.0
3,000	9.5	79.5
4,000	10.5	80.5
6,000	13.5	83.5
8,000	13.0	83.0

(6) 29 CFR 1910.101(b) shall be amended by revocation of referenced pamphlet P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(7) 29 CFR 1910.106 "Flammable and combustible liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service station, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) Revisions to 29 CFR 1910.106(g)(2) and 1910.106(g)(3)(vi)(a) and (b) as published in the Federal Register, Volume 47, Number 173, Tuesday, September 7, 1982 are adopted by reference.

(8) 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2—1980."

(b) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1—1973."

(c) 29 CFR 1910.134(g) shall read: Identification of Air-Purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

3. On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR_____
(Name of atmospheric contaminant)
or
CARTRIDGE FOR_____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs a and b of this paragraph, and subparagraph c of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

a.

For respiratory protection in atmospheres containing not more than _____ by volume of
(Concentration)
_____
(Name of atmospheric contaminant)

b.

For respiratory protection in atmospheres containing
_____
(Type of particulate contaminant)

c.

Do not use in atmospheres containing less than 19.5% oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(d) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

(1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

(2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

(3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

(4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(9) 29 CFR 1910.141(c)(2)(i) shall read as follows:

"(i) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(10) 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

"(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health."

"(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first-aid supplies approved by a consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees."

"(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First-aid supplies approved by the consulting physician shall be readily available."

"(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

(11) 1910.156(a)(2) "Application" is amended to read "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply only to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

(12) 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

"This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(13) Subparagraph 29 CFR 1910.252(a)(6)(iv), (d)(2) shall be corrected to read as follows:

"Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations."

(14) Corrections to 29 CFR 1910 Subpart S "Electrical" as published in the Federal Register, Volume 46, Number 152, August 7, 1981 are adopted by reference.

(15) Amendments to 29 CFR 1910.401(a)(2)(iv) and 29 CFR 1910.402 "Commercial Diving Operations" as published in the Federal Register, Volume 47, Number 228, November 26, 1982 are adopted by reference.

(16) 29 CFR 1910.1001(d)(2)(iv)(a) is amended to read:

"The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2—1980, which in incorporated by reference herein."

(17) Amendments to 29 CFR 1910.1002 "Coal Tar Pitch Volatiles" as published in the Federal Register Volume 48, Number 15, January 21, 1983 are adopted by reference.

(18) 29 CFR 1910.1005 4,4′-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(19) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows:

"Premixed Solutions: Where 4,4′-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(20) 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows:

(a) Revisions as published in the Federal Register, Volume 46, Number 238, Friday, December 11, 1981, are adopted by reference.

(b) Revisions published in the Federal Register, Volume 47, Number 219, November 12, 1982, and Volume 48, Number 46, March 8, 1983 are adopted by reference.

(c) "Table 1—Implementation Schedule" is amended to read:

TABLE 1—Implementation Schedule

INDUSTRY[1]	COMPLIANCE DATES 200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	(2)	6-29-84	6-29-91
Secondary lead production	(2)	6-29-84	6-29-86
Lead acid battery manufacture	(2)	6-29-83	6-29-86
Automobile manufacture/ solder grinding	(2)	N/A	6-29-88
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wallpaper manufacture, can manufacture, and printing	(2)	N/A	6-29-82
Lead pigment manufacture, non-ferrous foundries, leaded steel manufacture, lead chemical manufacture, ship building and ship repair, battery breaking in the collection and processing of scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), secondary smelting of copper, and lead casting	(2)	N/A	N/A
All other industries	(2)	N/A	6-11-84

[1]Includes ancillary activities located on the same worksite.

[2]On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

THELMA L. STOVALL, Commissioner
ADOPTED: October 12, 1983
APPROVED: LEONARD MARSHALL, Secretary
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: OSH Technical Support, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
Kentucky Occupational Safety and Health
(Proposed Amendment)

803 KAR 2:027. Adoption of 29 CFR Parts 1915, *1917,* 1918 and 1919, maritime employment.

RELATES TO: KRS Chapter 338
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the Board. The following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1915 as published in the April 20, 1983, Federal Register, *Part 1917 as published in July 5, 1983, Federal Register,* and Parts 1918 and 1919 of the Code of Federal Regulations revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR 1915.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR 1915.4(b) and 1918.3(b) "Secretary" is changed to read: "Commissioner" means the Commissioner of Labor, Kentucky Department of Labor, Commonwealth of Kentucky, or his authorized representative.

(3) 29 CFR 1919.2(d) "Assistant Secretary" is changed to read: "Commissioner" means the Commissioner of Labor, Kentucky Department of Labor, Commonwealth of Kentucky, or his authorized representative.

(4) 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(5) An employer, required under 29 CFR 1915, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601.

THELMA L. STOVALL, Commissioner
ADOPTED: October 4, 1983
APPROVED: LEONARD MARSHALL, Secretary
RECEIVED BY LRC: October, 12, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: OSH Technical Support, Kentucky Department of Labor, Occupational Safety and Health, U.S. 127 South, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:001. Definitions.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to define the terms used in the commission's rules and regulations.

Section 1. Definitions. The following words and phrases, irrespective of literal meaning as defined in

recognized dictionaries, have assumed special meaning and connotations as used in racing, and in the context of these rules shall be construed as having the following special meaning:

(1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if such horse was foaled on January 1 of the year in which such horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

(4) "Association" means any person, or persons, or legal entity, required to be licensed under KRS 230.300 to conduct a race meeting, and when used herein, the association conducting a race meeting where such rule is applicable.

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner principal by virtue of notarized appointment of agency lodged with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a "mutuel entry" or joined in the "mutuel field," on which a single pari-mutuel wager may be placed.

(7) "Bleeder"means any horse known to have bled *internally or* from its nostrils during a workout or race.

(8) "Breeder" means owner of the dam of a horse at the time such horse was foaled. A horse is "bred" at the place of its foaling.

(9) "Claiming race" means any race in which every horse running therein may be transferred in conformity with these rules.

(10) "Closing" means time published by the association after which entries for a race will not be accepted.

(11) "Commission" means the Kentucky State Racing Commission. "Commissioner" is a member of the commission.

(12) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight. "Racing day" is a day on which races are conducted. "Calendar days" are those consecutive days counted irrespective of number of "racing days."

(13) "Declaration" means withdrawal of horse entered in a race prior to time of closing of entries therefor in conformance with these rules.

(14) "Disciplinary action" means that taken by the stewards or the commission for a rule violation and can include suspension, revocation, voidance of a license or ejection or exclusion from association grounds, or assessment of a forfeiture, or reprimand, or any combination thereof.

(15) "Disqualification" means an order of the stewards or commission revising the order of finish of a race.

(16) "Entry" means the act of nominating a horse for a race in conformance with these rules. (See "mutuel entry.")

(17) "Equipment" means accouterments other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(19) "Field or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizator, and the highest numbered horse within the numbering capacity of the totalizator and all horses of a higher number are grouped in the "mutuel field."

(20) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative order of the stewards or commission.

(21) "Handicap race" means race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered therein. A "free handicap" is a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(22) "Horse" means thoroughbred registered as such with the Jockey Club in New York and when used in these rules to designate any thoroughbred irrespective of age or sex designation.

(23) "Ineligible" means horse or person not qualified under these rules or conditions of a race to participate in a specified racing activity.

(24) "Jockey" means rider currently licensed to ride in races as a jockey, or apprentice jockey, or amateur jockey, or a provisional jockey permitted by the stewards to ride in *three (3)* [two (2)] races prior to applying for a license.

(25) "Lessee" means licensed owner whose interest in a horse is a leasehold.

(26) "Licensee" means person or association that has been duly issued a currently valid license to participate in racing in this Commonwealth.

(27) "Maiden" means horse which has never won a race on the flat at a recognized meeting in any country; a "maiden" which was disqualified after finishing first remains a "maiden;" race conditions referring to "maidens" shall be interpreted as meaning "maidens" at the time of starting.

(28) "Match race" means race between two (2) horses, for which no other horses are eligible.

(29) "Meeting" means the entire period of consecutive days, exclusive of [Sundays and] dark days, granted by the commission to a licensed association for the conduct of racing, beginning at 10 a.m. of the first racing day and extending through a period ending one (1) hour after the last scheduled race of the last day. (See "recognized meeting.")

(30) "Month" means calendar month.

(31) "Mutuel entry" means single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry."

(32) "Mutuel field" means the same as "field." (See subsection (19) of this section.)

(33) "Nominator" means the person in whose name a horse is entered for a race. *Nomination is a subscription or entry of a horse in a stakes or early closing race.*

(34) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person reponsible for such horse.

(35) "Place," when used in the context of a single position in the order of finish in a race, means second; when used in the context of pari-mutuel wagering, a "place" wager is one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "place

or placing'' means finishing first, or second, or third. (See also, ''unplaced.'')

(36) ''Post'' means the starting point of a race.

(37) ''Post position'' means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(38) ''Post time'' means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(39) ''Prize'' means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(40) ''Purse'' means the gross cash portion of the prize for which a race is run.

(41) ''Purse race'' means any race for which entries close less than seventy-two (72) hours prior to its running, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(42) ''Race'' means running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(43) ''Racing official'' means racing commissioner, commission staff as duties require, and all association racing department employees, as duties require.

(44) ''Recognized meeting'' means any meeting with regularly scheduled races for thoroughbreds on the flat, licensed by and conducted under rules promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club and whose race records can be provided an association by the Jockey Club.

(45) ''Registration certificate'' means document issued by the Jockey Club of New York certifying as to the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the Jockey Club; shall be deemed to refer also to the document known as a ''racing permit'' issued by the Jockey Club in lieu of a ''registration certificate'' when a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(46) ''Rules'' when used in the plural shall be deemed to mean all current ''rules'' promulgated by the commission; when used in the singular, shall be deemed to be confined to the numbered ''rule,'' and subparagraphs thereof, wherein such mention is made.

(47) ''Rulings'' means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(48) ''Scratch'' means withdrawal of a horse entered for a race after time of closing of entries therefor in conformance with these rules.

(49) ''Scratch time'' means time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(50) ''Secretary'' means duly appointed and currently serving secretary of the commission.

(51) ''Specimen'' means sample of blood, urine, or saliva taken or drawn from a horse for chemical testing.

(52) ''Stakes'' means all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of such race, such fees to be included in the purse.

(53) ''Stakes race'' means race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, *or a race for which horses are invited by an association to run for a guaranteed purse of $50,000 or more without payment of stakes.*

(54) ''Stewards'' means duly appointed racing officials with powers and duties set out in 810 KAR 1:004 serving at a current meeting in this Commonwealth.

(55) ''Starter'' means horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

[(56) ''Subscription'' means nomination or entry of a horse in a stakes race.]

(56) [(57)] ''Thoroughbred racing'' means the conduct of running contests between horses, each of which is registered with the Jockey Club of New York and certified as having a thoroughbred pedigree, and each of which is ridden by a jockey, such conduct being licensed by a governmental regulatory body.

(57) [(58)] ''Unplaced'' means not among the first three (3) horses finishing a race.

(58) [(59)] ''Walkover'' means race in which the only starter or all starters represent single ownership.

(59) [(60)] ''Weigh in'' means presentation of a jockey to the clerk of scales for weighing after a race.

(60) [(61)] ''Weigh out'' means presentation of a jockey to the clerk of scales for weighing prior to a race.

(61) [(62)] ''Weight for age'' means standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to age of the horse as set out in 810 KAR 1:014(12).

(62) [(63)] ''Workout'' means training exercise of a horse on the training track or main track of an association during which such horse is timed for speed over a specified distance.

(63) [(64)] ''Year'' means twelve (12) consecutive months beginning with January and ending with December.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:002. Racing commission.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the positions and duties of the commission.

Section 1. Statutory Powers of the Commission. (1) *The commission as constituted in KRS 230.220 shall be responsible as a body for the regulation of thoroughbred racing in Kentucky, under the terms defined in KRS 230.210 and other statutes pertaining to thoroughbred racing.* [The commission shall be composed of five (5) members, responsible as a body for the regulation of thoroughbred

racing in Kentucky, under the terms defined in KRS 230.210 to 230.360, and other statutes pertaining to thoroughbred racing.]

(2) Individual members of the commission may be assigned specific areas of responsibility; and, with the consent of the commission, can act with full authority of the commission in such areas.

Section 2. Commission Secretary. The secretary of the commission shall be appointed by the Governor, for a term not to exceed four (4) years. He shall possess the powers and perform the duties imposed upon him by KRS 230.210 to 230.360, and shall perform such other duties as the commission may direct.

Section 3. Administrative Staff. The following positions and duties compose, with secretary, the administrative staff of the commission:

(1) Senior steward and chief administrator, in overall supervision of all commission matters pertaining to racing.

(2) State steward, responsible for all commission matters at the race meetings to which he is assigned, and for such other duties as may be directed.

(3) Associate steward, who may be assigned by the commission to serve under the state steward as they may direct.

(4) Executive director, responsible under the chief administrator for the administration of commission programs.

(5) Public relations director, responsible for the promotion of the thoroughbred industry in Kentucky.

Section 4. Commission License Administrator. The commission may employ a person or persons who shall be responsible for processing license applications of all persons, other than associations, required to be licensed by 810 KAR 1:003 and collecting fees therefor. All license applications received by the license administrator shall be subject to approval by the licensing committee and the commission. The licensing administrator and his assistants shall:

(1) Be present on association grounds prior to the opening of a race meeting to accept license applications and shall maintain an office on association grounds to accept license applications during such race meeting.

(2) File daily reports to the commission on license applications received with accountings of fees received and forwarded to the commission.

(3) Be responsible for the photographing of license applicants for whom same is required.

(4) Be bonded.

Section 5. Commission Supervisor of Pari-mutuel Betting. (1) The commission shall employ a supervisor with accounting experience who shall be responsible for ascertaining whether the proper amounts have been paid from pari-mutuel pools to the betting public, to the association, and to the Commonwealth, by checking, auditing, and filing with the commission verified reports accounting for daily pari-mutuel handle distribution and attendance for each preceding racing day and a final report at the conclusion of each race meeting in the Commonwealth.

(2) Such daily reports to the commission shall show: For each race: number of horses started, number of betting interests, total money wagered in each betting pool, and refunds, if any for each day. The sum of all betting pools, and total refunds also, total pari-mutuel handle for the comparable racing day for the preceding year, and cumulative total and daily average pari-mutuel handle for the race meeting.

(3) Such daily reports also shall show: Amount of state pari-mutuel tax due; taxable admissions, tax exempt admissions, total admissions; temperature, weather and track conditions, post time of first race; program purses, distance and conditions of each race; any minus pools resulting with explanation.

(4) The commission supervisor of pari-mutuel betting shall submit to the commission on or before thirty (30) days after the close of each race meeting a final verified report giving in summary form a recapitulation of the daily reports for each race meeting and such other information as the commission may require.

(5) The commission supervisor of pari-mutuel betting or his representative shall have access to all association books, records, and pari-mutuel equipment for checking accuracy of same.

Section 6. Commission Veterinarian(s). The commission shall employ a graduate veterinarian(s) licensed in Kentucky and experienced in equine medicine and practice. He (they) shall advise the commission and the stewards on all equine veterinary matters. The commission veterinarian's prime responsiblity shall be the supervision and control of the detention area and for the collection of samples for the testing of horses for prohibited medication as outlined in 810 KAR 1:018. The commission may employ persons to assist the commission veterinarian(s) in maintaining the detention area and collecting specimens. The commission veterinarian(s) shall not treat or prescribe for any horse registered to race at any race track where he (they) is employed, except in case of emergency; nor shall he (they) buy or sell, for himself or another, any horse under his supervision; nor shall he (they) wager on a race under his supervision, nor be licensed to participate in racing in any other capacity.

(1) The commission veterinarian(s) shall be responsible for inspecting and reporting all horses entered for racing soundness; maintaining and posting in the racing secretary's office a veterinary list of horses ineligible to race because of sickness or unsoundness; control of communicable equine diseases; insect control; sanitary conditions in the stable area, and shall observe and report all cruel or inhumane treatment of horses to the stewards.

(2) The commission veterinarian(s) shall be attendant on the stewards and the racing secretary at scratch time each day, and shall examine such horses as such racing officials may request, and shall make reports to such racing officials as promptly as possible.

(3) The commission veterinarian(s) shall be responsible for inspecting every horse entered on the day of the race for which such horse is entered. Such inspection shall be for physical fitness, general conditions, and for any noticeable unsoundness or pecularities that may affect the racing condition of the horse or be considered for scratching a horse on a muddy or sloppy track. Such pre-race examinations shall be recorded on a health record for every starter at the race meeting.

(4) The commission veterinarian(s) shall be present in the paddock for saddling, shall accompany each field to the starting post, and observe all horses after the finish of each race. If, in the opinion of the commission veterinarian(s), a horse suffers an injury while in the paddock, during the post parade, or at the starting gate, which injury shall render such horse unfit to race, he shall recommend to the stewards that the horse be excused and placed

on the veterinary list. All horses requested to be scratched for physical reasons after scratch time shall be inspected by the commission veterinarian(s), who shall report the condition of such horse to the stewards.

Section 7. Commission Chemist. (1) The commission is authorized to acquire, operate and maintain or to provide by contract for the maintenance of a testing laboratory and related facilities, for the purpose of performing such tests as the commission may require. Such commission chemist shall be a graduate chemist experienced in chemical testing techniques for conducting tests on urine, [saliva,] sweat, blood and other specimens from thoroughbreds delivered to the commission chemist or his representative by the commission veterinarian.

(2) The commission chemist shall report to the state steward all substances he might find in his tests which are not normal in the body of the horse as outlined in 810 KAR 1:018. His duties will be limited to these reports and need not include the possible effects on the physiology of a horse.

Section 8. Chief Investigative Officer. The commission may employ an investigator experienced in police work who shall advise the commission as to any person on association grounds, or among license applicants, whose conduct or reputation is such that such person's presence on association grounds may reflect on the honesty and integrity of thoroughbred racing or interfere with the orderly conduct of thoroughbred racing. The chief investigative officer shall:

(1) Maintain a current file on persons against whom rulings have been issued in racing jurisdictions and reported through the National Association of State Racing Commissioners. Said file also shall contain reports received from the Thoroughbred Racing Protective Bureau as to investigations, arrest records, and other information; said file also shall contain reports as to ejections or exclusions from association grounds in Kentucky and other racing jurisdictions.

(2) Investigate and ascertain the truth of statements made on license applications.

(3) Investigate possible infractions of racing rules at the request of the commission or stewards.

(4) Participate and co-operate with members of the track security police, Thoroughbred Racing Protective Bureau, state and local police on all other investigations pertaining to racing in the Commonwealth.

Section 9. Commission Inspector. The commission may employ a person or persons who shall be responsible for ascertaining that all persons required to be licensed under 810 KAR 1:003 have same in their possession on association grounds, and for conducting investigations on association grounds at the request of the stewards or the director of security.

Section 10. Horse Identifier. The commission may employ one (1) or more persons to be charged with the responsiblity of proper identification of all horses entered to be raced. A horse identifier may accompany the commission veterinarian on the pre-race examination of all starters. Every starter shall be examined in the paddock by a horse identifier for sex, age, color, markings, and lip tattoo, for comparison with its registration certificate; photographs may be used as an aid in identification. If a horse identifier has any doubt as to the identity of a horse entered to be raced, the horse identifier shall so notify the paddock judge and the stewards. *Safekeeping of registration certificate and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the race meeting.*

Section 11. Investigative Powers. To insure compliance with these rules or to investigate possible infraction of these rules, the commission and its representatives shall have free access to all offices, files, records, enclosures, barns, and other facilities owned or possessed by associations. The commission and its representatives shall have the power to conduct a reasonable search of the person and property in the possession of licensed persons, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters.

Section 12. Publication of Rule Changes. All rules adopted, revised, or repealed subsequent to the publication of a rule book shall be signed by the secretary and published by posting same with the effective date, in compliance with the statutes, of such change on the bulletin board on the racing secretary's office of each association, and by forwarding a copy of same to the National Association of State Racing Commissioners, and to the Daily Racing Form for publication therein.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:003. Licensing.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the licensing procedures and requirements.

Section 1. License Required. No person, legal entity, or association shall conduct any thoroughbred race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission. No person shall participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license therefor from the commission.

