

# *of Kentucky* **Administrative Register**

LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

VOLUME 14, NUMBER 9  
TUESDAY, MARCH 1, 1988



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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND  
A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING  
AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING  
DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation  
Review Subcommittee is tentatively scheduled on March 10, 1988. See  
tentative agenda on pages 1731-1733 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1987 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA  
March 10, 1988  
(Rm. 107, Capitol Annex @ Noon)

GENERAL GOVERNMENT CABINET

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- 201 KAR 9:101. Definitions relating to paramedics.
- 201 KAR 9:161. Skills, authorized procedures.

Real Estate Commission

- 201 KAR 11:220. Errors and omissions insurance requirements.

Board of Nursing

- 201 KAR 20:095. Inactive nurse licensure status.
- 201 KAR 20:110. Licensure by endorsement.
- 201 KAR 20:225. Reinstatement of license.

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

General Administrative Procedures

- 401 KAR 30:010. Definitions. (Amended After Hearing)
- 401 KAR 30:020. General provisions. (Amended After Hearing)
- 401 KAR 30:070. Reference documents. (Amended After Hearing)
- 401 KAR 30:080. Standards for variances. (Not Amended After Hearing)

Identification and Listing of Hazardous Waste

- 401 KAR 31:010. General provisions for hazardous wastes. (Amended After Hearing)
- 401 KAR 31:030. Characteristics of hazardous waste. (Not Amended After Hearing)
- 401 KAR 31:040. Lists of hazardous wastes. (Amended After Hearing)
- 401 KAR 31:060. Rulemaking petitions for hazardous waste. (Not Amended After Hearing)
- 401 KAR 31:120. Appendix on chemical analysis test methods. (Not Amended After Hearing)
- 401 KAR 31:160. Appendix on basis for listing hazardous waste. (Not Amended After Hearing)
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- 401 KAR 32:050. Special conditions. (Amended After Hearing)
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- 401 KAR 34:020. General facility standards. (Amended After Hearing)
- 401 KAR 34:050. Manifest system, recordkeeping and reporting. (Amended After Hearing)
- 401 KAR 34:070. Closure and postclosure. (Amended After Hearing)
- 401 KAR 34:080. General financial requirements. (Not Amended After Hearing)
- 401 KAR 34:090. Closure financial requirements. (Amended After Hearing)
- 401 KAR 34:100. Postclosure financial requirements. (Not Amended After Hearing)
- 401 KAR 34:190. Tanks. (Amended After Hearing)
- 401 KAR 34:200. Surface impoundments. (Not Amended After Hearing)

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

- 401 KAR 35:010. General provisions for facilities (IS). (Not Amended After Hearing)
- 401 KAR 35:020. General facilities standards (IS). (Not Amended After Hearing)
- 401 KAR 35:050. Manifest system, recordkeeping and reporting (IS). (Amended After Hearing)
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- 401 KAR 35:080. General financial requirements (IS). (Amended After Hearing)
- 401 KAR 35:090. Closure financial requirements (IS). (Not Amended After Hearing)
- 401 KAR 35:100. Postclosure financial requirements (IS). (Not Amended After Hearing)
- 401 KAR 35:190. Tanks (IS). (Amended After Hearing)
- 401 KAR 35:200. Surface impoundments (IS). (Not Amended After Hearing)

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- 401 KAR 38:070. Application procedures. (Not Amended After Hearing)
- 401 KAR 38:090. General contents of Part B application. (Not Amended After Hearing)
- 401 KAR 38:100. Specific Part B requirements for groundwater protection. (Not Amended After Hearing)
- 401 KAR 38:160. Specific Part B requirements for tanks. (Amended After Hearing)

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- 401 KAR 39:090. Postclosure fees. (Not Amended After Hearing)
- 401 KAR 39:100. Exposure information report fee. (Not Amended After Hearing)

**Underground Storage Tanks**

- 401 KAR 42:010. General provisions for underground storage tanks. (Not Amended After Hearing)

**Division for Air Quality**

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- 401 KAR 50:010. Definitions and abbreviations.
- 401 KAR 50:015. Documents incorporated by reference.
- 401 KAR 50:035. Permits.