Section 2. Conditions Precedent to Issuance of License. Thoroughbred racing and participation therein in the Commonwealth are privileges, not rights, granted only by the commission by license subject to the hereinafter set out

conditions precedent. Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply therewith shall be grounds for immediate voidance or revocation of such license:

(1) Representations made or with license application are complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal thereto. All rulings and decisions of the stewards may be appealed to the commission except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during such race, and all such excepted rulings and decisions by the stewards shall be final with no right of review thereof by the commission or courts.

(3) Licensee shall consent to a reasonable search of his person and property in his possession by the commission or its representatives, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard such horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of such horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for same to conduct a thoroughbred race meeting on such days as the commission may deem appropriate, if the commission finds that the proposed conduct of racing by such association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which such association proposed to conduct a race meeting, and capability to comply with the rules and rulings of the commission, the licensing of such association would serve to nurture, promote, develop, and improve the thoroughbred industry in the Commonwealth. As a condition precedent to the issuance of such license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth under KRS 137.170, 138.480, and 138.510, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for same to participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.

Section 5. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

(1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require re-instatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;

(2) Conviction of a crime or violation of any *regulation dealing with a controlled substance* [narcotic regulation];

(3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

(4) Making false or misleading statements to the commission and/or the stewards, in the course of an investigation;

(5) [(4)] Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;

(6) [(5)] Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;

(7) [(6)] Person less than sixteen (16) years of age;

(8) [(7)] Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examination prescribed by the stewards;

(9) [(8)] Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;

(10) [(9)] Employment or harboring of unlicensed persons required by these rules to be licensed;

(11) [(10)] Discontinuance of or ineligibility for activity for which license was issued;

(12) [(11)] Possession on association grounds, without written permission therefor from the commission or stewards, of:

(a) Firearms;

(b) Battery, or buzzer, or electrical device, or other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.

(13) [(12)] Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(b) Narcotics, or medication, or drugs, or substance which could be used to alter the speed of a horse in a race.

(14) [(13)] Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while such persons are in the discharge of their duties;

(15) [(14)] Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

(16) [(15)] Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

(17) [(16)] Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

(18) [(17)] Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;

(19) [(18)] Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

(20) [(19)] Violation of any rule of the commission, or aiding or abetting any person in violation of any such rule.

Section 6. License Applications for Associations. Any person or legal entity desiring to conduct thoroughbred racing in the Commonwealth may apply to the commission for association license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Such application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require.

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(3) Days and hours thereof on which racing is requested to be conducted, *and number of races to be run on each day.*

(4) Names of racing officials and persons responsible for track security and fire protection.

(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.

(6) An operating report on forms prescribed by the commission if applicant is currently licensed.

(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct thoroughbred racing.

Section 7. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 of this regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) Fingerprint identification will be required of all licensees unless waived by the commission (i.e., absentee owners and casual delivery personnel who do not enter the stable area).

(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.

(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until such applicant has been administered a standard examination by an experienced farrier known to the stewards

so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of such applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) *$25* [$20]—Owner license and annual color registration;

(b) *$25* [$15]—Trainer, jockey, apprentice jockey, or jockey's agent license;

(c) *$25* [$10]—Veterinarian, dental technician, assistant trainer, farrier, or apprentice farrier license;

(d) $5—Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);

(e) *$10* [$5]—Stable-area supplier license (supplier of horse feed, tack, medication, or food vendors);

(f) *$10* [$5]—Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, commission veterinarian, commission chemist, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, association veterinarian, testing laboratory employee, horse identifier, valet, jockey room custodian, clerk of scales, entry clerk, photo-finish operator, film patrol or video tape operator and projectionist, flagman, or outrider;

(g) *$10* [$5]—Mutuel department employee license, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizator employee;

(h) *$10* [$5]—Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; association security department including police chief, detectives, policeman, watchmen, fire, ambulance drivers and attendants, track superintendent, groundsmen, mechanics, carpenters; maintenance department manager and employees; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting.

(i) *$5* [$3]—Temporary occupational license for persons to be employed in occupations listed in paragraph (h) of this subsection for ten (10) days or less during a calendar year.

Section 8. Licensing Committee. The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative. Such licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. Such licensing committee may issue to a license applciant a temporary permit to participate in the activity for which such license application was made pending administrative processing and final action on such license application by the commission.

Section 9. Term of License. Licenses issued by the commission for participation in thoroughbred racing shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by associations in the Commonwealth during such calendar year, unless sooner suspended, revoked, or voided. The commission may renew any license and any such renewal shall not be construed to be a waiver of or to condone any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.

Section 10. Possession of License Required. No person required to be licensed by these rules may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (i) of this regulation shall include a color photograph of the licensee.

Section 11. Applicability of Rules and Rulings to Household. Rules pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a prticular activity.

Section 12. Notice for Discontinuance of Employement. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of such intention at least fifteen (15) days before such termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these rules, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these rules, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

WILLIAM B. STURGILL, Chairman

ADOPTED: October 11, 1983

RECEIVED BY LRC: October 14, 1983 at 11 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:004. Stewards.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the qualifications, duties, powers, and responsibilities of the stewards.

Section 1. Qualifications for a Steward. No person shall qualify for commission appointment or approval as a steward unless:

(1) He has served as a steward, or racing secretary, or assistant racing secretary, or starter, or placing judge, or patrol judge, or paddock judge, or clerk of scales, at one (1) or more recognized race meetings for a period of not less than sixty (60) racing days per year during at least three (3) of the five (5) preceding calendar years; provided, however, if no person is available to serve who possesses the aforesaid experience as a racing official, then, the commission may consider for appointment and/or approval persons who have engaged in racing as an owner, or trainer, or jockey, or veterinarian, or breeder, and as an observer in the stewards stand for a period satisfactory to the commission;

(2) He has satisfactorily passed an optical examination within one (1) year prior to approval as a steward evidencing corrected twenty-twenty (20-20) vision and ability to distinguish colors correctly;

(3) The commission is satisfied that income, other than salary as a steward, which may accrue to a person under consideration for appointment as a steward is independent of and unrelated to patronage of or employment by any licensee under the supervision of such steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of a licensee.

Section 2. Appointment of Stewards. (1) There shall be three (3) stewards for each race meeting, one (1) of whom shall be appointed by the commission and two (2) of whom shall be nominated by the association for approval by the commission. Names of association nominees for steward shall be submitted at the time of application for association license if possible, but no later than thirty (30) days before commencement of a race meeting and be accompanied by biographical data setting out the experience and qualifications of the nominees. The association shall submit successive nominees until two (2) persons are approved by the commission as qualified to serve as stewards. No steward shall serve until approved by the commission.

(2) Stewards shall serve from one (1) minute after midnight on the day before the first racing day until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the commission.

(3) Stewards shall be responsible only to the commission and may be replaced by the commission at any time for failure to perform their duties to the satisfaction of the commission.

(4) In the event a steward becomes ill, resigns, or is unable to serve for any reason, then the remaining stewards shall nominate a successor or temporary steward to the commission for approval. In emergencies, a single commissioner by telephone may approve appointment of a successor steward.

Section 3. General Powers of Stewards. The stewards shall exercise immediate supervision, control, and regulation of racing at each licensed race meeting on behalf of and responsible only to the commission. By way of illustration and without limiting thereby, the powers of the stewards shall include:

(1) Authority over all horses and all persons, licensed or unlicensed, on association grounds during a race meeting as to all matters relating to racing;

(2) To determine all questions, disputes, protests, complaints, or objections concerning racing which arise during a race meeting and to enforce such determinations;

(3) To suspend the license of a participant in racing, or eject or exclude from association grounds or any part thereof licensed or unlicensed persons upon reasonable belief that a violation of these rules has or is about to occur;

(4) To interpret and enforce these rules and determine all questions pertaining to a racing matter not specifically covered by these rules in conformity with justice and the customs of the turf, the same being subject to the powers and duties of the commission;

(5) To issue decisions or rulings pertaining to racing which shall supersede orders of the officers, directors, and officials of the association and which shall, if the stewards deem proper, vary any arrangement for the conduct of a race meeting, to include without limiting thereby, postponing a race, or cancelling a race, ruling a race run as "no contest."

(6) To request and receive assistance from commission employees, racing officials, members of the Thoroughbred Racing Protective Bureau, track security police, state or local police, in the investigation of possible rule infractions;

(7) To conduct hearings on all questions, disputes, protests, complaints, or objections concerning racing matters.

(8) In the event a regularly named rider or trainer or racing official other than a steward is unable for any reason to perform, the stewards may select a substitute therefor; upon suspicion of fraud or misconduct, the stewards may excuse a horse or replace any rider or trainer, or racing official other than a steward;

(9) All other powers enumerated in these rules.

Section 4. Duties and Responsibilities of Stewards. In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of race meetings, and without limiting the authority of the stewards to perform same and other duties enumerated in these rules, the stewards shall have the following specific duties and responsibilities:

(1) To take cognizance of all misconduct or rule infractions irrespective of whether complained of, and to cause investigations to be made of all instances of possible rule infractions; to take such action as the stewards may deem necessary to prevent a rule infraction;

(2) At least one (1) steward shall be on association grounds from scratch time (or if not a racing day, when entries are first taken) until entries are closed. At least one (1) steward shall be present for the regular showing of racing films or video tapes. All three (3) stewards shall be on

association grounds *no less than ninety (90) minutes before post time* [for a continuous period beginning three (3) hours before post time for the first race] until conclusion of the last race. All three (3) stewards shall be present in the stewards' stand during the running of each race;

(3) *Unless prevented by more pressing duties, at least one (1) steward shall be present in the paddock before each race and shall* [At least one (1) steward, or a designated representative of the stewards, shall be present in the paddock at least twenty (20) minutes before each race and] remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and inspect, with the paddock judge and *commission* [association] veterinarian, all horses for fitness;

(4) To inspect all applications for licenses to participate in racing, and administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants for a trainer, jockey, apprentice jockey, veterinarian, dental technician, or farrier license, and make recommendations to the commission as to the qualifications of all applicants for licenses to participate in racing;

(5) To review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, jockey and apprentice jockey contracts, appointments of agents, adoptions of racing colors or stable name, and determine the eligibility and appropriateness thereof for participation in racing under supervision of the stewards;

(6) To call for proof of eligibility of a horse or person to participate in a race if such is in question and in absence of sufficient proof to establish eligibility, the stewards may rule such horse or person ineligible;

(7) To review stall applications and advise the association of undesirable persons, if any, among owners and trainers applying for stalls and provide the association with information pertaining to such undesirable persons;

(8) To supervise the taking of entries and receive all declarations and scratches and determine all questions arising and pertaining to same; the stewards may in their discretion refuse the entry of any horse by any person, or refuse to permit a declaration or scratch, or may limit entries in any way;

(9) To lock all pari-mutuel betting machines not later than the moment the starting gate is opened for the commencement of a race; to cause the "inquiry" sign to be posted on the infield odds board immediately after the horses have crossed the finish line in a race if any doubt is held by any steward or patrol judge as to the fairness of the running of such race; to cause the objection sign to be posted on the infield odds board upon the lodging of same; to cause the "official" sign to be posted on the infield odds board after determining the official order of finish for purposes of pari-mutuel payoff;

(10) To review the patrol films or video tapes of each day's races before commencement of the successive day's races and to draw up a list of riders (including all apprentice jockeys) whom the stewards feel should review such films for instructional purposes and cause same to be posted in the jockey's room. The patrol judges shall assist in making up the film list and attend all film showings whenever their other duties permit.

(11) To maintain a daily log, reporting all actions taken by the stewards on all controversies which arise during the day, such report to show name of track, date, weather, track condition, claims, [results of saliva and urine tests,] rulings issued, and any other circumstance or condition regarded as unusual, such reports to be signed by all three (3) stewards and filed within twenty-four (24) hours at the commission general office;

(12) To make periodic inspections of the barn area and check track security; to make occasional, informal visits to the jockeys' room and observe weighing out and check security; such inspections and observations made shall be noted in the stewards' report;

(13) To maintain a minute book which shall contain a detailed written record of all questions, disputes, protests, complaints, or objections brought to the attention of the stewards, summary of interviews taken thereon, reports of investigations thereon, together with rulings issued thereon; if a ruling is not unanimous, the dissenting steward shall record reasons for such dissent; such stewards' minute book shall be available to the commission for inspection at all times, but shall not be considered part of commission papers open to public inspection;

(14) Within seven (7) days after the conclusion of a race meeting, the stewards shall submit to the commission a written report setting out the condition of the meeting and association grounds, together with any recommendation for the improvement thereof which they may deem appropriate.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:005. Racing officials.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the qualifications, duties, powers and responsibilities of the racing officials.

Section 1. Racing Officials. (1) Persons appointed by the association to serve as racing officials during a race meeting must first be approved by the commission, shall serve only so long as approved by the commission, and shall be under the supervision of the stewards. For purposes of these rules, racing officials shall include those persons serving as steward, racing secretary, assistant racing secretary, clerk of the scales, paddock judge, starter, patrol judge, placing judge, *and* timer [, identifier and association veterinarian].

(2) No person while serving as a racing official shall, indirectly or directly, own a beneficial interest in a thoroughbred, or jockey contract, or association under his supervision; nor shall he cause to be bought or sold, for himself or another, any thoroughbred under his supervision; nor shall he buy or sell, for himself or another, any right to or in a contract with a jockey or apprentice jockey under his supervision; nor shall he wager on any race under his supervision; nor shall he write or solicit horse insurance

or have any monetary interest in any business which seeks the patronage of horsemen or racing associations as such. For the purposes of the above, the following racing department employes shall also be deemed racing officials: assistant starter, jockey room custodian, jockey room employes, valets, outriders.

(3) Racing officials serving in the capacity of stewards, placing and/or patrol judges, clerk of scales, starter and horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which they serve, such examination evidencing corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(4) Any racing official who desires to leave his employment during the race meeting must first obtain permission from the commission; in the event a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission; in the event the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

Section 2. Racing Secretary. The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations, and scratches. Among the duties for which the racing secretary and his staff are responsible are:

[(1) Safekeeping of registration certifications and racing permits for horses, recording information required thereon, and returning same to owners at the conclusion of the racing meeting;]

(1) [(2)] Maintaining a record of all stakes fees received, and all arrears, jockeys' fees, purchase money in claiming races, and all other monies received incident to the racing meeting and pay over same to persons entitled thereto within fourteen (14) days after race meeting concluded;

(2) [(3)] Supervision of the horsemen's bookkeeper's handling of the "horseman's account;"

(3) [(4)] Daily posting of entries for the benefit of the public as soon as possible after the entries have been closed and declarations have been made;

(4) [(5)] To assign stall applicants such stabling as he may deem proper after consultation with the stewards, and to maintain a record of arrival and departure of all horses stabled on association grounds;

(5) [(6)] To publish the official daily program, insuring the accuracy therein of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions, and distance for each race, and current track record for such distance;

(c) The full name of licensed owners of each horse, indicated as leased if applicable, and description of racing colors to be carried;

(d) The full name of the trainer and the full name of the jockey named for each horse together with the weight to be carried;

(e) The saddle cloth number or designation for each horse, and the post position for each horse if there is a variance with the saddle cloth designation;

(f) Identification of each horse by name, color, sex, age, sire and dam;

(g) Such other information as may be requested from time to time by the association or the commission.

Section 3. Clerk of the Scales. One (1) racing official shall serve as clerk of the scales who shall be responsible for the security, regulation, and control of the jockey's room, the equipment therein, and personnel permitted access thereto. Among the duties for which the clerk of scales is responsible are:

(1) Weighing out every jockey no later than fifteen (15) minutes prior to the race the jockey is scheduled to ride and recording all overweights which shall immediately be posted and announced to the public before each race;

(2) Weighing in every jockey immediately after the finish of each race and promptly notifying the stewards whether any jockey weighed in more than two (2) pounds underweight;

(3) Safekeeping of all racing colors;

(4) Reporting [all color changes or] jockey changes from that listed in the official daily program and causing same to be posted and announced to the public before each race;

(5) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(6) Accuracy of the scales and periodic tests thereof;

(7) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any;

(8) All complaints, protests, objections, or disputes submitted to the clerk of the scales shall be immediately transmitted to the stewards, and if the stewards are unavailable, then to the commission.

Section 4. Paddock Judge. One (1) racing official shall serve as paddock judge who shall have general supervision of the paddock and be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

[(2) Proper identification of all horses entered in each race. The track horse identifier shall be under the supervision of the paddock judge;]

(2) [(3)] Maintaining a written record of all equipment and inspecting all equipment of each horse saddled and reporting any change thereof to the stewards;

(3) [(4)] Inspection of bandages of a horse; the paddock judge may order such bandages removed or replaced;

[(5) Inspection of the feet of each horse to insure that each horse is properly shod;]

(4) [(6)] Paddock schooling of all horses approved for such by the stewards;

(5) [(7)] Taking such measures as to insure that the saddling of all horses is orderly, open to public view, free from interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence.

Section 5. Starter. (1) The starter shall be responsible for the fair and equal start of all horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his signal. So far as practical, the starter shall cause all horses to be loaded in order of post position, but the starter may in his discretion load an unruly or fractious horse out of order or may start such unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. By permission of the stewards a race may be started without a starting gate. The starter may employ such assistant starters as he may deem necessary and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race shall come upon the track.

(2) No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list which shall be posted in the racing secretary's office listing the names of all horses ineligible to start for want of adequate training leaving the gate. Horses shall be schooled under the supervision of the starter or his assistants.

(3) The starter shall report to the stewards any disobedience of his orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(4) No assistant starter shall handle a horse until instructed to do so by the starter. No assistant starter shall strike or use abusive language to a jockey.

(5) No starter or assistant starter shall accept any gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race, nor shall he wager on a race.

(6) The starter shall maintain a written record showing the names of all starters during the day and the names of the assistant starters who handled each horse, such record to be made available to the stewards upon request.

(7) The starter shall have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away.

Section 6. Patrol Judges. At least two (2) racing officials shall serve a patrol judge who shall be stationed in elevated stands at points designated by the stewards to observe the running of each race. Each patrol judge shall have instant radio or telephone communication with the stewards to report observations, particularly as to any suspected foul riding, during the running of each race. Patrol judges shall assist in making up the film list and shall review all patrol films or video tapes before commencement of the next succeeding race program.

Section 7. Placing Judges. Three (3) racing officials shall serve as placing judges who shall occupy a stand directly above the finish line during the running of each race. The placing judges shall take special note of racing colors and distinguishing equipment carried by each horse. The placing judges shall determine the order of the horses as they cross the finish line by consideration of the respective noses of such horses. The placing judges shall cause the numbers of the first four (4) horses to cross the finish line to be flashed on the result board. A photo-finish camera approved by the commission shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line; placing judges may request a photo to assist in determining margins of less than a half-length.

Section 8. Timer. A racing official shall serve as timer who shall occupy a stand directly above the finish line during the running of each race and record the official time thereof. The timer shall record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line. An electrical or mechanical timing device approved by the commission may be used as an aid by the timer in determining the official time of each race. The timer shall maintain a written record of fractional and finish times of each race and *have same available for inspection by the stewards or commission on request* [file same with the racing secretary at the close of each racing day].

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:006. Racing associations.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation outlines the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. Each association shall at all times maintain its grounds and facilities so as to be neat and clean. painted and in good repair, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.

Section 2. Result Boards, Totalizators Required. Each association shall provide and maintain mechanically operated totalizators and electronic boards showing odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. Each association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip. Each association shall have in attendance one (1) or more men qualified to keep said starting gates in good working order whenever said gates are in use, and each association shall provide for periodic inspections of said gates.

Section 4. Stabling. Each association shall be responsible for providing and maintaining fire-resistant barns and stalls in good repair, and in a clean, and sanitary condition; each barn and each stall shall be numbered in consecutive order for ready ascertainment of location and identification and adequate drainage therefor shall be maintained. The racing commission shall submit to the racing secretary prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race; such locations shall be considered for purposes of these rules "association grounds."

Section 5. Stands for Officials. Each association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials,

such stands and location thereof to be approved by the commission. Patrol judge stands shall be constructed so the floor thereof shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. Each association shall cause quarter poles to be painted red and white, eighth poles to be painted green and white, and sixteenth poles to be painted black and white.

Section 7. Lighting. Each association shall provide and maintain flood lights so as to insure adequate illumination in the stable area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

Section 8. Facilities for Stable Employees. Each association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities such as showers, toilets, and wash basins for stable employees. No personnel shall be permitted to sleep in any stall *or barn loft.*

Section 9. Facilities for Jockeys. Each association shall provide and maintain adequate facilities for jockeys scheduled to ride each day, such facilities to include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. Each association shall provide adequate office space for the commission on association grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued at any time by the commission, or by the National Association of State Racing Commissioners.

Section 11. Sanitary Facilities for Patrons. Each association shall, on every racing day, provide adequate and sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business at the association.

Section 12. Manure Removal. Each association shall provide and maintain adequate manure pits of such size and construction to handle refuse from stalls. The contents of said manure pits shall be removed from the stable areas as promptly as is possible.

Section 13. Photo-finish Cameras. Each association shall provide and maintain at the finish line two (2) photo-finish cameras for photographing the finish of races; one (1) camera to be held in reserve. The photo-finish photographer shall promptly furnish to the stewards and placing judges prints of all finishes as may be requested and in such number as may be required for public posting. The association shall maintain a one (1) year file of all such photo-finishes.

Section 14. Patrol Films or Video Tapes. Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record with same each race from start to finish.

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(2) Such films and video tapes, shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any questions, dispute, or controversy shall be filed with the commission upon order of the stewards.

(3) Such films, or video tapes, shall be made available for viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed, and to members of the press.

Section 15. Ambulances. Each association shall provide and maintain at least one (1) man-ambulance and at least one (1) horse-ambulance during times horses are permitted to exercise or race. Said ambulances shall be equipped, manned, ready for immediate duty, and shall be located at an entrance to the racing strip.

Section 16. First-aid Room. Each association shall equip and maintain adequate first-aid facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during race hours.

Section 17. Track Kitchen. Each association shall provide adequate eating facilities within the stable area, maintained in a clean and sanitary manner at all times horses are stabled on association grounds.

Section 18. Communication System. Each association shall install and maintain in good working service communication systems between the stewards' stand and patrol judges, pari-mutuel department, starting gate, public address announcer, and clerk of scales.

Section 19. Fire Prevention. Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a fire-fighting unit of trained personnel equipped with high-expansion foam fire extinguishers and other equipment as may be recommended by local fire inspection authority. Each association shall prohibit:

(1) Smoking in stalls, under shed rows, and in feed rooms;

(2) Open fires, oil or gas lamps in stable area; and

(3) Locking of stalls occupied by horses.

[Section 20. Telephone Restricted. (1) No association shall permit communication by any electrical, mechanical, manual, or visual method from association grounds of any information pertaining to any race conducted by the association until at least thirty (30) minutes after the last race of the day is declared official; excepting from the effect of this rule such information as may be transmitted by duly accredited members of the news media for the benefit of the public at large.]

[(2) All telephones and telegraph wires on association grounds shall be closed from fifteen (15) minutes before post time of the first race and remain closed until thirty (30) minutes after the finish of the last race is declared official and no calls or wires shall be allowed to be made or received while such telephone and telegraph wires are closed.]

[(3) Excepted from the effect of this rule shall be the transmission of information pertaining to racing by duly accredited members of the news media, and the ordinary conduct of business as may be transmitted by members of the commission and its staff or association officials.]

[(4) No association employee shall furnish, other than to authorized persons, any information with respect to entries, scratches, jockey changes, or track conditions for any race.]

Section *20.* [21.] Association Police. Each association shall provide and maintain competent police and watchman services, night and day, in and about association grounds, and shall furnish daily to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by any person on association grounds.

Section *21.* [22.] Security. Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take such measures as to maintain security of horses on association grounds so as to protect from injury due to frightening of or tampering with said horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.

Section *22.* [23.] Vendors and Suppliers. Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No association by virtue of this rule shall attempt to control or monopolize proper selling to owners, trainers, or stable employees, nor shall an association grant a concession to any vendor of feed, racing supplies, or racing services. Any vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including any new preparation or medication. No association shall permit the sale of any alcoholic beverage, beer excepted, within the stable area.

Section *23.* [24.] Ejection or Exclusion from Association Grounds. (1) Associations may eject or exclude any persons, licensed or unlicensed, from association grounds or a part thereof solely of its own volition and without any reason or excuse given therefor, provided, however, such ejection or exclusion is not founded on race, creed, color, or national origin.

(2) Associations shall eject or exclude from association grounds all persons believed to be engaged in a bookmaking activity or solicitation of bets or touting, and a report thereof shall be submitted promptly to the commission, to the stewards, and to the local police. Associations shall eject or exclude from association grounds all persons who as a business or for any compensation, shall, directly or indirectly, accept any thing of value to be wagered or to be transmitted or delivered for wager to any pari-mutuel wagering enterprise, or participate in any such transmission.

(3) Associations shall eject or exclude from the stable areas on association grounds all persons except those whose presence in the stable area is authorized as:

(a) Persons licensed to conduct an activity, the conduct of which requires the presence of such licensee in the stable area;

(b) Duly accredited members of the news media;

(c) Guests of licensed owner or licensed trainer physically in the company of such owner or trainer;

(d) Persons physically in the company of and under the control and supervision of a racing official, or association security guard, or association public relations department representative.

(4) Reports of all ejections or exclusions from association grounds for any reason shall be made immediately to the commission and the stewards, such reports stating the name of all persons and circumstances involved.

Section *24.* [25.] Ownership of Associations. Each association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:003, Section 6(2), immediately upon transfer of any beneficial interest or control in the association as from time to time may occur.

Section *25.* [26.] Plan of Association Grounds. Each association shall file with the commission existing maps and plans of association grounds, showing all structures, piping, fire hydrants, fixed equipment, racing strip, noting elevation as filled, drained, and gapped, and composition of track base and cushion. Each association shall file revised maps or plans of association grounds upon any material change as may occur from time to time.

Section *26.* [27.] Attendance Report. (1) In addition to filing with the commission a copy of the report required by KRS 138.480 to be filed with the Department of Revenue on admission taxes, each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted; such attendance report shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials.

(3) Tax exempt admission credentials shall not be transferable and associations shall exclude or eject from association grounds any person attempting to use such tax exempt admission credentials not issued to him by the association.

Section *27.* [28.] Financial Report. In addition to filing with the commission copies of reports required by KRS 137.180 and 138.530 to be filed with the Department of Revenue on pari-mutuel and license taxes, each association shall furnish to the commission within sixty (60) days after the close of its fiscal year three (3) copies of its balance sheet and of its operating statement for such fiscal year with comparison to prior year, the same to be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. Such financial report shall be in such form as may be prescribed from time to time by the commission.

Section *28.* [29.] Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be

known as the "horsemen's account," with at all times sufficient funds in such account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of such account shall be bonded.

(2) All portions of purse money shall be made available to earners thereof within forty-eight (48) hours *dark days excluded* [(Sundays excluded)] after the result of the race in which such money was earned has been declared official; except, however, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to such money in dispute.

(3) No portion of purse money shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom such purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing account at the close of each race meeting.

Section *29.* [30.] Outriders. Each association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall wear traditional apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing. *All persons exercising horses during training hours, or accompanying horses to the starting gate during racing hours must wear a protective helmet. The term "exercising" is defined to include breezing, galloping, or ponying horses.*

Section *30.* [31.] Valets. Each association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. Such valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for the care and cleaning of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.

Section *31.* [32.] Minimum Purse and Stakes Values. No association shall program or run any race the purse for which is less than $2,000 in cash without special permission of the commission. No association shall program or run any stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners. Such minimum cash amounts paid by the association shall be exclusive of nomination, eligibility, entrance, and starting fees, and exclusive of other cash awards, premiums, prizes, or objects of value.

Section *32.* [33.] Maximum Number of Races. No association shall program or run more than nine (9) races on any single racing day without special permission of the commission.

Section *33.* [34.] Two-year-old Races. Beginning on *May* [March] 1 of each year, each association shall program in the conditions book at least four (4) two (2) year old races each week.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:007. Owners.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for owners.

Section 1. License Required. No horse may be entered or raced in this state unless the owner or each of the part owners has been granted a current owner's license; except that, the commission may, through its licensing committee as provided by 810 KAR 1:003, Section 8, cause a temporary license to be issued which will be valid for entering and racing pending administrative processing and final action by the commission on such owner's license application, but in no event shall such temporary license be considered valid later than *thirty (30) days* [two (2) weeks] after such license application was submitted.

Section 2. Requirements for Owner's License. (1) In addition to rules applicable to licensees under 810 KAR 1:003, a holder of an owner's license:

(a) Must be an individual person, eighteen (18) years or older; provided, however, the commission may grant an owner's license to a person less than eighteen (18) years of age who is a son or daughter of a licensed owner in this state, if the parent thereof holding an owner's license in this state files with the license application of such minor an agreement whereby such parent assumes responsibility for meeting all financial, contractual, or other obligations relating to racing of such applicant son or daughter.

(b) Must carry workmen's compensation insurance covering employees in connection with racing as required by Kentucky law.

(c) Must own or have under lease a horse eligible to race, and be prepared to prove same upon call of the stewards.

(d) Must not engage in an activity directly or indirectly involving the racing performance of horses on association grounds owned by others.

(2) The commission may deny, suspend, or revoke an owner's license for the spouse or any member of the immediate family or household, of a person ineligible to be licensed as an owner, unless there is a showing on the part

of the applicant or licensed owner, and the commission so finds, that his participation in racing as an owner will in no way circumvent the intent of the rule by permitting a person, under the control or direction of a person ineligible for an owner's license, to serve in essence as a substitute for such ineligible person.

(3) A licensed owner or trainer may personally serve as a farrier or jockey for horses he owns or are registered as in his care, provided he has received from the stewards a certification of said licensee's fitness as a competent farrier or jockey.

Section 3. Ownership Disclosure. (1) Licensed owners and licensed trainers shall be held jointly responsible for making a full disclosure of the entire ownership of each horse in their care.

(2) Such disclosure shall identify in writing all individual persons who directly, or indirectly, through a lien, or a lease or partnership, or corporate stockholding, or syndication, or other joint venture, hold any present or reversionary right, title, or interest in and to such horse, and those individual persons who by virtue of any form of interest might exercise control over such horse or can benefit from the racing of such horse, the degree and type of such ownership held by each individual person shall be designated.

(3) Such disclosure shall be made when registering each horse with the racing secretary upon arrival on association grounds, or at time of entry, whichever event occurs first, and shall be revised immediately upon any subsequent change in such ownership.

(4) Such disclosure together with all written agreements, and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse, shall be attached to the registration certificate for such horse and filed with the racing secretary, who shall be responsible for the care and security of such papers while such horses thereunto pertaining are located on association grounds.

(5) Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

(6) The stewards shall review the ownership of each horse entered to race and insure each registration certificate is properly endorsed by the transferor to the present owner. The stewards may determine the validity for racing purposes of all leases, transfers, and agreements pertaining to ownership of a horse; and may call for adequate evidence of ownership at any time. The stewards may declare ineligible to race any horse, the ownership or control of which is in question.

Section 4. Joint Ownership. (1) No more than *five (5)* [four (4)] individual persons may be licensed as owners of a single horse.

(2) In the event more than *five (5)* [four (4)] individual persons own interests in a single horse, through a partnership, or corporation, or syndication, or other joint venture, then such individual persons may designate in writing a member of the partnership, corporation, syndicate, or joint venture to represent the entire ownership of and be responsible for such horse as the licensed owner thereof.

(3) Such agreement, or lease, shall accompany the application for an owner's license. Each person designated as representing the entire ownership of a horse must be licensed.

(4) The commission may deny, suspend, or revoke the license of any owner whose ownership of a horse is qualified or limited in part by rights or interests in or to such horse being held or controlled by any other individual person or persons who would be ineligible to be licensed as an owner under 810 KAR 1:003.

Section 5. Program Listing of Owners. Names of all individual persons licensed as owners of each horse shall be listed in the daily program; if space limitations preclude listing of first names, then at least two (2) initials shall precede surnames. Stable names, or corporate names, registered in other racing jurisdictions may be shown parenthetically if program space limitations permit. Lessees licensed as owners shall be designated on the program as lessees of each leased horse.

Section 6. Leases. Horses may be raced under lease provided the lease agreement is annexed to the horse's registration certificate and is approved by the stewards. Validity of a lease for the purposes of racing a horse in this state may be suspended temporarily or voided by the stewards at any time. No lease may be approved by the stewards for racing purposes unless:

(1) Lessee is licensed as an owner;

(2) Each of the signatures of the lessors and lessees on the lease agreement is subscribed and sworn to before a notary public;

(3) Term of the lease is no less than one (1) year, unless sooner terminated by claim or retirement of subject horses;

(4) Conditions of the lease specify, as to parties to the lease, whether the subject horse can be entered in a race to be claimed. If agreeable to lessor that the subject horse may be entered to be claimed, conditions of the lease must specify the minimum price for which the subject horse can be entered, the name of the payee of claiming price;

(5) Conditions of the lease specify that upon claim of subject horse the lease shall terminate and all rights in and to such horse shall pass to claimant as a bona fide purchaser;

(6) After reviewing the full ownership of such leased horses, and the interests of all persons involved in such lease, and the term and conditions of such lease, the stewards in their discretion find that such lease:

(a) Completely divests lessors or sublessors of further control or direction of the racing performance of such horse while under lease; and

(b) The resultant program-listing of lessee would not mislead the betting public by reason of the absence in the program-listing of the name of a person or persons possessing a beneficial interest in such leased horse.

Section 7. Racing Colors. (1) Owners shall be responsible for designing and providing individual racing colors, consisting of jackets and caps of distinctive color and pattern to be worn by jockeys during a race, such racing colors to be registered with the commission.

(2) Racing colors may be registered for the life of an owner upon payment of a twenty-five dollar ($25) fee therefor. Upon death of a registrant of lifetime racing colors, no application for the same colors shall be accepted by the commission for twelve (12) months, except from members of the family of the deceased owner.

(3) Racing colors other than those registered for life must be registered annually, application therefor to accompany application for an owner's license.

(4) Registration of racing colors shall be at the discretion of the commission. Disputes as to rights to particular racing colors shall be determined by the commission. The commission may refuse to accept for registration racing colors which:

(a) Are not readily distinguishable by color and pattern from racing colors currently registered in this state or with the Jockey Club;

(b) Include advertising, promotional, or cartoon symbols or words, or which, in the opinion of the commission, are not in keeping with the traditions of the turf.

(5) No horse may be raced in racing colors other than those registered in the name of the horse's owner without special permission of the stewards. If an owner races two (2) or more horses in the same race, jackets shall be identical while caps shall be varied in color or design. Any deviation from registered colors granted by the stewards shall be immediately posted on the public notice board.

(6) Owners and trainers shall be jointly responsible for the condition of racing colors, insuring that they are neat, clean, and in good repair, and that an adequate number of sets of racing colors are placed in the care of the clerk of scales.

(7) The clerk of scales, and the valet serving a jockey, shall be jointly responsible for having the correct jacket and cap on each rider when leaving the jockey room for the paddock.

[(8) Racing colors are not assignable and registration thereof shall be automatically cancelled upon the death or license-suspension of an owner.]

Section 8. Employees Licensed. No owner or trainer may employ or contract with an unlicensed person to perform an activity on association grounds for which a license is required. An owner shall immediately notify the *stewards* [racing secretary] upon change of trainer during a race meeting.

Section 9. Authorized Agent. A licensed owner may, as a principal, authorize any person, as an agent, to act in such owner's behalf in all matters pertaining to racing in this state and ownership of horses on association grounds, provided by 801 KAR 1:010. A licensed owner, as a principal, shall be jointly liable and responsible with his licensed authorized agent for all acts and omissions of such authorized agent serving in such owner's behalf in a racing matter, until written notification from such owner revoking such agency is received by the commission.

Section 10. Suspension. In the event the license of an owner is suspended or revoked, all horses owned wholly or in part by such owner shall not be permitted to race during such suspension unless such horses are transferred to a licensed owner, and such transfer is approved by the stewards as completely divesting such suspended former owner of control of or benefit from the subsequent racing of such horses.

Section 11. Partnerships. (1) Partnerships must be registered with the commission. Partnership papers shall set forth the following:

(a) The name and address of every person having an interest in the horse or horses involved;

(b) The relative proportion of such interests;

(c) To whom the winnings are payable;

(d) In whose name the horse or horses shall run;

(e) With whom the power of entry and declaration rests;

(f) The terms of any contingency, lease, or any other arrangement; and

(g) The names of the horse or horses involved.

(2) Any partner transacting business on behalf of a partnership must own an interest therein at least equal to that owned by any other partner.

(3) All partnership registrations must be signed by *the principal partner or by his authorized agent* [all of the partners or by their authorized agent].

(4) Any alteration in a recorded partnership must be reported in writing to the commission and signed by all the partners, or their authorized agent.

(5) All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees, and other obligations.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:008. Trainers.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for trainers.

Section 1. License Required. No horse may be raced in this state unless the trainer thereof has been granted a current trainer's license.

Section 2. Requirements for Trainer's License. (1) In addition to rules applicable to licensees under 810 KAR 1:003, a holder of a trainer's license:

(a) Must be an individual person eighteen (18) years or older. No trainer may be licensed to train under an assumed or stable name;

(b) Must be qualified by experience or competence to care for and train race horses as determined by a standard examination prescribed and given at any time by the stewards;

(c) Must have in his charge a horse eligible to race; and

(d) Must not engage in an activity directly or indirectly involving the racing performance of horses on association grounds other than those registered as being in his charge.

(2) A licensed trainer cannot also be currently licensed to participate in racing in this state as a jockey, apprentice jockey, jockey's agent, veterinarian, assistant veterinarian, dental technician, farrier, apprentice farrier, or as an association racing department employee, except as provided by 810 KAR 1:009, Section 3.

(3) The commission may deny, suspend, or revoke a trainer's license for the spouse, or any member of the immediate family or household, or a licensee ineligible to hold a trainer's license under subsection (1)(d) of this section, unless there is a showing on the part of the applicant or licensed trainer, and the commission so finds that his participation in racing as a trainer will in no way circumvent the intent of this rule by permitting a person, under the control or direction of a licensee ineligible to hold a trainer's license to serve in essence as a substitute for such ineligible person.

Section 3. Duties and Responsibilities. A licensed trainer shall bear primary responsibility for the proper care, health, training condition, safety, and protection against administration of prohibited drugs or medication of horses in his charge. A licensed trainer:

(1) Shall register with the racing secretary all persons in his employ and insure same are duly licensed within twenty-four (24) hours after such employees arrive on association grounds, or are employed. Upon discharge of an employee, a trainer must promptly notify the *Thoroughbred Racing and Protective Bureau and/or track security* [racing secretary] and commission license adminstrator;

(2) Shall carry workmen's compensation insurance covering his employees in connection with racing as required by *KRS Chapter 342* [Kentucky law];

(3) Shall register with the racing secretary all horses in his charge in accordance with 810 KAR 1:007, Section 3. No licensed trainer may take or keep in his charge a horse owned wholly or in part, or controlled by, a person unlicensed as an owner. No licensed trainer shall assume responsibility for a horse not under his active care and supervision, except as provided by subsection (6) of this section;

(4) Shall bear primary responsibility for horses he enters as to eligibility; weight allowance claimed; physical fitness to perform creditably at the distance entered; absence of prohibited drugs or medications; proper shoes, bandages, and equipment; and timely arrival in the saddling paddock. A licensed trainer shall be jointly responsible with the licensed owner for horses he enters as to stakes payments and jockey fees due;

(5) Shall furnish the name of the jockey engaged to ride each horse entered, if possible at the time of entry, but in no event later than scratch time. If no jockey has been named to ride a horse entered to race by scratch time, then the stewards shall select the best rider available to ride such horse;

(6) Shall personally attend his horses in the paddock and supervise the saddling thereof, unless excused by the stewards. If a licensed trainer is to be absent from association grounds where his horses are stabled, he must provide a substitute, his licensed assistant trainer or another licensed trainer, to attend the saddling of horses already entered and to assume complete responsibility for horses to be entered; such substitute must be approved by the stewards and shall sign in the presence of the stewards a form furnished by the commission accepting complete responsibility for horses such substitute enters;

(7) May attend the taking and testing of a [salvia,] urine or blood sample from a horse in his charge by the commission veterinarian and commission chemist, or may delegate one of his licensed employees to do so;

(8) Shall maintain the stable area assigned to him in a clean, neat, and sanitary condition in all times, and insure that fire-prevention rules are strictly observed in his stable area; and

(9) Shall promptly report to the *commission* [association] veterinarian *or horse identifier serious illness* [any sickness], or death of any horse in his charge.

[Section 4. Restrictions on ownership. No licensed trainer shall have any interest, by ownership or lease in the racing or breeding qualities, in a horse of which he is not the trainer at any race meeting at which such trainer is in charge of a racing stable.]