**New Source Requirements; Nonattainment Areas**

- 401 KAR 51:010. Attainment status designations.
- 401 KAR 51:017. Prevention of significant deterioration of air quality.
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- 401 KAR 53:005. General provisions.
- 401 KAR 53:010. Ambient air quality standards.

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- 401 KAR 55:005. Significant harm criteria.
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**New Source Standards**

- 401 KAR 59:010. New process operations.
- 401 KAR 59:050. New storage vessels for petroleum liquids.
- 401 KAR 59:052. New volatile organic liquid storage vessels.
- 401 KAR 59:236. New rubber tire manufacturing industry. (Repeals 401 KAR 59:235)

**Existing Source Standards**

- 401 KAR 61:020. Existing process operations.
- 401 KAR 61:170. Existing blast furnace casthouses.

**CORRECTIONS CABINET**

**Office of the Secretary**

- 501 KAR 6:030. Kentucky State Reformatory.
- 501 KAR 6:040. Kentucky State Penitentiary.
- 501 KAR 6:060. Northpoint Training Center.
- 501 KAR 6:070 & E. Kentucky Correctional Institutional for Women.
- 501 KAR 6:130. Western Kentucky Farm Center.

**TRANSPORTATION CABINET**

**Department of Vehicle Regulation**

**Division of Motor Carriers**

- 601 KAR 1:025. Transporting hazardous materials; permit. (Amended After Hearing) (Deferred from February meeting)
- 601 KAR 1:115. Taxicabs. (Deferred since October meeting)

**Motor Vehicle Tax**

- 601 KAR 9:130. Motor vehicle registration. (Repeals 601 KAR 9:050)
- 601 KAR 9:135. Apportioned registration.

**Department of Highways**

**Preconstruction**

- 603 KAR 2:015. Prequalification for construction; certificate of eligibility; and contract claims dispute.

**Traffic**

- 603 KAR 5:120. Access control of highways.

**Motor Vehicle Commission**

- 605 KAR 1:170. Temporary sale or display event license for a motor vehicle dealer trade association.

**EDUCATION AND HUMANITIES CABINET**

**Department of Education**

**Office of Local Services**

**School Terms, Attendance and Operation**

- 702 KAR 7:090. Requirements for coaches and other personnel staffing interscholastic athletic programs.

**Office of Instruction**

**Elementary and Secondary Education Act**

- 704 KAR 10:022. Elementary, middle and secondary schools standards. (Agency requests deferral until May)



**Teacher Education**

704 KAR 15:080. Paraprofessional employees and volunteer personnel.

**Teacher Certification**

704 KAR 20:330. Endorsement for individual intellectual assessment.

Office of Programs

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PUBLIC PROTECTION AND REGULATION CABINET

Harness Racing Commission

**Harness Racing Rules**

811 KAR 1:125. Pari-mutuel rules.

811 KAR 1:225. Substance abuse by commission employees and licensees.

**Quarter Horse, Appaloosa and Arabian Racing Rules**

811 KAR 2:035. Associations.

811 KAR 2:040. Owners.

811 KAR 2:045. Trainers.

811 KAR 2:050. Jockeys.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:070. Entries, subscriptions and declarations.

811 KAR 2:080. Claiming races.

811 KAR 2:085. Running of the race.

811 KAR 2:096. Medication of horses.

811 KAR 2:110. Substance abuse by commission employees and licensees.

CABINET FOR HUMAN RESOURCES

Department for Health Services

**Hospitalization of Mentally Ill and Mentally Retarded**

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

**Certificate of Need and Licensure**

902 KAR 20:250. Specialized medical technology services.

902 KAR 20:260. Special health clinics.

902 KAR 20:270. Mobile health services.

Department for Employment Services

**Unemployment Insurance**

903 KAR 5:300. Required reports and due dates.

Department for Social Insurance

**Public Assistance**

904 KAR 2:015 & E. Supplemental programs for the aged, blind, and disabled.

904 KAR 2:116 & E. Low income home energy assistance program.

904 KAR 2:140. Supplementary policies for programs administered by the Department for Social Insurance.

904 KAR 2:170. Incorporation by reference of materials relating to the child support program.

**Food Stamp Program**

904 KAR 3:030 & E. Application process. (Amended After Hearing)

904 KAR 3:090. Incorporation by reference of materials relating to the food stamp program.

## REGULATION REVIEW PROCEDURE

## Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register. Following publication in the Register, all regulations shall be referred by the LRC to the appropriate subcommittee for review.

## Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler and the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

## Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and following publication shall be sent to the appropriate committee for review at its next meeting. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the regulation shall be sent to the appropriate committee for review at its next meeting. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the subcommittee meets.

## EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

## STATEMENT OF EMERGENCY

In order to continue to operate the Kentucky Correctional Institution for Women in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policy must be revised immediately to allow the Kentucky Correctional Institution for Women to establish policy and procedures for the management of special security inmates. Special security inmates are those which are sent to an institution with the sentence of death. An inmate with such a sentence has recently been committed to the Kentucky Correctional Institution for Women, thus requiring this policy to be implemented on an emergency basis. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on January 15, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor  
JOHN T. WIGGINTON, Secretary

## CORRECTIONS CABINET

501 KAR 6:070E. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: January 19, 1988

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on January 15, 1988 [December 15, 1987] and hereinafter should be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property

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KCIW 02-03-03	Criteria for Selection of Bidders and Vendors	KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 02-04-01	Accounting Procedures	KCIW 15-03-01	Inmate Rule Book
KCIW 02-05-01	Inmate Canteen/Staff Canteen	KCIW 15-04-01	Incentive Levels System
KCIW 02-07-01	Release of CETA Money Earned	KCIW 15-06-01	Restriction Guidelines
KCIW 03-01-01	Travel Expense Reimbursement	KCIW 16-01-01	Inmate Correspondence
KCIW 03-02-01	General Orders for Staff	KCIW 16-01-02	Inmate Mail Distribution
KCIW 03-02-02	Inclement Weather and Emergency Conditions	KCIW 16-01-03	Staff Mail
KCIW 03-03-01	Employee Grievance Procedure	KCIW 16-02-01	Inmate Access to Telephone
KCIW 03-05-01	Employee Personnel File	KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 03-06-01	Affirmative Action and the Equal Employment Opportunity Complaint Procedure	KCIW 16-03-01	Inmate Visiting Regulations
KCIW 03-08-01	Employee Performance Evaluations	KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 03-09-01	Payroll and Personnel Manning Records	KCIW 16-04-01	Inmate Indigent Fund [(Amended 12/15/87)]
KCIW 03-10-01	Promotion Committee	KCIW 16-05-01	Commercial Vendor Packages, Appliance and Drug Store Orders [(Amended 12/15/87)]
KCIW 03-11-01	Personnel Registers	KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 03-12-01	Criminal History Checks on all Personnel and the Recruitment and Employment of Ex-Offenders	KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 06-01-01	Inmate Records	KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit	KCIW 17-02-01	Identification Department Admissions
KCIW 06-01-03	Storage of Expunged Records	KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 10-01-01	Special Management Unit General Operation and Regulations	KCIW 17-05-01	Inmate Personal Property Guidelines [(Amended 12/15/87)]
KCIW 10-01-02	Special Management Unit Programs, Placement and Review	KCIW 18-01-02	Institutional Housing Assignments
KCIW 10-01-04	<u>Special Security Inmates (Added 1/15/88)</u>	KCIW 18-02-01	Classification Procedures
KCIW 11-01-01	Food Service Operation Inspections	KCIW 18-05-01	Special Needs Inmates
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products	KCIW 18-06-01	Institutional Status Codes
KCIW 11-02-01	Menu Preparation/Special Diets	KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 11-03-01	General Guidelines for Food Service Operations Manager	KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 11-03-02	General Guidelines for Food Service Workers	KCIW 20-01-01	Education Programs
KCIW 11-04-01	Health Standards, Regulations for Food Service Workers	KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 12-01-01	Control of Pests and Vermin	KCIW 20-01-04	Entry - Exit Vocational School
KCIW 12-02-01	Laundry Facilities/Clothing Issuance [(Amended 12/15/87)]	KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 12-02-03	Donated Items	KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 12-04-01	Sanitation and General Living Conditions [(Amended 12/15/87)]	KCIW 20-01-07	Vocational Counselor
KCIW 13-01-01	Provision of Medical and Dental Care	KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 13-01-02	Preliminary Health Screening and Appraisal	KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 13-01-03	Use of Pharmaceutical Products	KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 13-03-01	Emergency Care	KCIW 22-01-04	Inmate Club Activities
KCIW 13-03-02	Infirmary Care and Outside Services	KCIW 23-01-01	Religious Services
KCIW 13-03-03	Outside Hospital Security	KCIW 25-01-01	Parole Progress Report
KCIW 13-04-01	Medical Alert System	KCIW 25-02-01	Temporary Release/Community Center
KCIW 13-04-02	Psychiatric/Psychological Services	KCIW 25-02-02	Furloughs [(Amended 12/15/87)]
KCIW 13-06-01	Informed Consent	KCIW 25-03-01	Escorted Leave into the Community
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines		
KCIW 13-08-01	Medical Exams for New Employees		
KCIW 13-09-01	Suicide Prevention and Intervention Program		
KCIW 14-01-02	Inmate Rights		
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes		
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs		
KCIW 14-04-01	Inmate Grievance Procedure		
KCIW 15-01-01	Offenses and Penalties		