Section *4.* [5.] Horses Suspended. All horses in the charge of a trainer whose license has been revoked or suspended, shall not be permitted to race during the period of such trainer's suspension. Upon application by the owners of such suspended horses, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

Section *5.* [6.] Assistant Trainer. A licensed owner or licensed trainer may employ an assistant trainer. Such assistant trainer must be licensed before acting in such capacity on behalf of his employer. Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards. A licensed assistant trainer shall assume the same duties and responsibilities as imposed on the holder of a trainer's license. The licensed trainer shall be jointly responsible with his assistant trainer for all acts and omissions of such assistant trainer involving a racing matter.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a rider and who never previously has ridden in a race may be permitted to ride in *three (3)* [two (2)] races before applying for a license as a jockey or apprentice jockey; provided, however;

(1) Such person is a licensee with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(3) The starter has schooled such person breaking from the starting gate with other horses and approves such person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards in their sole discretion are satisfied such person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without prior approval of the stewards.

Section 2. Qualifications for License. In addition to rules applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:

(1) Must be an individual person sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Must have served at least one (1) year with a racing stable;

(3) Must have ridden in at least *three (3)* [two (2)] races;

(4) Must, when required by the stewards, provide a medical affidavit certifying such person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, must be approved by the stewards as to competency of horsemanship, must be granted a jockey's license, and such amateur status must be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any country, and who is qualified under Section 2 of this regulation, may claim in all purse races except handicaps the following weight allowances:

(1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty (30) winners; if he has ridden thirty-five (35) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year.

(2) After the completion of conditions in subsection (1) a contracted apprentice for one (1) year may claim three (3) pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. Such original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. *No apprentice allowances may be claimed for a period in excess of three (3) years from the date of the rider's fifth winner.*

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this regulation for a period not to exceed five (5) years. Such contracts must be approved by the stewards and filed with the racing commission; such contracts shall be binding in all respects on the signatories thereof. An apprentice who is not contracted shall be given an apprentice jockey certificate, on a form furnished by the commission.

(4) In the event an apprentice jockey is unable to ride for a period of fourteen (14) consecutive days or more because of service in the armed forces of the United States, or because of physical disablement, or because of restrictions on racing, the commission upon recommendation of the stewards and after consultation with the racing authority which first approved the original apprentice contract, may extend the time during which such apprentice weight allowance may be claimed for a period no longer than the period such apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, such rider must be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. All contracts between an employer owner or trainer and employee rider are subject to the rules of racing. All riding contracts for terms longer than thirty (30) days, as well as any amendments thereto, or cancellation, or transfer thereof, must be in writing with signature of parties thereto notarized, must be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties thereto to participate in racing in this state if the stewards find that:

(1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of such contract;

(2) The contract employer posseses such character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;

(3) Such contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel such contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may: (1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. Such agreements, if for terms of more than thirty (30) days, must be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey in all races shall be, in the absence of special agreement, as follows:

(a) Purse $2,000 to $3,400: Winning mount, ten (10) percent of win purse; Second mount, $45; Third mount, $35; Losing mount, $30.

(b) Purse $3,500 to $4,900: Winning mount, ten (10) percent of win purse; Second mount, $50; Third mount, $40; Losing mount, $30.

(c) Purse $5,000 and up: Winning mount, ten (10) percent of win purse; Second mount, $55; Third mount, $45; Losing mount, $35.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; in such case, the owner or trainer shall pay an appropriate fee to each rider engaged for such race.

(b) When such rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause therefor.

(c) When such rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

Section 9. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be forced to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, such rider may be subject to disciplinary action.

Section 10. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall by physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. In the event a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who thereupon may name a substitute rider and shall cause announcement to be made of any such rider substitution prior to opening of wagering on such race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. Such rider shall have no contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, or a racing official, or a representative of the regular news media, until such rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for such security of the jockey room as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall so notify the stewards after fulfilling his final riding engagement of the day he intends to depart.

Section 11. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, *goggles,* and rider's safety helmet shall not be included in a rider's weight.

Section 12. Wagering. No rider shall place a wager, or cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. Such owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and such record shall be available for examination by the stewards at all times.

Section 13. Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 14. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race, the posting of same to be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing such films, or with the stewards' permission, be represented at such viewing by his designated representative.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:011. Pari-mutuel wagering.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for the operation of pari-mutuel wagering.

Section 1. Pari-mutuel System of Wagering Required. Each association licensed to conduct racing in this state may permit wagering only on races conducted by such association on the grounds of such association; no association may accept wagers on races conducted elsewhere by another association. All such permitted wagering shall be under the pari-mutuel system, employing an electric totalizator approved by the commission. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be ejected or excluded from association grounds.

Section 2. Totalizator Required. Each association shall install and operate during its race meeting an electric totalizator approved by the commission. Such totalizator shall be tested daily under the supervision of the commission to insure its proper working order.

Section 3. Records to be Maintained. The pari-mutuel

manager shall maintain complete records of all wagering so the commission may upon review ascertain for any race: The opening line and subsequent odds fluctuations, the amount, and at which window, wagers were placed on any betting interest, and such other information as the commission may from time to time require. A copy of such wagering records shall be retained by each association and safeguarded for a period not less than two (2) years and may not be destroyed without permission of the commission.

Section 4. Calculation and Distribution of Pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, exacta and quinella, each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the commission as provided by KRS 138.515, with the remainder being the net pool for distribution as payoffs to ticket holders as follows:

(1) Win pool. The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.

(a) In the event of a dead heat for first involving horses of two (2) different betting interests, the win pool is distributed as if a place pool; if involving horses of three (3) different betting interests, the win pool is distributed as if a show pool.

(b) In the event no win ticket is sold on the horse which finishes first, the net win pool is distributed to holders of win tickets on the horse finishing second.

(2) Place pool. The amounts wagered to place on the first two (2) horses to finish are deducted from the net pool to determine the profit; the profit is divided into two (2) equal amounts; one-half (½) of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half (½) of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place of such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two (2) finishers.

(a) In the event of a dead heat for first: between horses representing the same betting interest, the place pool is distributed as if a win pool; if between horses representing two (2) different betting interests, the place pool is distributed as if one (1) betting interest finished first and the other finished second; if between horses representing three (3) different betting interests, the place pool is distributed as if a show pool.

(b) In the event of a dead heat for second: between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two (2) or more different betting interests, the profit is divided in half, with one-half (½) allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth (¼) of the profit on the net place pool for wagers to place on each of two (2) horses finishing in a dead heat for second, or one-sixth (1/6) of the profit for wagers to place on each of three (3) horses finishing in a dead heat for second.

(c) In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.

(d) In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace that horse in the distribution of wagers in the place pool.

(3) Show pool. The amounts wagered to show on the first three (3) horses to finish are deducted from the net pool to determine the profit; the profit is divided into three (3) equal amounts; one-third (⅓) of the profit is divided by the amount wagered to show on the first finisher, such quotient being the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third (⅓) of the profit is divided by the amount wagered to show on the third finisher, such quotient being profit per dollar wagered to show on such third finisher; payoffs include return of amount wagered and profit thereon as to each of the first three (3) finishers.

(a) In the event of a dead heat for first: between two (2) horses involving different betting interest, or three (3) horses involving three (3) different betting interests , the show pool is distributed as if no dead heat occurred; if between two (2) horses involving the same betting interest two thirds (⅔) of the profit is allocated to wagers to show on the coupled betting interest, and one-third (⅓) allocated to wagers to show on the other horse among the first three (3) finishers; if between three (3) horses involving one (1) betting interest, the show pool is distributed as if a win pool.

(b) In the event of a dead heat for second: between two (2) horses involving two (2) different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two thirds (⅔) of the profit shall be allocated to wagers to show on the coupled betting interest, and one-third (⅓) allocated to wagers to show on the horse finishing first; if between three (3) horses involving two (2) or three (3) betting interests, one-third (⅓) of the profit is allocated to wagers to show on the horse finishing first, and the remaining two thirds (⅔) of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.

(c) In the event of a dead heat for third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two (2) or more betting interests, two thirds (⅔) of the profit shall be allocated to wagers to show on the first two (2) finishers, and the remaining one-third (⅓) is divided equally by the number of betting interests finishing in a dead heat for third for proportinate distribution on wagers to show for each such betting interest finishing in a dead heat for third.

(d) In the event the first three (3) horses to finish comprise one (1) betting interest, the show pool shall be distributed as a win pool. In the event two (2) horses coupled as a single betting interest finish first and second, or first and third, or second and third, two thirds (⅔) of the profit shall be allocated to wagers to show on the other horse among the first three (3) finishers.

(e) In the event one (1) horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second, and another horse included in the same betting interest finishes in a dead heat for third: one-half (½) of the profit in the show pool shall be allocated to wagers on such field or entry, one-third (⅓) of the profit in the show pool shall be allocated to wagers on the horse finishing first or second, and the remaining one-

sixth (1/6) of such profit shall be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.

(f) In the event only two (2) horses finish, the show pool, if any, shall be distributed as if a place pool; if only one (1) horse finishes, the place and show pools, if any, shall be distributed as if a win pool; if no horse finishes, all money wagered on such race shall be refunded upon presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wagers in the show pool.

(4) Daily double pool. The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.

(a) In the event of a dead heat for first involving two (2) different betting interests, in one (1) of the two (2) daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one (1) daily double race and one (1) of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one (1) daily double race and the other betting interest involved in the dead heat in the other daily double race.

(b) In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four (4), or six (6), or nine (9), winning combinations for proportionate allocation for each such winning daily double wager.

(c) In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one (1) of the daily double races, the daily double pool is distributed as if win pool with the profit allocated to wagering combinations which include the horse or betting interest which finished first in one (1) of the daily double races.

(d) In the event no daily double ticket is sold combining the horse or betting interests which finishes first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit shall be that combining the horses or betting interests which finished second in each of the daily double races.

(e) If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting-gate to open properly, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

(f) If, prior to closing of the daily double wagering, a scheduled starter in the second half of the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.

(g) If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting-gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race shall be allocated consolation payoffs:

1. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with such horse prevented from racing in the second daily double race;

2. Such consolation payoffs shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

(h) If for any reason the first daily double race is cancelled or declared "no race" by the stewards, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is cancelled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(i) If no daily double ticket is sold requiring distribution, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon.

(5) Quinella pool. The amount wagered on the winning combination, such being the first two (2) finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.

(a) In the event of a dead heat for first: between horses involving two (2) different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three (3) horses finishing in a dead heat for first.

(b) In the event of a dead heat for second: between horses involving two (2) different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three (3) horses finishing in a dead heat for second;

(c) In the event horses representing a single betting interest finish first and second, the net quinella pool shall be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.

(d) In the event no quinella ticket is sold combining:

1. The first finisher with one (1) of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second;

2. The first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two (2) horses which finished in the dead heat for second;

3. The first finisher with either of the horses finishing in a dead heat for second, or combining with two (2) horses

which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool is allocated to wagers combining any of the first three (3) finishers with any other horses.

4. The first two (2) finishers, then the net quinella pool shall be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.

5. Horses or betting interest as would require distribution, then the entire quinella pool shall be refunded upon presentation and surrender of quinella tickets thereon.

(6) Exacta pool. The exacta pool is a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(a) The exacta is not a "parlay" and has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(b) If no ticket is sold on the winning combination of an exacta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and/or holders of tickets selecting the second place horse to finish second.

(c) If no ticket is sold that would require distribution of an exacta pool to winnner as above defined, the association shall make a complete and full refund of exacta pool.

(d) In case of a dead heat between two (2) horses for first place, the net exacta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two (2) horses for second place, the exacta pool shall be figured as a place pool, the holders of tickets combining the winning horse and the two (2) horses finishing second participating in the pay-off.

(e) In the event of a dead heat for second place, if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(f) In the event of any entry finishing first and second, the net exacta pool shall be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.

(7) Refunds.

(a) If after win, place, or show wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate door to open properly, the wagers on such horse shall be deducted from the win, place, and show pools, as the case may be, and refunded upon presentation and surrender thereof. If more than one (1) horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination in a daily double, exacta or quinella wager, then there shall be no refund unless all of the horses representing such single betting interest are excused by the stewards and/or are prevented from racing horses because of failure of the starting-gate doors to open properly.

(b) If after exacta and quinella wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate to open properly, then exacta and quinella wagers combining such horse with any other horse or betting interest shall be deducted from the exacta and quinella pool and refunded upon presentation and surrender of exacta and quinella tickets thereon.

(8) Race cancelled. If for any reason a race is cancelled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon shall be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as to daily double wagers upon cancellation of the second daily double race, which shall be distributed as provided under Section 4(4)(h) of this regulation.

(9) Totalizator breakdown. In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

Section 5. Minimum Wager and Payoff. The minimum wager to be accepted by any licensed association shall be two dollars ($2). The minimum pay-off on a two dollar ($2) wager shall be two dollars and twenty cents ($2.20). [However, in the event of a minus pool, the minimum pay-off for a two dollar ($2) wager shall be two dollars and ten cents ($2.10).]

Section 6. Minors Prohibited from Wagering. No minor shall be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

Section 7. Odds or Payoffs Posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off-time of the second daily double race, the possible payoff for each two dollar ($2) daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled starter in the econd daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public of same by posting or public-address announcement as soon as possible and prior to the running of the second daily double race.

Section 8. Betting Explanation. Each association shall cause to be published in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered; such explanation also shall be posted in conspicous places about the association grounds so as to adequately inform the public. Such explanation shall be submitted to the state steward prior to publication so as to insure an absence of conflict with these rules.

Section 9. Prior Approval Required for Betting Pools. Each association desiring to conduct more than nine (9) betting races on a single day, or desiring to offer daily double, exacta or quinella wagering, shall first apply therefor in writing to the commission and obtain specific approval as to number of betting races and type of wagering to be offered on a single day.

Section 10. Pools Dependent upon Entries. (1) Unless the commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six (6) or more betting interests.

(2) If horses representing five (5) or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if horses representing four (4) or fewer betting interests qualify to start in a race, then the association may prohibit both place and show wagering on that race.

(3) If, by reason of a horse being excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting-gate door to open properly, the number of actual starters representing different betting interests is:

(a) Reduced to five (5), then the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets thereon;

(b) Reduced to four (4) or fewer, then the association may cancel both place and show wagering on that race and the entire place pool and show pool shall be refunded upon presentation and surrender of such place and show tickets thereon.

Section 11. Pari-mutuel Ticket Sales. (1) No pari-mutuel tickets shall be sold except by the association conducting the races on which such wagers are made, and the same shall be sold only at regular "seller" windows properly designated by signs showing the type and denomination of tickets to be sold at such windows. No pari-mutuel ticket may be sold after the totalizator has been locked and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

(2) Any claim by a person that he has been issued a ticket other than that which he requested, must be made before such person leaves the seller window and before the totalizator is locked.

(3) After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discared, or lost, or destroyed, or mutilated beyond identification.

(4) Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender thereof to the association where such wager was made within two (2) years following the running of the race on which such wager was made. Failure to present any such ticket within two (2) years shall constitute a waiver of the right to receive payment thereon.

(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as purposely posted on the infield results board and declared "official" by the stewards; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the steward or commission, shall in no way affect the pari-mutuel payoff.

(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, then such posting error may be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets (calculating sheets) of such race to be proven by the computer (calculator) and the winners verified. Such proof shall show the amounts for commission, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets (calculating sheets) as to winners and prices before being issued to cashiers, and all board prices are to be rechecked with the computer printout sheet (calculator) before released to the public.

(8) Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, such deficiency shall be deposited in the pool or pools by the association. Should the recapitulation of sales prove that the actual amount in the pool or pools, is greater than the amount used in calculating the payoff due to a mechanical error of the totalizator such error resulting in underpayment to the public, then the aggregate of such underpayments shall be paid into the corresponding pool of the next race or races, in such amounts as may be determined by the state steward and the pari-mutuel manager. If any such error should occur in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment shall be paid to the Department of Revenue.

Section 12. Betting Interests Involving More Than One (1) Horse. When two (2) or more horses entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry," such mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 13. Emergency Situation. In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, then the pari-mutuel manager shall make an immediate decision and render a full report to the commission.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for horses entered to be raced.

Section 1. Registration Required. No horse may be entered or raced in this state unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for such horse is on file with the racing secretary; except, however, the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction. *Jockey Club registration certificate of each horse must be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the grounds.*

[(1) In order to establish the true ownership of all thoroughbred horses, that race, each starter which does not remain the property of its breeder shall have a certificate of ownership, issued by the commission in behalf of the Jockey Club, a copy of which shall be attached to the horse's foal certificate, and in the event that ownership of a horse is transferred, either by private treaty or by claiming, the new owner shall obtain a new certificate of ownership issued by the commission in behalf of the Jockey Club, a copy of which shall be attached to the foal certificate. No horse shall be permitted to start in a race unless there has been compliance with these requirements; except, however, the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.]

[(2) The certificate of ownership shall bear the proper names of all persons owning an interest in the horse, and in each instance the accuracy of this information shall be attested to by the signature of one of the owners or his agent.]

[(3) Failure by the signator to accurately identify the ownership of a horse on the certificate of ownership may be punishable by revocation of the signator's license or by such other penalty as the stewards or the racing commission may deem appropriate.]

Section 2. Ringers Prohibited. (1) No horse may be entered or raced in this state designated by a name other than the name under which such horse is currently registered with the Jockey Club in New York. In the event a horse's name is changed by the Jockey Club, such horse's former name shall be shown parenthetically in the daily race program the first three (3) times such horse races after such name change.

(2) No person shall at any time cause or permit the correct identity of a horse to be concealed or altered, nor shall any person refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.

(3) No horse shall race in this state without a legible lip tatoo number applied by agents of the Thoroughbred Racing and Protective Bureau; except, however, the stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction. The stewards shall require that a horse without a lip tatoo number be lip tattoed within a reasonably practical time.

(4) No horse may be entered or raced in this state if previously involved in a "ringer" case to the extent that: a person having control of such horse knowingly entered or raced such horse while designated by a name other than the name under which such horse was registered with the Jockey Club; or such person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to such horse in question.

Section 3. Denerving. (1) Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of such denerved horse to insure that such fact is designated on the registration certificate or racing permit.

(2) Any horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) Any horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neurectomy (known as low nerved), may be permitted to race provided such denerving has been reported by the trainer to the stewards, and such horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) In the event a horse races in violation of this rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the stewards within forty-eight (48) hours after such race.

(5) In the event a horse races in violation of this rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing forty-eight (48) hours requesting the claim be voided. Should the claim be voided, the horse shall be returned to the owner who started such horse in such race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. No person shall report a horse as having a neurectomy when in fact such horse has not.

Section 4. Bleeders. Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without prior approval for racing by the commission veterinarian. In the event a horse bleeds a second time, such horse shall be placed on the veterinarian's list and prohibited from racing for a minimum of six (6) months; in the event a horse bleeds a third time, such horse shall be thereafter prohibited from racing in this state.

Section 5. Health Certificate Required. No horse may be stabled on association grounds unless, within ten (10) days *prior to arrival* [of arrival] on association grounds, such horse has been examined by an accredited practicing veterinarian who certifies as to the identity of such horse, temperature at time of examination, and that to the best of his knowledge and belief such horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites, and further certifies as to such other matters as may be required from time to time by the Kentucky State Veterinarian in Frankfort. Notice of this re-

quirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. No horse may be schooled in the paddock, or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. No maiden six (6) years of age or older which has made five (5) life time starts on the flat may be entered or start.

Section 8. Fillies and Mares Bred. Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race. A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office. No filly or mare that has been covered by a stallion may be entered in a claiming race unless a written release from the stallion owner is attached to such filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9. Serviceable for Racing. No horse may be entered or raced that: (1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person.
(2) Is posted on a veterinarian's list, or stewards' list, or starter's list, or is suspended, in any racing jurisdication.
(3) Has been administered any drug in violation of 810 KAR 1:018.
(4) Is blind or has seriously impaired vision in both eyes.
(5) Is not correctly identified to the satisfaction of the stewards.
(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Whips and blinkers must be used consistently on a horse. Permission to change use of any equipment used on a horse in its last previous start must be obtained from the stewards. A horse's tongue may be tied down during a race with a clean bandage or gauze. A horse's bridle may weigh no more than two (2) pounds; war bridles are prohibited. No horse may race in ordinary training shoes; bar shoes may be used for racing only with permission of the stewards.
(2) Use on a horse either in a race or workout of any goading device, or chain, or spurs, or electrical or mechanical device, or appliance other than the ordinary whip which could be used to alter the speed of such horse, is prohibited.
(3) No whip shall be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper. No stingers or projections extending through the hole of a popper or any metal part on a whip shall be permitted. Indiscriminate or brutal use on a horse of an ordinary whip, as determined by the stewards in their sole discretion, is prohibited.

Section 11. Sex Alteration. Any alteration in the sex of a horse must be reported by such horse's trainer to the racing secretary promptly, and the racing secretary shall note same on such horse's registration certificate.

Section 12. Post-mortem Examination. Each horse which suffers a breakdown on the race track,in training, or in competition, and is destroyed, and/or each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a post-mortem examination at the University of Kentucky at the discretion of the commission steward and/or the commission veterinarian.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:013. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline requirements for entry, subscription and declaration of horses in order to race.

Section 1. Entering Required. No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given therefor.

Section 2. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be lodged with the racing secretary and shall not be considered as having been made until received by the racing secretary who shall maintain a record of time of receipt of same *for a period of one (1) year.*
(2) Every entry must be in the name of such horse's licensed owner, as completely disclosed and registered with the racing secretary under these rules, and made by the owner, or trainer, or a *licensed authorized agent of* [person deputized by] such owner or trainer.
(3) Every entry must be in writing, [or by telegraph promptly confirmed in writing;] except that an entry may be made by telephone to the racing secretary, but must be confirmed [promptly] in writing should the stewards, the racing secretary, or an assistant to the racing secretary so request.
(4) Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, *and* dam, [and broodmare sire,] as reflected by such horse's registration certificate.
(a) No horse may race unless correctly identified to the satisfaction of the stewards as being a horse duly entered.
(b) In establishing identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.
(5) No alteration may be made in any entry after the closing of entries, but an error may be corrected *with permission of the stewards.*

(6) No horse may be entered in two (2) races to be run on the same day.

(7) *No* [Any] horse which has not started [with]in the past ninety (90) days shall [not] be permitted to start unless it has at least one (1) published work-out within twenty (20) days of entry at a distance *satisfactory to the stewards of the meeting* [of not less than three-eighths (3/8) of a mile for two (2) year olds and one-half (½) mile for older horses].

[(a)] In the event that *a* [the] horse has done the requisite work-out, but through no fault of the trainer, such work-out does not appear in the past performances, the horse shall be permitted to start and the correct work-out announced [and/or posted].

[(b)] *No* [A] horse which has never started shall [not] be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 3. Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where such race is to be run, unless its stabling elsewhere has been approved by the *commission in its approved farm list* [racing secretary as provided by Section 4 of 810 KAR 1:006].

Section 4. Limitation as to Spouses. No entry in any race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that, if the license of a jockey has been suspended for a routine riding offense, then the stewards may waive this rule as to the duly licensed husband or wife or such suspended jockey.

Section 5. Mutuel Entries. (1) All horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest. All horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(2) No more than two (2) horses having common ties through ownership or training as to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one (1) of the horses must be made.

(3) In no case may two (2) horses having common ties through ownership start in a purse race to the exclusion of a single interest. In races in which the number of starters is limited to ten (10) or less, no two (2) horses having common ties through training may start to the exclusion of a single entry.

Section 6. Subscriptions. (1) Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due thereon.

(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded, "except as otherwise stated in the conditions of a stakes race."

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) When a horse is sold privately, or sold at public auction, or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new owner; excpet that, if such, horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter such horse, then such subscription shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

Section 7. Closing. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for such races. If a race is not split, no entry, subscription, or declaration shall be accepted after such closing time; except that in event of an emergency, or if a purse race fails to fill them the racing secretary may, with the approval of a steward, extend such closing time.

(2) If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing; provided, they are received in time for compliance with every other condition of such race.

(3) Entries which have closed shall be complied without delay by the racing secretary and, along with declarations, be posted.

Section 8. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions thereof approved by the commission as can be positioned across the width of the track at the starting point for such race; and such maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, can be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more then ten (10) horses may start in any race without consent of the stewards, and no more than twelve (12) horses may start under any circumstance.

(3) Any claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered must be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered must be run.

(4) If any purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, then the association may cancel or declare off such race. The names of all horses entered therein shall be publicly posted in the office of the racing secretary not later than 1:00 p.m. the same day.

Section 9. Split or Divided Races. (1) In the event a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more

separate races, the racing secretary shall give notice thereof not less than fifteen (15) minutes before such races are closed so as to grant time for the making of additional entries to such split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made, and in the absence of specific prohibition of such conditions:

(a) Horses originally joined as a mutuel entry may be place in different divisions of a split race unless the person making such multiple entry, at the time of such entry indicates such coupling of horses is not to be uncoupled when such race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided above by this rule, shall be divided by lot so as to provide a number of betting interests as near equal as possible for each division of such split race.

Section 10. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for such rac. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race included two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List. (1) If the number of entries for a race exceeded the number of horses permitted to start in such race as provided by Section 8 of this regulation, then the names of as many as eight (8) horses entered but not drawn into such race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After any horses have been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list, and the starting and post position of such horses drawn from the also-eligible list shall be determined by the sequence drawn, unless otherwise stipulated in published conditions of the race.

(3) Any owner or trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the racing secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

(4) Where entries are closed two (2) racing days prior to the running of a race, any horse on an also-eligible list, and which also has been drawn into a race as a starter for the succeeding day, shall not be *permitted to run in the race for which it had been listed as also-eligible* [given an apportunity to be drawn into the eariler race for which he had been listed as also-eligible].

Section 12. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. *The racing secretary shall submit for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.* [Horses so eliminated shall be awarded a preference "star" for each such elimination, and as to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.]

(2) No preference shall be given a horse otherwise entitled thereto for a race if such horse also is entered for a race on the succeeding day.

[(3) No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred."]

Section 13. Arrears. No horse may be entered or raced if the owner thereof is in arrears as to any stakes fees due by such owner; except with the approval of the racing secretary.

Section 14. Declarations. Withdrawal of a horse from a race before closing thereof by the owner or trainer or person deputized by either, such being known as a "declaration," shall be made in the same manner as to form, time, and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any licensed association.

Section 15. Scratches. Withdrawal of a horse from a race after closing thereof by owner or trainer or person deputized by either, such being known as a "scratch," shall be permitted only under the following conditions:

(1) A horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceeding such stakes race by the filing in writing of such intention with the racing secretary, unless a list of also-eligibles has been drawn, in which case scratches must be filed at the regular scratch time as posted by the racing secretary, and no horse will be excused thereafter without a valid physical reason. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.

(2) No horse may be scratched from a purse race without approval of the stewards and unless such intention to scratch has been filed in writing with the racing secretary or his assistant at or before the time conspicuously posted as "scratch time." Scratch of one (1) horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a lter appointed scratch time therefor.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than ten (10) betting interests in either of the two (2) daily double races, or horses representing mire than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective minimum numbers for such races, this privilege to be determined by lot if an excessive number of owners or trainers wish to scrtach their horses.

(4) Entry of any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after such horse was scratched or excused.

Section 16. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or

corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:014. Weights.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for assigning weights for the horse to race.

Section 1. (1) Weight penalties are obligatory; weight allowance must be claimed at time of entry and shall not be waived after the posting of entries, except by consent of the stewards.

(2) A horse shall start with only the allowance of weight to which it is entitled at time of starting, regardless of its allowance at time of entry.

(3) Horses incurring weight penalties for a race shall not be entitled to any weight allowance for that race; horses not entitled to the first weight allowance in a race shall not be entitled to any subsequent allowance specified in the conditions.

(4) Claim of weight allowance to which a horse is not entitled shall not disqualify unless protest is made in writing and lodged with the stewards at least one (1) hour before post time.

(5) No horse shall incur a weight penalty or be barred from any race for having been placed second or lower in any race; nor shall a horse be given a weight allowance for failure to finish second or lower in any race.

(6) No horse shall receive allowance of weight nor be relieved of extra weight for having been beaten in one (1) or more races, but this rule shall not prohibit maiden allowances or allowances to horse that have not won a race within a specified period or a race of a specified value.

(7) Penalties incurred and allowances due in steeplechase or hurdle races shall not apply to races on the flat, and vice versa.

(8) In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign country, shall be considered *official, but may be corrected until forty-five (45) minutes prior to post time of the race.*

(9) Horses winning races at unrecognized meetings shall not be penalized for such winnings in races run thereafter under the jurisdiction of the commission. The maiden allowance, however, shall be lost by the winning of a race at any unrecognized meeting.

(10) Excepting in handicaps, fillies two (2) years old shall be allowed three (3) pounds, and fillies and mares three (3) years old and upward shall be allowed five (5) pounds before September 1, and three (3) pounds thereafter *in races where competing against horses of the opposite sex.*

(11) In all races of one (1) mile or over, other than maiden races, races for non-winners at a mile or over, stakes races or handicaps, any horse which has never won at a distance of one (1) mile or over, shall be allowed three (3) pounds weight allowance in addition to any other allowances to which it may be entitled in the race; such allowance must be claimed at time of entry.

(12) The following is the scale of weights for age, and shall be carried when not otherwise specified in the condition of the race:

SCALE OF WEIGHTS

Distance	Age	Jan. and Feb.	March and April	May	June	July	Aug.	Sept.	Oct.	Nov. and Dec.
	2	—	—	—	—	—	105	108	111	114
One-half	3	117	119	121	123	125	126	127	128	129
Mile	4	130	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
	2	—	—	—	—	—	102	105	108	111
Six	3	114	117	119	121	123	125	126	127	128
Furlongs	4	129	130	130	130	130	130	130	130	130
	5 and up	130	130	130	130	130	130	130	130	130
	2	—	—	—	—	—	—	96	99	102
	3	107	111	113	115	117	119	121	122	123
One Mile	4	127	128	127	126	126	126	126	126	126
	5 and up	128	128	127	126	126	126	126	126	126
	2	—	—	—	—	—	—	—	—	—
One Mile	3	101	107	111	113	116	118	120	121	122
and a	4	125	127	127	126	126	126	126	126	126
Quarter	5 and up	127	127	127	126	126	126	126	126	126
	2	—	—	—	—	—	—	—	—	—
One mile	3	98	104	108	111	114	117	119	121	122
and a half	4	124	126	126	126	126	126	126	126	126
	5 and up	126	126	126	126	126	126	126	126	126
	3	96	102	106	109	112	114	117	119	120
Two Miles	4	124	126	126	126	126	125	125	124	124
	5 and up	126	126	126	126	126	125	125	124	124

In race if intermediate lengths, the weights for the shorter distaince shall be carried

(13) Jockeys shall be weighed out for their respective mounts by the clerk of scales not less than fifteen (15) minutes before post time. (See also 810 KAR 1:009, Section 11(1).)

(14) A jockey's weight shall include his clothing, boots, [goggles,] saddle and its attachments or any other equipment except as specified. None of the following items shall be included in the jockey's weight: whip, bridle, bit or reins, safety helmet, blinkers, *goggles,* or number cloth. (See also 810 KAR 1:009, Section 11(4).)

(15) Five (5) pounds is the limit of overweight any horse is permitted to carry. (See also 810 KAR 1:009, Section 11(2).)

(16) Only valets furnished by the association shall assist jockeys in weighing out.

(17) After a race has been run, the jockey shall ride promptly to the finish line and there dismount and present himself to the clerk of scales to be weighed in. He shall carry over to the scales all pieces of equipment with which he weighed out.

(18) Each jockey shall weigh in at the same weight as that at which he weighed out, and if short of it by more than two (2) pounds, his mount shall be disqualified.

(19) No jockey shall weigh in at more than two (2) pounds over the weight at which he weighed out, except insofar as said weight may have been affected by the elements.

(20) If a jockey is prevented from riding his mount to the finish line because of an accident or illness either to himself or his horse, he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:016. Running of the race.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation outlines the requirements relating to the running of a race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, no race shall be started after 11:55 p.m.

Section 2. Horses in Paddock Not to be Touched. No person shall touch a horse while in the paddock except its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of such horse. If a trainer is to be absent from a track where his horses are participating in races, he must provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. Every horse whose starting is obligatory is expected to run the course; except, however, that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable shall be weighed out, such horse or horses of single ownership shall be ridden past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting post, such parade to pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm-up, or go as they please to the post. The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, such jockey must remount at the point at which thrown. In the event the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be mounted by a substitute jockey.

Section 7. Lead Pony. When, by permission of the paddock judge, a horse is led to the post by a pony, such horse may be excused from parading with the other horses, but must enroute to the post, pass the stewards' stand. Lead ponies may be excluded from the saddling enclosure or walking ring at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started. If an accident happens to any jockey or his equipment, the started may grant a delay to permit the substitution of a jockey or repair of equipment. During such delay the starter may permit any jockey to dismount. Should a horse break through the gate or unseat its jockey after any of the field is loaded in the starting gate, and such horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate and reload such horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. No person other than the jockey or starter or assistant starter shall be permitted to strike a horse or attempt, by shouting or other fashion, to assist such horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the commission shall be used in starting all races on the flat except in cases permitted by the stewards. When a race is started without a starting gate, there shall be no start until, and no recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a door at the front of the starting gate should fail to open timely when the starter dispatches the field, or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing such horse to be left at the post, the starter immediately shall report such circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutuel tickets. After consulting with the starter and viewing the patrol films, or video tapes, the stewards then shall determine whether such horse was precluded from obtaining a fair start.

(2) If the stewards find such horse was precluded from obtaining a fair start, the stewards shall rule such a horse a

non-starter and shall order money wagered on such horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; provided, however, if such horse ruled a non-starter is part of a mutuel entry and another horse in such entry is not left at the post, there shall be no pari-mutuel refund.

(3) Stakes fees for such ruled non-starter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If such horse so stationed outside the starting gate by the starter dwells or refuses to break with the field, and thereby is left at the post, there shall be no refund of pari-mutuel wagers thereon nor refund of stakes fees paid therefor.

Section 11. *Horses Failing to Finish. Any horse which starts in a race, but does not cross the finish line, shall be declared unplaced. Any portion of the purse that would normally accrue to such horse shall revert to the association.* [Leaving course; Losing jockey. If a horse leaves the course during the running of a race, such horse must turn back and run the course from the point at which it left the course, or such horse shall be ruled unplaced. Any horse which starts in a race, but does not cross the finish line, or is not ridden across the finish line by the jockey with whom it starts the race, shall be declared unplaced. Any portion of a purse that would normally accrue to such horse shall revert to the association.]

Section 12. Fouls. A leading horse when clear is entitled to any part of the track. If a leading horse, or any other horse in a race, swerves or is ridden to either side so as to interfere with or intimidate or impede any other horse or jockey, or to cause same, it is a foul; if a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards, a foul alters the finish of a race, any offending horses may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged, and if in the opinion of the stewards, a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, such jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out. Every horse in every race must be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time; no horse shall be eased up without adequate cause even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of marked reversal of form of all horses and shall conduct inquiries of the licensed owner, licensed trainer; and all other persons connected with such horse suspected of unformful racing, and if the stewards find that such horse was deliberately restrained or impeded in any way by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Whips, Other Means of Altering Performance. Whips are to be used uniformly and the stewards shall take cognizance of unusual use or non-use of a whip by a jockey. No appliance, electrical or mechanical, other than the ordinary whip, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or non-use of ordinary racing equipment shall be consistent and any change thereof must be approved by the stewards.

Section 16. Official Order of Finish as to Pari-mutuel Payoff. In the event of foul riding, or other cause for disqualification of any horses in a race is brought to the attention of the stewards by the time the last jockey in a race has been weighted in, the stewards shall rule on the extent of disqualification, if any, and shall determine the placing of the horses in the official order of finish for purposes of pari-mutuel payoff. After the stewards have caused the "official" sign to be flashed on the infield result board, the order of finish so declared official shall be final, and no right of appeal thereof shall exist, insofar as the pari-mutuel payoff is concerned. Any subsequent change in the order of finish or award of purse money after the result of a race has been so declared official by the stewards shall in no way affect the pari-mutuel payoff.

WILLIAM B. STURGILL, Chairman
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PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:019. Disciplinary measures.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the disciplinary powers of the stewards and commission.

Section 1. Disciplinary Measures by Stewards. Upon the finding of a violation of these rules, or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or licensed person;

(2) Suspend the license of any person involved in such rule violation for any length of time deemed appropriate by the stewards as in keeping with the seriousness of the violation;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing, to be ex-

cluded or ejected from association grounds or any portion of association grounds; and

(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed *$1,000* [$250], which sum the licensee may, if he so chooses, pay to the commission in lieu of such imposed license suspension.

Section 2. Disciplinary Measures by Commission. Upon the finding of a violation of these rules, or an attempted violation, on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:

(1) Declare ineligible for racing or disqualify in a race any thoroughbred or licensed person;

(2) Deny, suspend, revoke, or declare void any license applied for or issued by the commission;

(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting or any person whose presence is found by the commission to be inconsistent with maintaining the honesty and intregity of the sport of thoroughbred racing, to be excluded or ejected from all association grounds or any portion of any association grounds for any length of time the commission may deem the presence of such person remains inconsistent with maintaining the honesty and integrity of the sport of thoroughbred racing in the Commonwealth;

(4) Upon appeal and hearing de novo of a matter determined by the stewards, the commission may reverse or revise such stewards' ruling in all respects; except as to findings of fact by the stewards as occurred during an incident to the running of a race and as to the extent of disqualification fixed by the stewards for a foul in a race; and

(5) In lieu of a license suspension or revocation, the commission may fix in the alternative a forfieture in any amount, which sum the licensee may, if he so chooses, pay to the commission in lieu of an imposed license suspension or revocation. Such forfeitures paid to the commission shall in no event in any way accrue to the personal benefit of any commissioner or stewards.

WILLIAM B. STURGILL, Chairman
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PUBLIC PROTECTION AND REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:020. Hearings, reviews and appeals.

RELATES TO: KRS 230.210 to 230.360
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation outlines the procedures and requirements relating to hearings, reviews, and appeals.

Section 1. *Stewards' Hearing.* (1) Before holding any stewards' hearing provided for under these rules, notice in writing must be given to any party charged with a violation other than a routine riding offense occurring in a race unless waived in writing by the person charged.

(2) The notice required by Section 2, subsection (1), of this regulation shall:

(a) Notify the party of the specific rule or rules, the infraction for which he is charged, and a brief statement of the facts supporting said charge.

(b) State the time and place of hearing.

(c) State that the party charged may be represented by legal counsel, or by a representative of any racing trade organization of which he is a member.

(3) All stewards' hearings shall be closed and the stewards shall cause no public announcement to be made concerning a matter under investigation until conclusion of the hearing, and the party charged has been notified of the decision.

(4) The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(5) All testimony of such hearings shall be given under oath, and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards will not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race.

(6) If, at the conclusion of said hearing the stewards shall find that a rule has been violated, they shall promptly issue a written ruling which sets forth the full name of every person charged with the rule violation, identification of such persons, if licensed, by license classification and address, the rule number and pertinent parts of the rule violated, the finding by the stewards as to the violation of such rule, and the penalty affixed by the stewards. Copies of such rulings shall be delivered to each party in interest, delivered to the commission, posted in the racing secretary's office, and forwarded to the office of the National Association of State Racing Commissioners.

(7) At least the state steward and one (1) association steward shall be present at all times at the hearing.

(8) Review and appeal. Any party who is the subject of any order or ruling of the stewards may apply to the commission for a review of such stewards' order or ruling other than as to extent of disqualification for a foul in a race or as to a finding of fact as occurred during an incident to the running of a race.

(9) Application for review. An application to the commission for review of a steward's order or ruling must be made within ten (10) days after such order or ruling is issued in writing, and shall:

(a) Be in writing and addressed to the commission secretary at the commission general office.

(b) Contain the signature of the applicant, and the address to which notices may be mailed to applicant.

(c) Set forth the order or ruling requested to be reviewed and the date thereof.

(d) Set forth the reasons for making such applications.

(e) Request a hearing.

Section 2. Commission Hearings. Before holding any commission hearing provided for under these rules, the commission shall:

(1) Give written notice forthwith to all parties personally or by mail. If indispensable and necessary parties propose a large class, notice shall be served upon a reasonable

number thereof as representatives of such class. Such notice shall include a statement of:

(a) Time and place of such hearing as designated by the commission and chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) Specific designation of the particular rules or statutes alleged to have been violated; and

(d) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices alleged to be in violation of the act or rules promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

(2) The right of any party to subpoena witnesses and documentary evidence through the commission, employing such rights of discovery and use of subpoenas as would be available under the Kentucky Rules of Civil Procedures, pretrial and trial procedures shall be governed by Kentucky Rules of Civil Procedures.

Section 3. Special Prosecutor. (1) The commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a rule violation if the matter involved a rule violation and requires a proceeding of an adversary nature; such prosecutor being one who has had no prior participation in the matter of any kind. The commission also may request that the Attorney General, or a member of his staff other than the special prosecutor, serve as law officer for the commission to assist the presiding officer in rendering decisions of a judicial nature. The special prosecutor shall have the services of the Kentucky State Police for investigatory purposes.

(2) The commission shall permit all parties that so desire to be represented by counsel; shall permit all parties to respond and present evidence and argument on all issues involved; and shall permit all parties to examine commission memoranda and data and all other information which is or has been considered by the commission in investigating and hearing the matter or which may be offered as evidence.

(3) The commission shall administer oaths and issue subpoenas upon its own motion or when requested by an appearing party. Each party shall pay the cost of its subpoenas and the expenses of its witnesses. When a subpoena is disobeyed, any party may apply to the Franklin Circuit Court for an order requiring obeyance; failure to comply with such order shall be cause for punishment as a contempt of the court under KRS 421.110.

(4) Unless varied by the commission, the order of proof in the de novo hearing may be:

(a) Evidence presented by the prosecution as to alleged violations of a rule;

(b) Cross examination of prosecution witnesses; re-direct examination;

(c) Evidence presented by a party charged, in defense or explanation;

(d) Cross examination of party charged, and his witnesses; re-direct examination;

(e) Rebuttal or other evidence, on behalf of the prosecution or any other party in interest as deemed pertinent by the presiding officer;

(f) Closing argument by party charged; and

(g) Closing argument by prosecution.

(5) The commission shall keep a record of each hearing which shall include:

(a) All pretrial and trial pleadings, motions, and interlocutory rulings;

(b) All evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof and rulings thereon;

(e) Proposed findings and exceptions;

(f) All commission memoranda or data submitted to the commission in connection with the commission's consideration of the case;

(g) All stenographic recordings taken and transcriptions made; oral proceedings, or any part thereof, shall be reported stenographically upon request of any party and shall be paid for by such parties desiring copies; and

(h) Final adjudication including findings of fact, based exclusively on evidence presented at the hearing and matters officially noticed, and any decision, opinion, and ruling by the commission on the matter.

(6) The commission may exclude evidence that is irrelevant, immaterial, or unduly repetitious and may admit evidence that would be inadmissible under the Rules of Civil Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(a) Objections to evidentiary offers may be made and shall be noted in the record; and

(b) All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

(7) The commission may take official notice of technical facts or customs or procedures common to racing, but all appearing parties to the hearing shall be duly notified. Appearing parties shall have an opportunity to contest facts so noticed, including commission memoranda or commission data.

(8) Members of the commission participating in the adjudication of a matter before it shall not, directly or indirectly:

(a) In connection with any issue of fact in the matter before the commission, consult with any person or party who was engaged in the investigation or prosecution of the matter before the commission, or conduct any personal investigation outside the record, without giving an opportunity for all appearing parties to participate.

(b) In connection with any issue at law, no party or representative shall be consulted without giving all parties an opportunity to participate.

(9) The commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order, or by default.

(10) Upon conclusion of the hearing, the commission shall take the matter under advisement, shall render a decision as promptly as possible, and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the full name of every person charged with a rule violation; identification of such person, if licensed, by license classification and address; the rule number and pertinent parts of the rule alleged to have been violated; a separate statement of findings of fact; a separate statement of conclusions of law; a separate statement of reasons for the decisions; and penalties fixed by the commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the racing secretary's office of the association where the matter arose, and forwarded to the office of the National Association of State Racing Commissioners.

Section 4. Appeal from Commission Order or Ruling.

Any person or licensee aggrieved by any order or decision of the commission may appeal same to the Franklin Circuit Court. Such appeal must be made within ten (10) days after the entry of such order of decision of the commission by posting and filing in the office of the Franklin Circuit Court Clerk:

(1) A bond to secure the costs of the action in a sum approved by the circuit clerk, said bond to be secured by corporate surety approved by the Department of Insurance.

(2) An attested copy of the order or decision appealed from.

(3) An attested copy of the transcript of evidence heard by the commission, the cost of such transcript of evidence heard by the commission, the cost of such transcript being borne by the appellant. Appeals from a commission order or decision shall be taken as provided in KRS 243.560 to 243.590.

Section 5. Suspensions Pending Appeal. *Any person alleged to have committed a violation under subsection (1) of this section may request a stay of imposition of the steward's sanction. Pending appeal, a hearing on such request for stay shall be held within forty-eight (48) hours, the stay shall be automatically granted. It shall be the policy of the commission to grant stays, unless:* [The commission may, for cause shown and provided that sufficient facts are presented by affidavit to warrant such action, lift a suspension until the final determination of the commission.]

(1) In any case where a licensee is alleged to have committed a flagrant violation of the prescribed rules and regulations of racing which presents a clear and present danger to the immediate integrity of racing; and

(2) Wherein it is impossible for the commission to secure necessary scientific evidence or indispensable witnesses within forty-eight (48) hours, then the commission or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial steward's determination of a violation.

Section 6. Continuances. (1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons therefor, and shall be filed with the commission after giving notice of such application by mail or otherwise to all parties or their attorney. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the commission, the party applying for the continuance shall substantiate the reasons contained in such application.

(2) When application is made for continuance of a cause because of the illness of an applicant, licensee, witness, or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(3) An application for continuance of any commission hearing must be received by the commission at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the commission within the ninety-six (96) hour period will not be granted unless a satisfactory arrangement in writing is made with the commission for the payment of all expenses resulting from such continuance. However, the commission may waive payment of such expenses for extenuating circumstances.

(4) If the commission approves the application for continuance, the commission forthwith shall set a date for the continued hearing.

Section 7. Commission Hearing Officer. *(1) Any hearing authorized or required by KRS 230.210 to 230.360 may be conducted by the commission, or may be conducted by a hearing officer appointed by the commission to serve in its place. Such a hearing shall be conducted in the name of the commission at any time or place designated by the chairman. The hearing officer may, in receiving evidence on behalf of the commission, make such evidence to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case. The commission may require the entire record to be certified to it for initial decision, and the hearing officer shall submit written findings of fact, conclusions of law and recommendations which shall be incorporated in and become a part of the record. In the absence of a requirement by the commission that a record be certified to it for initial decision, the hearing officer shall render a decision, and the absence of either an appeal to the commission, or a review upon motion of the commission, the hearing officer's decision shall become the decision of the commission.* [The commission may, by written order, designate counsel for the commission or any other qualified person designated by the commission as an officer to take testimony, conduct hearings, and submit findings to the commission.]

(2) A hearing officer may be a full-time employee, serve by contract, or be paid upon a per diem basis in the discretion of the commission.

Section 8. Disqualification of Commission Members and Hearing Officer. A commission member or hearing officer may at any time withdraw from the proceeding if he deems himself disqualified, and upon the filing in good faith before the termination of the hearing of an affidavit of personal bias or disqualification of any such member or hearing officer, the commission shall determine the matter as a part of the record and decision in the case. In the event of such withdrawal or disqualification, any other member of the commission, if there be such participating in the hearing, shall have the authority to complete the hearing and to participate in the decision. In cases where the hearing is conducted by the commission, members participating in the decision shall hear all the evidence, or shall read the evidence prior to making a decision thereon. At least *a majority of the* [three (3)] members of the commission must hear all the evidence or read the record before making a final decision.

WILLIAM B. STURGILL, Chairman
ADOPTED: October 11, 1983
RECEIVED BY LRC: October 14, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: James K. Navolio, Director, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

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

902 KAR 4:010. *Lay*-midwifery.

RELATES TO: KRS 211.090, 211.180
PURSUANT TO: KRS 13.082, 194.050, 211.090
NECESSITY AND FUNCTION: KRS 211.180 authorizes the *Cabinet* [Department] for Human Resources to regulate the practice of *lay*-midwifery in Ken-

tucky, including the issuance of permits and the supervision of persons who practice *lay*-midwifery. [This regulation distinguishes between the nurse-midwife and the lay-midwife and recognizes the advanced education, training and experience of the nurse-midwife and the increasing role of the nurse-midwife in the delivery of midwifery services in this state.] This regulation does not authorize the issuance of new permits to practice lay-midwifery. It does, however, authorize the renewal of existing permits to practice lay-midwifery provided a need for such services exists locally.

[Section 1. Practice of Nurse-Midwifery Defined. The practice or nurse-midwifery embodies the practice of professional nursing and the extension of that practice into the area of care and management of the essentially healthy woman and newborn during the childbearing processes.]

Section *1.* [2.] Practice of Lay-Midwifery Defined. The practice of lay-midwifery is defined as, and limited to, such assistance or offer of assistance as may be rendered by any person, other than a physician or nurse-midwife, to any woman in normal childbirth, without using any instrument or artificial, forcible or mechanical means and without performing or attempting to perform any version or removing or attempting to remove adherent placenta and without prescribing, using or advising the use of any drug except silver nitrate for the eyes of the newborn.

Section *2.* [3.] Practice of *Lay*-midwifery Without Permit Prohibited. No person shall engage or attempt to engage in the practice of *lay*-midwifery within the state, unless such person holds a valid and effective permit issued as herein provided.

[Section 4. Nurse-Midwife Permits. (1) Applications for permits to practice nurse-midwifery may be obtained from the Department for Human Resources, Bureau of Health Services, 275 East Main Street, Frankfort, Kentucky 40601.]

[(2) The Department for Human Resources may issue a nurse-midwife permit to any person who is:]

[(a) Licensed as a registered nurse in accordance with KRS Chapter 314;]

[(b) A graduate of a program in nurse-midwifery approved by the American College of Nurse Midwives and by the Department for Human Resources; and]

[(c) Nationally certified by the American College of Nurse Midwives to practice nurse-midwifery.]

Section *3.* [5.] Lay-Midwife Permits. New applications to practice lay-midwifery in the State of Kentucky shall not be accepted after *April 9, 1975* [the effective date of this regulation]. Provided, however, that persons who have actively engaged in the practice of lay-midwifery in this state for a period of one (1) year prior to *April 9, 1975* [the effective date of this regulation] and who hold a valid and effective permit issued by the former Department of Health may, upon furnishing proof thereof, be entitled to renewal of their existing permit upon recommendation of the local board of health certifying a need for such services.

[Section 6. Nurse-Midwife Practice Standards. All nurse-midwives shall comply with the following practice standards and requirements. In such practice, the nurse-midwife shall:]

[(1) Render service to the mother and baby throughout the maternity cycle in such a way as to make a maximum contribution to their safety, health and welfare, including the control and prevention of complicating conditions and enhancing the childbearing experience;]

[(2) Attempt to maintain the integrity of the mother and her family and encourage their participation in plans for her maternity care;]

[(3) Not work as an independent practitioner but function within the boundaries of her professional competencies within the framework of medically approved protocols;]

[(4) Work in collaboration with the physician and other health professionals;]

[(5) Perform nurse-midwifery services only under terms or conditions which permit the exercise of nurse-midwifery judgment and skill and encourage a high quality of nurse-midwifery care;]

[(6) Strive continually to improve knowledge and skills and to make available to patients and co-workers the benefits of professional attainments;]

[(7) Understand, utilize and encourage the contributions of other professional disciplines and community resources to maternity care; and]

[(8) Demonstrate interest in and accept responsibility for participating in activities designed to improve the health and well-being of the family and the community.]

Section *4.* [7.] Lay-Midwife Practice Standards. Lay-midwives shall be under the supervision of the local board of health and shall comply with the following practice standards and requirements. In such practice, the lay-midwife shall:

(1) Refer expectant mothers to a physician or to the local health department for a prenatal examination and blood test;

(2) Report all expected deliveries to the local health department;

(3) Neither give nor prescribe drugs of any kind except silver nitrate for the eyes of the newborn;

(4) Not use instruments of any kind, nor assist labor by artificial, forcible or mechanical means, nor insert hands or fingers into the birth canal or rectum; and

(5) Call a physician if:

(a) The mother has convulsions or other complications;

(b) There is any abnormal bleeding;

(c) The baby shows a presenting other than the head or is not born after twenty (20) hours of active labor in the primpara or ten (10) hours in the multipara; or

(d) There is any other evidence of abnormality.

Section *5.* [8.] Permit Renewals. [(1) Nurse-midwife permits issued under this regulation shall expire on December 31 of each year, but may on proper application be renewed provided the applicant is in full compliance with the provisions of this regulation.]

[(2)] Lay-midwife permits issued under this regulation shall expire on December 31 of each year, but maybe renewed upon recommendation of the local health department where the midwife practices and upon certification of the local health department that a need for such services exists.

Section *6.* [9.] Denial, Revocation or Suspension of Permit. The *Cabinet* [Department] for Human Resources may deny, revoke, probate, suspend or refuse to renew the permit of any *lay*-midwife who has:

[(1) Had license as a registered nurse revoked (if a nurse-midwife);]

(1) [(2)] Been convicted of a felony involving moral turpitude;

(2) [(3)] Become habiually intemperate or is addicted to the use of habit-forming drugs;

(3) [(4)] Knowingly made or caused to be made or abetted in the making of any false statement in procuring or attempting to procure a permit or in the making of a birth or death certificate;

(4) [(5)] Developed such physical or mental disabilities that continued practice would be dangerous to the public or patients;

(5) [(6)] Engaged in dishonorable, unprofessional conduct of a character likely to deceive or defraud the public; or

(6) [(7)] Violated any of the provisions of this regulation or any other regulation of the *Cabinet* [Department] for Human Resources relating to the practice of midwifery.

DAVID T. ALLEN, Commissioner
ADOPTED: October 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 14, 1983 at 2 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 1:150. Payments for alternative home and community based services for the mentally retarded.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet 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, 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 payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS/MR) for services rendered to eligible medical assistance recipients who meet patient status criteria for intermediate care for the mentally retarded, and who are authorized for the AIS/MR service by the cabinet. The covered service elements are described and defined in 904 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be provided in accordance with the terms and conditions described therein. [Payments may not exceed the limits specified in Section 3 of this regulation.]

Section 2. Payment Amounts. (1) Residential services, including residential (home) training, personal care, and homemaker/home health aide, shall be paid for at the rate of forty dollars ($40) per day.

(2) Case management services shall be paid for at the rate of forty dollars ($40) per hour.

(3) Habilitation services shall be paid for at the rate of forty dollars ($40) per hour; *however, medical services and/or items (e.g., dentures, eyeglasses, hearing aids, etc.) prescribed for a recipient by an appropriate specialist as necessary to the client's habilitation but not otherwise covered by the medical assistance program shall be paid for on the basis of reasonable cost.*

(4) Adult day habilitation services shall be paid for at the rate of five dollars ($5) per hour.

(5) In-home support services shall be paid for at the following rates:

(a) In-home training services shall be paid for at the rate of forty dollars ($40) per hour.

(b) Homemaker/home health aide support services shall be paid for at the rate of twenty dollars ($20) per hour.

(c) Personal care services shall be paid for at the rate of twenty dollars ($20) per hour.

(6) Respite care (twenty-four (24) hours or more) shall be paid for at the rate of thirty-two dollars ($32) per day. Respite care (less than twenty-four (24) hours) shall be paid for at the rate of three dollars and fifty cents ($3.50) per hour, with the total not to exceed the upper limit of thirty-two dollars ($32) for one (1) full day of care.

[Section 3. Payment limits. (1) Payments shall be made on the above stated rate basis not to exceed the AIS/MR cluster annualized upper limit on payment.]

[(2) Under this system, an AIS/MR cluster will receive a total of Title XIX payments during the year in the amount of the established rates for services rendered Title XIX eligible recipients, so long as such payments (on a cumulative basis) do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster will also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.]

[(3) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet will set effective July 1 each year the annualized upper limits and averages to be applied to the AIS/MR cluster services from July 1 to June 30 each year.]

[(4) The cabinet may reduce payment by the percentage amount which will assure that the payments to the cluster do not exceed the annualized upper limit or average expenditures. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure as even flow of reimbursement to the AIS/MR cluster through the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.]

[(5) Any overpayment due the program at the end of the period as a result of exceeding the upper limit shall be recouped by settlement or by withholding payment.]

[Section 4. Implementation. Payments may be made for covered services provided beginning on April 1, 1983.]

JOHN CUBINE, Commissioner
ADOPTED: October 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 14, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 904 KAR 1:011 and 904 KAR 1:004 *(except as otherwise specified herein)* who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) The upper limit for resources is $1,500 for an individual and $2,250 for a couple.

(2) Income producing property with a net equity of $6,000 or less is excluded.

(3) The first $4,500 of equity value in an automobile is excluded; if used for employment, to obtain medical services, or if specially equipped (e.g., as for use by the handicapped) there is no upper limit on value.

(4) Burial reserves (life insurance, prepaid burial policy, etc.) up to $1,500 are excluded. The face value of life insurance is considered when determining the total value of burial reserves.

(5) A homestead, household items, and personal items are excluded.

(6) Resources determined in accordance with subsections (2), (3), and (4) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section *4.* [3.] Income Considerations. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse and/or minor dependent children in the amount of one-half (½) of the SSI standard for an individual for each person adjusted by deduction of sixty-five dollars ($65) and one-half (½) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five dollars ($65) and one-half (½) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section *5.* [4.] Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section *4* [3] of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: [not less than $456, effective 7/1/82;] not less than $466, effective 7/1/83; *not less than $476, effective 1/1/84;*

(b) Family care home: [not less than $369, effective 7/1/82;] not less than $379, effective 7/1/83; *not less than $389, effective 1/1/84;*

(c) Caretaker:

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): [not less than $323, effective 7/1/82;] not less than $333, effective 7/1/83; *not less than $343, effective 1/1/84;*

2. Married couple, both eligible (aged, blind, or disabl-

ed), with one (1) requiring care: [not less than $465, effective 7/1/82;] not less than $480, effective 7/1/83; *not less than $496, effective 1/1/84;*

3. Married couple, both eligible and both requiring care: [not less than $503, effective 7/1/82;] not less than $518, effective 7/1/83; *not less than $534, effective 1/1/84.*

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (½) of the deficit is payable to each.

Section *6.* [5.] Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section *7.* [6.] Residency. (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section *6* [5] of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be pre-authorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any non-institutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any non-institutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Notwithstanding subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through June 23, 1983, even if he does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he returns to this

state and he has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

Section 8. Implementation. The provisions of this regulation, as amended, will be effective on February 1, 1984, applicable at the time of the next reinvestigation for each recipient, except as otherwise specified.

JOHN CUBINE, Commissioner
ADOPTED: October 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 14, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

905 KAR 1:140. Foster care, adoption assistance.

RELATES TO: KRS 199.467
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: This regulation is required by P.L. 96-272, Adoption Assistance and Child Welfare Act of 1980. It serves to set forth the maximum number of children in foster care who can remain in care for more than twenty-four (24) months and the steps which will be taken to achieve such goal.

Section 1. Definitions. (1) "Child-care institution" means an institution caring for no more than twenty-five (25) children that is licensed by the Cabinet for Human Resources.

(2) "Foster care" means care of a child in a foster family home or child-care institution.

(3) "Foster family home" means a home which is approved by the Cabinet for Human Resources.

Section 2. Children in Care. During the federal fiscal year beginning October 1, 1984 [3] *and succeeding fiscal years,* the maximum number of children who will receive foster care in excess of twenty-four (24) months is *1,125* [1,250].

Section 3. Goal Achievement. Activities directed at the achievement of this goal may include but not be limited to supportive services to the child and his family to prevent or eliminate the need for removal of the child, attempting to place the child in close proximity to the family and in the least restrictive setting, implementing case plan and a case review procedure that periodically assess the appropriateness of the child's placement and re-evaluate the services provided to assist the child and his family, providing supportive services to the family to make it possible for the child to return home, and at the end of six (6) months in foster care to formulate a permanent plan for the child.

JOSEPH E. SMITH, Acting Commissioner
ADOPTED: September 27, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 12, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Joseph E. Smith, Acting Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

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

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

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

Section 3. Room and Board. Social Services Block Grant funds are not available for the provision of room and board unless it is an integral but subordinate part of a service authorized in Kentucky's Title XX plan. Room and board is deemed to be integral but subordinate if it is minor but essential to the social service of which it is a part and is necessary to achieve the objective of that service. However, in no instance shall room and board be provided for a period in excess of *twelve (12)* [six (6)] consecutive months for any one (1) placement.

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

JOSEPH E. SMITH, Acting Commissioner
ADOPTED: September 27, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 12, 1983 at 11 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Joseph E. Smith, Acting Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

FINANCE AND ADMINISTRATION CABINET
Board of Medical Licensure

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.

RELATES TO: KRS 311.530 to 311.620
PURSUANT TO: KRS 13.082
NECESSITY AND FUNCTION: KRS 311.597 empowers the State Board of Medical Licensure to determine those acts that shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof by a licensee. In accordance therewith, the purpose of this regulation is to regulate and control the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. A physician shall not prescribe, order, dispense, administer, supply, sell or give any amphetamine or amphetamine-like anorectic controlled substance designated as Schedule II pursuant to KRS 218A.070 or by duly promulgated regulation without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or distribute to others and the presence of an illicit market for the drug. The patient's record and the prescription order shall indicate the specific diagnosis/purpose for which the drug is being given. Such diagnosis/purpose shall be restricted to:
(1) The treatment of narcolepsy;
(2) The treatment of hyperkinesis;
(3) The treatment of drug-induced brain dysfunction;
(4) The treatment of epilepsy;
(5) The differential diagnostic psychiatric evaluation of depression;
(6) The treatment of depression shown to be refractory to other therapeutic modalities; and
(7) The clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefore shall have been submitted to, reviewed and approved by the board before such investigation has begun.

Section 2. Amphetamine means all Schedule II controlled substances in this group, including but not limited to dextroamphetamine and methamphetamine. Amphetamine-like means all Schedule II controlled substances with pharmacologic activity similar to the prototype drugs of the amphetamine class, including but not limited to phenmetrazine and methylphenidate.

Section 3. Amphetamine and amphetamine-like controlled substances shall not be prescribed, ordered, dispensed, administered, supplied, sold or given except as provided in this regulation. A departure from this regulation shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof.

Section 4. For legitimate medical purposes, a physician may apply in writing for a written waiver of any of these requirements. The board may issue such waivers with terms and conditions it deems appropriate.

JOHN C. QUERTERMOUS, President
ADOPTED: September 22, 1983
RECEIVED BY LRC: September 30, 1983 at 1 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: C. William Schmidt, Assistant Secretary, Kentucky State Board of Medical Licensure, 3532 Ephraim McDowell Drive, Louisville, Kentucky 40205.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 50:041. Good engineering practice stack height.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation specifies good engineering practice stack heights used in establishing emissions limitations.

Section 1. Applicability. The provisions of this regulation shall apply to all stacks and all dispersion techniques commenced on or after the classification date defined below except as provided for in Section 6 of this regulation.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.
(1) "Emission limitation" and "emission standard" mean requirements established by the department or U.S. EPA which limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
(2) "Stack" means any point in a source designed to emit air pollutants into the atmosphere, including a pipe or duct but not including flares.
(3) "A stack in existence" means that the owner or operator had:
(a) Begun, or caused to begin, a continuous program of physical on-site construction of a stack; or
(b) Entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of a stack to be completed in a reasonable time.
(4) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the

ambient air by using that portion of a stack which exceeds good engineering practice stack height, varying the rate of emission of a pollutant according to atmosphere conditions or ambient concentrations of that pollutant, or by addition of a fan or reheater to obtain a less stringent emission limitation but does not include:

(a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(b) The use of smoke management in agricultural or silvicultural programs; or

(c) Combining the exhaust gases from several stacks into one (1) stack.

(5) "Good engineering practice (GEP) stack height" means the greater of:

(a) Sixty-five (65) meters;

(b) 1. For stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under the regulations of the Division of Air Pollution, $H_g = 2.5H$.

2. For all other stacks,

$$H_g = H + 1.5L$$

Where:

H_g = GEP stack height measured from the ground-level elevation at the base of the stack.

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

L = lesser dimension (height or projected width) of nearby structure(s); or

(c) 1. The height demonstrated by a fluid model or a field study approved by the department, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain obstacles.

2. The fluid model study shall be conducted in accordance with guidelines published by U.S. EPA in "Guideline for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height," July 1981, U.S. EPA Office of Air Quality Planning and Standards, EPA-450/4-81-003; and "Guideline for Fluid Modeling of Atmospheric Diffusion," April 1981, U.S. EPA Environmental Science Research Laboratory, EPA 600/8-81-009, filed by reference in 401 KAR 50:015.

(6) "Nearby" means that distance up to five (5) times the lesser of the height or the width dimension of a structure but not greater than 0.8 km (one-half (½) mile). The height of the structure is measured from the ground-level elevation at the base of the stack.

(7) "Excessive concentrations" means a maximum concentration due to downwash wakes, or eddy effects produced by structures or terrain features which is at least forty (40) percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(8) "Plume impaction" means concentrations measured or predicted to occur when the plume interacts with elevated terrain.

(9) "Elevated terrain" means terrain which exceeds the elevation of the GEP stack as calculated under subsection (5) of this section.

(10) "Classification date" means December 31, 1970.

Section 3. Emissions Limitation. No stack height in excess of GEP height, nor any other dispersion techniques, shall be used to determine the emission limitations required for control of any air pollutant regulated by the department.

Section 4. Adjustment of Stack Height. (1) The GEP stack height as determined in Section 2(5) of this regulation may be adjusted by the department if the source demonstrates that for such GEP height, plume impaction on surrounding terrain results in violation of national ambient air quality standards (NAAQS) or the applicable prevention of significant deterioration (PSD) increments. The adjusted GEP stack height when plume impaction occurs shall be established as follows:

(a) The source, complying with the requirements of 401 KAR 50:040, shall model its air quality impact using the GEP height determined in Section 2(5) of this regulation and assuming that the terrain feature(s) causing impaction is no taller than this GEP height. Using the appropriate maximum concentration determined from this modeling, the maximum allowable emission limitation shall be determined.

(b) The source shall be remodeled using the maximum allowable emission limitation determined in paragraph (a) of this subsection and the actual physical terrain elevations to determine the stack height that would result in a maximum concentration on the actual terrain equal to the maximum concentration determined in paragraph (a) of this subsection. This increased stack height is the source's maximum GEP height to avoid high concentrations due to impaction.

(2) This regulation does not in any manner restrict the actual physical stack height of any source.

Section 5. Public Notice. Before submitting to U.S. EPA a new or revised emission limitation that is based on GEP stack height that exceeds the stack height allowed by Section 2(5)(a) or (b) of this regulation, the department shall notify the public of the availability of the demonstration study and shall provide opportunity for public hearing on it.

Section 6. Exemptions. The provisions of this regulation shall not apply to coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

JACKIE SWIGART, Secretary

Adopted: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.

See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:042. New asphalt processing and asphalt roofing manufacturing plants.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires

the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new asphalt processing and asphalt roofing manufacturing plants.

Section 1. Applicability. The provisions of this regulation shall apply to the following affected facilities commenced on or after the classification dates defined below: each saturator and each mineral handling and storage facility at asphalt roofing plants, and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants.

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Afterburner" means an exhaust gas incinerator used to control emissions of particulate matter.

(2) "Asphalt processing" means the storage and blowing of asphalt.

(3) "Asphalt processing plant" means a plant which blows asphalt for use in the manufacture of asphalt products.

(4) "Asphalt roofing plant" means a plant which produces any of the following asphalt roofing products: shingles, roll roofing, siding, or saturated felt.

(5) "Asphalt storage tank" means any tank used to store asphalt at asphalt roofing plants, petroleum refineries, and asphalt processing plants. Storage tanks containing cutback asphalts and emulsified asphalts are not subject to this regulation.

(6) "Blowing still" means the equipment in which air is blown through asphalt flux to change the softening point and penetration rate.

(7) "Catalyst"means a substance which, when added to asphalt flux in a blowing still, alters the penetrating-softening point relationship or increases the rate of oxidation of the flux.

(8) "Coating blow" means the process in which air is blown through hot asphalt flux to produce coating asphalt. The coating blow starts when the air is turned on and stops when the air is turned off.

(9) "Cutback asphalts" means asphalts diluted with solvents to reduce viscosity for low temperature applications.

(10) "Electrostatic precipitator" means an air pollution control device in which solid or liquid particulates in a gas stream are charged as they pass through an electric field and precipitated onto a collection surface.

(11) "Emulsified asphalts" means asphalts dispersed in water with an emulsifying agent.

(12) "High velocity air filter" means an air pollution control filtration device for the removal of sticky, oily, or liquid aerosol particulate matter from exhaust gas streams.

(13) "Mineral handling and storage facility" means the areas in asphalt roofing plants in which minerals are unloaded from a carrier, the conveyor transfer points between the carrier and the storage silos, and the storage silos.

(14) "Saturator" means the equipment in which asphalt is applied to felt to make asphalt roofing products. The term saturator includes the saturator, wet looper, and coater.

(15) "Classification date" means:

(a) November 19, 1980, for any saturator or mineral handling storage facility at asphalt roofing plants; and any asphalt storage tank or blowing still that processes or stores asphalt used for roofing only or for roofing and other purposes at asphalt processing plants, petroleum refineries, and asphalt roofing plants.

(b) May 27, 1981, for any storage tank or blowing still that processes or stores only nonroofing asphalts at asphalt processing plants, petroleum refineries, and asphalt roofing plants.

Section 3. Standards for Particulate Matter. (1) On and after the date on which the performance test required to be conducted by 401 KAR 59:005 is completed, no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any saturator:

(a) Particulate matter in excess of:

1. 0.04 kilograms of particulate per megagram (0.08 lb/ton) of asphalt shingle or mineral-surfaced roll roofing produced; or

2. 0.4 kilograms per megagram (0.8 lb/ton) of saturated felt or smooth-surfaced roll roofing produced;

(b) Exhaust gases with opacity greater than twenty (20) percent; and

(c) Any visible emissions from a saturator capture system for more than twenty (20) percent of any period of consecutive valid observations totaling sixty (60) minutes. Saturators constructed before November 19, 1980, which have not been reconstructed since that date and which become subject to this regulation through modification are exempt from the visible emissions standards.

(2) On and after the date on which the performance test required to be conducted by 401 KAR 59:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any blowing still:

(a) Particulate matter in excess of 0.67 kilograms of particulate per megagram (1.34 lb/ton) of asphalt charged to the still when a catalyst is added to the still;

(b) Particulate matter in excess of 0.71 kilograms of particulate per megagram (1.42 lb/ton) of asphalt charged to a still equipped with an afterburner when a catalyst is added to the still and when Number 6 fuel oil is fired in the afterburner;

(c) Particulate matter in excess of 0.60 kilograms of particulate per megagram (1.20 lb/ton) of asphalt charged to the still during blowing without a catalyst;

(d) Particulate matter in excess of 0.64 kilograms of particulate per megagram (1.28 lb/ton) of asphalt charged to a still equipped with an afterburner during blowing without a catalyst and when Number 6 fuel oil is fired in the afterburner; and

(e) Exhaust gases with an opacity greater than zero percent.

(f) If fuel oil is used to fire an afterburner that controls a blowing still, the owner or operator may petition the department in accordance with 401 KAR 50:055, Section 2(6), to establish an alternate opacity standard for the blowing still that will be applicable only during use of such fuel oil.

(3) Within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated but not later than 180 days after initial startup of such facility, no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any asphalt storage tank exhaust gases with opacity greater than zero percent, except for one (1) consecutive fifteen (15) minute period in any twenty-four (24) hour period when the transfer lines

are being blown for clearing. During the period of time when the transfer lines are being blown the storage tank control device shall not be bypassed.

(4) Within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, no owner or operator of an affected facility subject to the provisions of this regulation shall cause to be discharged into the atmosphere from any mineral handling and storage facility emissions with opacity greater than one (1) percent.

Section 4. Monitoring of Operations. (1) The owner or operator of an affected facility subject to the provisions of this regulation which uses either an electrostatic precipitator or a high velocity air filter to meet the emissions limit in Section 3(1)(a) or (2)(a) of this regulation shall continuously monitor and record the temperature of the gas at the inlet of the control device. The temperature monitoring instrument shall have an accuracy of ± fifteen (15) degrees Celsius over its range.

(2) The owner or operator of an affected facility subject to the provisions of this regulation which uses an afterburner to meet the emission limit in Section 3(1)(a) or (2)(a) of this regulation shall continuously monitor and record the temperature in the combustion zone of the afterburner. The monitoring instrument shall have an accuracy of ± ten (10) degrees Celsius over its range.

(3) An owner or operator of an affected facility subject to the provisions of this regulation which uses a control device not subject to subsection (1) or (2) of this section shall provide to the department information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The department may require continuous monitoring and will determine the process parameters to be monitored.

(4) Each owner or operator of an affected facility subject to the provisions of this regulation is exempt from the requirements of 401 KAR 59:005, Section 3(3).

Section 5. Test Methods and Procedures. (1) The reference methods in Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as provided for in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed in Section 3 of this regulation as follows:

(a) Method 5A for the concentration of particulate matter;

(b) Method 1 for sample and velocity traverses;

(c) Method 2 for velocity and volumetric flow rate;

(d) Method 3 for gas analysis; and

(e) Method 9 for opacity, except as provided in subsection (2) of this section.

(2) The department will determine compliance with the standards prescribed in Section 3(1)(c) of this regulation by using Method 22, modified so that readings are recorded every fifteen (15) seconds for a period of consecutive observations during representative conditions totaling sixty (60) minutes. A performance test shall consist of one (1) run.

(3) For Method 5A the sampling time for each run on a saturator shall be at least 120 minutes, and the sampling volume shall be at least three (3) dscm. Method 5A shall be used to measure the emissions from the saturator while 106.6 kg (235 lb) asphalt shingle is being produced if the final product is shingle or mineral-surfaced roll roofing or while 6.8 kg (fifteen (15) lb) saturated felt is being produced if the final product is saturated felt or smooth-surfaced roll roofing. If the saturator produces only fiberglass shingles, Method 5A shall be used to measure saturator emissions while a nominal 100 kg (220 lb) shingle is being produced. Method 5A shall be used to measure emissions from the blowing still for at least ninety (90) minutes or for the duration of the blow, whichever is greater.

(4) The particulate emission rate, E, shall be computed as follows:

$$E = Q_{sd}XC_s$$

Where:

E = particulate emission rate (kg/h);
Q_{sd} = average volumetric flow rate (dscm/h) as determined by Method 2; and
C_s = Average concentration (kg/dscm) of particulate matter as determined by Method 5A.

(5) The asphalt roofing production rate, P (Mg/h), shall be determined by dividing the weight in megagrams (Mg) of roofing produced on the shingle or saturated felt process lines during the performance test by the number of hours required to conduct the performance test. The roofing production shall be obtained by direct measurement.

(6) The production rate of asphalt from the blowing still, P_s (Mg/h), shall be determined by dividing the weight of asphalt charged to the still by the time required for the performance test during an asphalt blow. The weight of asphalt charged to the still shall be determined at the starting temperature of the blow. The weight of asphalt shall be converted from the volume measurement as follows:

$$M = Vd/C$$

Where:

M = weight of asphalt in megagrams;
V = volume of asphalt in cubic meters;
d = density of asphalt in kilograms per cubic meter; and
C = conversion factor: 1,000 kilograms per megagram.

The density, d, of asphalt at any measured temperature, T, in degrees Celsuis, is calculated by using the following equation:

$$d = 1056.1 - 0.6176T$$

The method of measurement shall have an accuracy of ± ten (10) percent.

(7) The saturator and blowing still emission rates shall be computed as follows:

$$R = E/P \text{ and } R_S = E/P_S, \text{ respectively,}$$

Where:

R = saturator emission rate (kg/Mg);
R_s = blowing still emission rate (kg/Mg);

E = particulate emission rate (kg/h) from subsection (4) of this section;
P = asphalt roofing production rate (Mg/h); and
P_s = asphalt charging rate (Mg/h).

(8) Temperature shall be measured and continuously recorded with the monitor required under Section 4(1) or (2) of this regulation during the measurement of particulate matter by Method 5A and reported to the department with the performance test results.

(9) If at a later date the owner or operator believes the emission limits in Section 3(1) and (2) of this regulation are being met even though the temperature measured in accordance with Section 4(1) of this regulation is exceeding that measured during the performance test, he may submit a written request to the department to repeat the performance test and procedure outlined in subsection (7) of this section.

JACKIE SWIGART, Secretary
ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.
See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:265. New phosphate rock plants.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new phosphate rock plants.

Section 1. Applicability. The provisions of this regulation shall apply to the following affected facilities commenced on or after the classification date defined below, used in phosphate rock plants which have a maximum plant production capacity greater than 3.6 megagrams per hour (four (4) tons/hr.): Dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Phosphate rock plant" means any plant which produces or prepares phosphate rock product by any or all of the following processes: Mining, beneficiation, crushing, screening, cleaning, drying, calcining, and grinding.

(2) "Phosphate rock feed" means all material entering the process unit including moisture and extraneous materials as well as the following ore minerals: Fluorapatite, hydrooxylapatite, chlorapatite, and carbonateapatite.

(3) "Dryer" means a unit in which the moisture content of phosphate rock is reduced by contact with a heated gas strain.

(4) "Calciner" means a unit in which the moisture and organic matter of phosphate rock is reduced within a combustion chamber.

(5) "Grinder" means a unit which is used to pulverize dry phosphate rock to the final product size used in the manufacture of phosphate fertilizer and does not include crushing devices used in mining.

(6) "Ground phosphate rock handling and storage system" means a system which is used for the conveyance and storage of ground phosphate rock from grinders at phosphate rock plants.

(7) "Beneficiation" means the process of washing the rock to remove impurities or to separate size fractions.

(8) "Classification date" means September 22, 1979.

Section 3. Standard for Particulate Matter. On and after the date on which the performance test required to be conducted by 401 KAR 59:005, Section 2, is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere:

(1) From any phosphate rock dryer any gases which:

(a) Contain particulate matter in excess of 0.030 kilograms per megagram of phosphate rock feed (0.06 lb/ton); or

(b) Exhibit greater than ten (10) percent opacity.

(2) From any phosphate rock calciner processing unbeneficiated rock or blends of beneficiated and unbeneficiated rock, any gases which:

(a) Contain particulate matter in excess of 0.12 kilograms per megagram of phosphate rock feed (0.23 lb/ton); or

(b) Exhibit greater than ten (10) percent opacity.

(3) From any phosphate rock calciner processing beneficiated rock any gases which:

(a) Contain particulate matter in excess of 0.055 kilograms per megagram of phosphate rock feed (0.11 lb/ton); or

(b) Exhibit greater than ten (10) percent opacity.

(4) From any phosphate rock grinder any gases which:

(a) Contain particulate matter in excess of 0.006 kilograms per megagram of phosphate rock feed (0.012 lb/ton); or

(b) Exhibit greater than zero percent opacity.

(5) From any ground phosphate rock handling and storage system any gases which exhibit greater than zero percent opacity.

Section 4. Emission Monitoring. (1) Any owner or operator subject to the provisions of this regulation shall install, calibrate, maintain, and operate a continuous monitoring system, except as provided under subsections (2) and (3) of this section, to monitor and record the opacity of gases discharged into the atmosphere from any phosphate rock dryer, calciner, or grinder. The span of this system shall be set at forty (40) percent opacity.

(2) For ground phosphate rock storage and handling systems, continuous monitoring systems for measuring opacity are not required.

(3) The owner or operator of any affected phosphate rock facility using a wet scrubbing emission control device shall not be subject to the requirements in subsection (1) of this section, but shall install, calibrate, maintain and operate the following continuous monitoring devices:

(a) A monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ± 250 pascals (± one (1) inch water) gauge pressure.

(b) A monitoring device for the continuous measurement of the scrubbing liquid supply pressure to the control device. The monitoring device must be accurate within ± five (5) percent of design scrubbing liquid supply pressure.

(4) For the purpose of conducting a performance test under 401 KAR 59:005, the owner or operator of any phosphate rock plant subject to the provisions of this regulation shall install, calibrate, maintain and operate a device for measuring the phosphate rock feed to any affected dryer, calciner, or grinder. The measuring device used must be accurate to within ± five (5) percent of the mass rate over its operating range.

(5) For the purpose of reports required under 401 KAR 59:005, Section 3, periods of excess emissions that shall be reported are defined as all six (6) minute periods during which the average opacity of the plume from any phosphate rock dryer, calciner, or grinder subject to subsection (1) of this section exceeds the applicable opacity limit.

(6) Any owner or operator subject to the requirements of subsection (3) of this section shall report for each calendar quarter all measurement results that are less than ninety (90) percent of the average levels maintained during the most recent performance test conducted under 401 KAR 59:005, Section 2, in which the affected facility demonstrated compliance with the standard under Section 3 of this regulation.

Section 5. Test Methods and Procedures. (1) Reference methods in Appendix A of 40 CFR 60 except as provided in 401 KAR 50:045, Section 3(2), shall be used to determine compliance with the standards as prescribed in Section 3 of this regulation as follows (reference methods are filed by reference in 401 KAR 50:015):

(a) Method 5 for the measurement of particulate matter and associated moisture content;

(b) Method 1 for sample and velocity traverses;

(c) Method 2 for velocity and volumetric flow rates;

(d) Method 3 for gas analysis; and

(e) Method 9 for the measurement of the opacity of emissions.

(2) For Method 5, the sampling time for each run shall be at least sixty (60) minutes and the minimum sample volume shall be at least 0.84 dscm (thirty (30) dscf). However, shorter sampling times and smaller sample volumes, when necessitated by process variable or other factors, may be approved by the department.

(3) For each run the average phosphate rock feed rate in megagrams per hour shall be determined using a device meeting the requirements of Section 4(4) of this regulation.

(4) For each run, emissions expressed in kilograms per megagram of phosphate rock feed shall be determined using the following equation:

$$E = \frac{(C_s Q_s) 10^{-6}}{M}$$

Where:

E = Emissions of particulates in kg/Mg of phosphate rock feed.

C_S = Concentration of particulates in mg/dscm as measured by Method 5.

Q_S = Volumetric flow rate in dscm/hr as determined by Method 2.

10^{-6} = Conversion factor for milligrams to kilograms.

M = Average phosphate rock feed rate in Mg/hr.

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983

RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.

See public hearings scheduled on page 515.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Air Pollution

401 KAR 59:270. New lead-acid battery manufacturing plants.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation is to provide standards of performance for new lead-acid battery manufacturing plants.

Section 1. Applicability. The provisions of this regulation shall apply to affected facilities at any lead-acid battery manufacturing plant, commenced on or after the classification date defined below, which has the design capacity to produce in one (1) day (twenty-four (24) hours) batteries containing, in total, an amount of lead equal to or greater than 5.9 Mg (6.5 tons).

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means any of the following: grid casting, paste mixing, three (3) process operation, lead oxide manufacturing, lead reclamation, or any other lead-emitting operation.

(2) "Grid casting facility" means all lead melting pots and machines used for casting the grid used in battery manufacturing.

(3) "Lead-acid battery manufacturing plant" means any plant that produces a storage battery using lead and lead compounds for the plates and sulfuric acid for the electrolyte.

(4) "Lead oxide manufacturing facility" means those processes associated with the production of lead oxide from lead, including product recovery.

(5) "Lead reclamation facility" means those processes associated with remelting lead scrap and casting it into lead ingots for use in the battery manufacturing process, and which is not a furnace subject to 401 KAR 59:055.

(6) "Other lead-emitting operation" means any lead-acid battery manufacturing plant operation from which lead emissions are collected and ducted to the atmosphere and which is not part of a grid casting, lead oxide manufacturing, lead reclamation, paste mixing, or three (3) process operation facility, or a furnace subject to 401 KAR 59:055.

(7) "Paste mixing facility" means lead oxide storage, conveying, weighing, metering, and charging operations; paste blending, handling, and cooling operations; and plate pasting, takeoff, cooling, and drying operations.

(8) "Three (3) process operation facility" means those processes involved with plate stacking, burning or strap casting, and assembly of elements into the battery case.

(9) "Classification date" means January 15, 1980.

Section 3. Standards for Lead. (1) On and after the date on which the performance test required to be conducted by 401 KAR 59:005 is completed, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere:

(a) From any grid casting facility any gases that contain

lead in excess of 0.40 milligram of lead per dry standard cubic meter of exhaust (0.000176 gr/dscf).

(b) From any paste mixing facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(c) From any three (3) process operation facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(d) From any lead oxide manufacturing facility any gases that contain in excess of 5.0 milligrams of lead per kilogram of lead feed (0.010 lb/ton).

(e) From any lead reclamation facility any gases that contain in excess of 4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00198 gr/dscf).

(f) From any other lead-emitting operation any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf).

(g) From any affected facility subject to this regulation other than a lead reclamation facility, any gases with greater than zero percent opacity.

(h) From any lead reclamation facility any gases with greater than five (5) percent opacity.

(2) For all affected facilities except the lead oxide manufacturing facility, when two (2) or more facilities at the same plant are ducted to a common control device, an equivalent standard for the total exhaust from the commonly controlled facilities shall be determined using the equation given in Appendix A to this regulation.

(3) Lead emissions from a lead oxide manufacturing facility shall be determined separately, as described in Section 5(4) and (5) of this regulation.

Section 4. Monitoring of Emissions and Operations. The owner or operator of any lead-acid battery manufacturing facility subject to the provisions of this regulation and controlled by a scrubbing system(s) shall install, calibrate, maintain, and operate a monitoring device(s) that measures and records the pressure drop across the scrubbing system(s) at least once every fifteen (15) minutes. The monitoring device shall have an accuracy of ± five (5) percent over its operating range.

Section 5. Test Methods and Procedures. (1) The reference methods in Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as provided for in 401 KAR 50:045, shall be used to determine compliance with the standards prescribed in Section 3 of this regulation as follows:

(a) Method 12 for the measurement of lead concentrations.

(b) Method 1 for sample and velocity traverses.

(c) Method 2 for velocity and volumetric flow rate.

(d) Method 4 for stack gas moisture.

(e) Method 9 for opacity.

(2) For Method 12, the sampling time for each run shall be at least sixty (60) minutes and the sampling rate shall be at least 0.85 dscm/hr (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the department.

(3) When different operations in a three (3) process operation facility are ducted to separate control devices, the lead emission concentration from the facility shall be determined using the equation given in Appendix B to this regulation.

(4) For lead oxide manufacturing facilities, the average lead feed rate to a facility, expressed in kilograms per hour, shall be determined for each test run as follows:

(a) Calculate the total amount of lead charged to the facility during the run by multiplying the number of lead pigs (ingots) charged during the run by the average mass of a pig in kilograms or by another method approved by the department.

(b) Divide the total amount of lead charged to the facility during the run by the duration of the run in hours.

(5) Lead emissions from lead oxide manufacturing facilities, expressed in milligrams per kilogram of lead charged, shall be determined using the equation given in Appendic C to this regulation.

JACKIE SWIGART, Secretary

ADOPTED: October 14, 1983
RECEIVED BY LRC: October 14, 1983 at 4:20 p.m.
See public hearing scheduled on page 515.

APPENDIX A to 401 KAR 59:270

Determination of an Equivalent Standard for Two or More Affected Facilities Ducted to a Common Control Device

$$S_e = \sum_{a=1}^{N} S_a(Q_{sd_a}/Q_{sd_T})$$

Where:

S_e = Equivalent standard for the total exhaust stream (mg/dscm).

S_a = Actual standard for each exhaust stream ducted to the control device (mg/dscm).

N = Total number of exhaust streams ducted to the control device.

Q_{sd_a} = Volumetric flow rate of the effluent gas stream from each facility ducted to the control device (dscm/hr).

Q_{sd_T} = Total volumetric flow rate of all effluent gas streams ducted to the control device (dscm/hr).

APPENDIX B to 401 KAR 59:270

Determination of Lead Emission Concentrations from Operations Ducted to Separate Control Devices in a Three (3) Process Operation Facility

$$C_{Pb_T} = \sum_{a=1}^{N} (C_{Pb_a} Q_{sd_a}/Q_{sd_T})$$

Where:

C_{Pb_T} = Lead emission concentration for the entire facility (mg/dscm).

N = Number of control devices to which separate operations in the facility are ducted

C_{Pb_a} = Lead emission concentration from each control device (mg/dscm).

Q_{sd_a} = Volumetric flow rate of the effluent gas stream from each control device (dscm/hr).
Q_{sd_T} = Total Volumetric flow rate from all of the control devices.

APPENDIX C to 401 KAR 59:270

Determination of Lead Emissions from a Lead Oxide Manufacturing Facility

$$E_{Pb} = C_{Pb}Q_{sd}/F$$

Where:
E_{Pb} = Lead emission rate from the facility in milligrams per kilogram of lead charged.
C_{Pb} = Concentration of lead in the exhaust stream in milligrams per dry standard cubic meter as determined according to Section 5(1)(a).
Q_{sd} = Volumetric flow rate in dry standard cubic meters per hour as determined according to Section 5(1)(c).
F = Lead feed rate to the facility in kilograms per hour as determined according to Section 5(4).

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction

704 KAR 20:156. Repeal of 704 KAR 20:155.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education. The position of school media library supervisor is non-existent in the provisions for funding local district education programs. There being no further need for the position, the certification program should be repealed.

Section 1. 704 KAR 20:155, Media supervisors, is hereby repealed.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction

704 KAR 20:280. Endorsement for teachers of gifted education.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education. This regulation establishes a preparation-certification program for teachers for gifted education.

Section 1. (1) Effective January 1, 1984, a certificate endorsement as teacher for gifted education shall be issued in accordance with the pertinent Kentucky statutes and the State Board of Education regulations to an applicant who holds a certificate valid for classroom teaching at the elementary school level, the middle grade level, or the high school level; who has completed at least three (3) years of successful teaching experience; and who has completed the appropriate program of preparation for the certificate endorsement established herein at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, as adopted by 704 KAR 20:005.

(2) The endorsement as teacher for gifted education shall be valid for the same grade levels as the base certificate and shall have the same duration as the base certificate.

(3) The teacher for gifted education is defined as a teacher who works directly with identified gifted pupils, in addition to the regularly assigned classroom teacher(s), or for at least one-half (½) of the regular school day in a classroom made up only of properly identified gifted students.

(4) Beginning with the 1984-85 school term, all persons employed as teachers for gifted education shall hold an appropriate certificate endorsement for gifted education, except that all teachers having certificates initially issued for a duration period beginning prior to July 1, 1984, or proper renewals thereof, shall remain eligible thereafter for assignment as teachers for gifted education, provided any such assignment was valid under the original certificate at the time it was issued.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Instruction

704 KAR 20:285. Deletion of certification information.

RELATES TO: KRS 161.020, 161.025, 161.030
PURSUANT TO: KRS 13.082, 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of approved teacher education programs, but no legal procedure exists whereby a teacher or other professional school person may voluntarily have a portion of his or her teacher certification withdrawn from the official record when he or she feels no longer qualified in the broad areas of certification. This regulation provides a means within certain limitations whereby a teacher may have a portion of the total teacher certification record deleted and establishes the provisions for the restoration of the deleted portion if desired at a later date.

Section 1. The holder of any type of Kentucky teacher certification issued by the Department of Education may voluntarily have any certificate, certificate endorsement, or subject specialization deleted from the official certification record upon request, subject to the following provisions:

(1) The request shall be submitted via the superintendent of the employing school district and must contain a recommendation to the Department of Education on forms provided by the department, between September 1 and December 1, and if approved by said department, shall become effective on the following July 1. Concurrent with notification to the applicants, the department shall notify each school district of decertification affecting its personnel on or before February 1 of the year in which the decertification is to become effective.

(2) No portion of the certification shall be deleted for any subject or assignment in which the teacher has had experience during the five (5) year period preceding the request.

(3) If the certification for classroom teaching at the secondary level is to be retained, at least one (1) teaching major or one (1) area of concentration must be retained.

(4) A certificate which is a prerequisite or a concurrent requirement to the issuance of another certificate or certificate endorsement must be retained.

(5) Requests for restoration of previously deleted areas of certification shall be submitted via the superintendent of the employing school district and shall show restored competency and proficiency by completion of twelve (12) semester hours of credit pertinent to the deleted areas as prescribed by an institution approved for teacher education. If the applicant is not under contract at the time of this application for restoration, the application shall be submitted directly to the Department of Education along with evidence of completion of twelve (12) semester hours of credit pertinent to the deleted areas as prescribed by an institution approved for teacher education.

RAYMOND BARBER
Superintendent of Public Instruction
ADOPTED: September 20, 1983
RECEIVED BY LRC: October 5, 1983 at 10 a.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: L. W. True, Secretary, Kentucky State Board of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 1:240. Solicitation of Medicaid contributions.

RELATES TO: KRS 194.050, 205.520, 211.280
PURSUANT TO: KRS 13.082, 194.050
NECESSITY AND FUNCTION: The Secretary of the Cabinet for Human Resources is authorized by KRS 194.050 to adopt regulations necessary to operate the programs and fulfill the responsibilities vested in the Cabinet for Human Resources. The Cabinet for Human Resources has responsibility to administer the state program of Medical Assistance in accordance with Title XIX of the Social Security Act as provided by KRS 205.520. KRS 211.280 provides that the Cabinet for Human Resources may receive and accept gifts for special purposes and that monies so received shall be deposited in the State Treasury to the credit of a trust or agency account to be used for the purpose for which they are received. This regulation sets forth the conditions under which the cabinet may solicit, receive and use contributions from adult children of medical assistance recipients in long-term care facilities to help defray the cabinet's costs of operating the state Medical Assistance Program.

Section 1. Solicitations for Contributions. The Cabinet for Human Resources may solicit contributions from the adult children of medical assistance recipients residing in long-term care facilities subject to the following terms and conditions:

(1) Both the adult child and his/her parent(s) must be residents of the Commonwealth of Kentucky and physically residing in Kentucky.

(2) Each solicitation must state in clear, understandable terms that the eligibility of the adult child's parent(s) for medical assistance benefits will not be affected by a failure on the adult child's part to contribute, and that any contribution made is to be a voluntary contribution.

(3) Each solicitation must reflect the fact that contributions received as a result of the solicitation will be utilized to help defray expenses of the Medical Assistance Program.

Section 2. Receipt of and Accountability for Contributions. Contributions received as a result of the solicitation will be received and accounted for in accordance with the provisions of KRS 211.280, and shall be considered restricted gifts to be used to help defray expenses of the Medical Assistance Program.

JOHN CUBINE, Commissioner
ADOPTED: October 14, 1983
APPROVED: BUDDY H. ADAMS, Secretary
RECEIVED BY LRC: October 14, 1983 at 2 p.m.
SUBMIT COMMENT OR REQUEST FOR HEARING TO: Secretary for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the September 27-28, 1983 Meeting

(Subject to subcommittee approval at the October 25-26 meeting.)

The Administrative Regulation Review Subcommittee held its monthly meeting on Tuesday, September 27, and on Wednesday, September 28, at 10 a.m. in Room 103 of the Capitol Annex. Present were:

Members: Representative William T. Brinkley, Chairman; Senators Pat McCuiston and Joe Lane Travis; Representatives Greg Stumbo, Albert Robinson and Jim Bruce.

Guests: Helen Herring, Gwynne Goldberg and Christine Sowder; Board of Social Work Examiners; Diane Simmons, Sharon Rodriguez, Ked Fitzpatrick and Bill Verbeten, Cabinet for Human Resources; Cheryl Roberts and Doug Sapp, Corrections Cabinet; Don McCormick, Department of Fish and Wildlife Resources; Lynda Clark and Grant Satterly, Finance Cabinet; Richard Casey and Paul Borden, Kentucky Higher Education Student Loan Corporation; Ron Mills, Steve Taylor, Dennis Conniff and Valerie Wickstrom, Natural Resources and Environmental Protection Cabinet; Clint Newman, Treasury Department; Andrew Cammack, Environmental Quality Commission; Jack Hoover and James Childers, Farmers Bank and Capital Trust; Michael Meehan, Gibbs and Hill, Inc.; Bill K. Caylor, Kentucky Coal Association; Margaret LeBus, K.E.C.

LRC Staff: Susan Harding, Joe Hood, Dan Risch, Carla Arnold, Roy Haddix, Paula Payne, Mary Helen Miller, Bob Fallon, Don Stosberg and Shirley Hart.

Press: Sy Ramsey, Associated Press; Livingston Taylor, Courier-Journal.

Chairman Brinkley announced that a quorum was present and called the meeting to order. On motion of Representative Bruce, seconded by Senator McCuiston, the minutes of the August 23-24, 1983 meeting were approved.

The following regulations were recommended for deferral by the subcommittee until the October 25-26 meeting:

FINANCE AND ADMINISTRATION CABINET
Department of Administration
State Investment Commission

200 KAR 14:050. Purchasing policies.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
Oil Shale Operations

405 KAR 30:020. General provisions.
405 KAR 30:160. Data requirements.
405 KAR 30:360. Waste management provisions. (Roll call vote—4 yeas, 2 nays.)

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Public Assistance

904 KAR 2:006. Technical requirements; AFDC. (Roll call vote—4 yeas, 1 nay.)

The subcommittee took no action on the following emergency regulations:

COMMERCE CABINET
Department of Fish and Wildlife Resources
Game

301 KAR 2:044E. Taking of migratory wildlife.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Public Assistance

904 KAR 2:115E. Eligibility, criteria for home energy assistance program.

The subcommittee recommended that the following regulations be approved for filing:

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION
Guaranteed Student Loans and Loans to Parents

15 KAR 1:020. Purchasing policies.

FINANCE AND ADMINISTRATION CABINET
Occupations and Professions
Board of Examiners of Social Work

201 KAR 23:060. Licensed and certified social workers.
201 KAR 23:070. Specialty certification.

COMMERCE CABINET
Department of Fish and Wildlife Resources
Game

301 KAR 2:044. Taking of migratory wildlife.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
Oil Shale Operations

405 KAR 30:010. Definitions.
405 KAR 30:025. Experimental practices.
405 KAR 30:070. Procedures, criteria and schedule for release of performance bond.
405 KAR 30:121. Oil shale exploration.
405 KAR 30:130. Oil shale operation permits.
405 KAR 30:250. Use of explosives.
405 KAR 30:280. Prime farmland.
405 KAR 30:320. Water quality standards, effluent limitations and monitoring.
405 KAR 30:370. Disposal of excess spoil materials and spent shale.
405 KAR 30:390. Backfilling and grading.

CORRECTIONS CABINET
Office of Community Services
Jail Standards
96-Hour Facilities

501 KAR 4:010. Definitions.
501 KAR 4:020. Administration; management.
501 KAR 4:030. Fiscal management.
501 KAR 4:040. Personnel.
501 KAR 4:050. Physical plant.
501 KAR 4:060. Security; control.
501 KAR 4:070. Safety; emergency procedures.
501 KAR 4:080. Sanitation; hygiene.

501 KAR 4:090. Medical services.
501 KAR 4:100. Food services.
501 KAR 4:110. Classification.
501 KAR 4:120. Admission; release.
501 KAR 4:130. Inmate programs; services.
501 KAR 4:140. Inmate rights.

12-Hour Facilities

501 KAR 5:010. Definitions.
501 KAR 5:020. Administration; management.
501 KAR 5:030. Fiscal management.
501 KAR 5:040. Personnel.
501 KAR 5:050. Physical plant.
501 KAR 5:060. Security; control.
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501 KAR 5:080. Sanitation; hygiene.
501 KAR 5:090. Medical services.
501 KAR 5:100. Food services.
501 KAR 5:110. Classification.
501 KAR 5:120. Admission; release.
501 KAR 5:130. Inmate rights.

CABINET FOR HUMAN RESOURCES

Department for Social Insurance

Medical Assistance

904 KAR 1:004. Resource and income standard of medically needy.
904 KAR 1:011. Technical eligibility requirements.
904 KAR 1:054. Primary care center services.
904 KAR 1:190. Payments for alternative birth center services.
904 KAR 1:220. Terms and conditions of provider participation; provider appeals.

Public Assistance

904 KAR 2:046. Adverse action; conditions.
904 KAR 2:050. Time and manner of payments.
904 KAR 2:115. Eligibility, criteria for home energy assistance program.

Food Stamp Program

904 KAR 3:020. Eligibility requirements.
904 KAR 3:080. Contingency plan.

Department for Social Services

Block Grants

905 KAR 3:030. Matching requirements.
905 KAR 3:040. Allocation formula.

The meeting was adjourned at 10:45 a.m. on September 28 until October 25-26, 1983.

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Locator Index—Effective Dates

NOTE: Emergency regulations expire on being repealed or replaced.

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Volume 10

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105 KAR 1:010E	391	9-1-83
200 KAR 14:040E	267	6-21-83
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301 KAR 2:044E	335	8-8-83
Replaced	344	10-5-83
301 KAR 2:088E	394	9-15-83
405 KAR 20:060E	516	9-19-83
804 KAR 9:040E	397	9-1-83
807 KAR 5:002E	268	6-27-83
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807 KAR 5:008E.		2-8-83
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904 KAR 1:210E	280	6-30-83
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