JOHN T. WIGGINTON, Secretary  
APPROVED BY AGENCY: January 15, 1988  
FILED WITH LRC: January 19, 1988 at 9 a.m.

## STATEMENT OF EMERGENCY

The rationale for the emergency regulation is to prevent an owner and/or trainer from using a high potency narcotic to simulate a horse and avoid any penalty from the commission because the commission can only provide two labs for a "second opinion" rather than four as the rule currently requires. Furthermore, the current rule requires these samples used for "second opinions" to be tested without prior knowledge of what to look for: a so-called "blind" sample. Unfortunately, the two labs that are capable of testing for these high potency narcotics will not consent to do so on a "blind" basis. An identical copy of this regulation is also being filed under the regular procedures of KRS 13A.220.

WALLACE G. WILKINSON, Governor  
 LYLE G. ROBEY, Chairman

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Kentucky State Racing Commission**

810 KAR 1:018E. Medication; testing procedures.

RELATES TO: KRS 230.210 to 230.360

PURSUANT TO: KRS Chapter 13A

EFFECTIVE: February 8, 1988

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation relates to the use of medication on the horses and requirements and controls thereof.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) No horse while participating in a race shall carry in its body any medication, or drug, or substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic, or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) Also prohibited are any drugs which might mask or screen the presence of the aforementioned prohibited drugs, or prevent or delay testing procedures.

(3) Proof of detection by the commission chemist of a medication, or drug, or substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that such horse was administered and carried such prohibited medication, drug, or substance, in its body while running in such race in violation of this rule.

(4) Medications, drugs, or substances must be used consistently on horses. Permission to change the use of any NSAID or bleeder medication must be obtained from the commission

veterinarian.

Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which such horse is entered and prior to such race. No medication, drug, or substance shall be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarian(s).

Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this regulation, or caused, or participated, or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering; and failing to prove such freedom from negligence (or reliance on the professional ability of a licensed veterinarian) shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this regulation, if found negligent in guarding or protecting such horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing such treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or posttrace test may be grounds for disciplinary action:

(1) Such daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Such daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in prerace treatment and submitted daily reports must be in complete accord; any deviation shall result in the scratching of the particular horse, and may be grounds for disciplinary action.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered

exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing, and such detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, or other specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist, provided the costs of such testing are borne by the owner or trainer requesting such test. In the absence of any such order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn are to be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom, or hotwalker, of a horse to be tested, and no lead pony, shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than necessary for washing and cooling out a horse are prohibited in the detention area; buckets and water will be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.

(3) During the taking of specimens from a horse, the owner, or responsible trainer (who, in the case of a claimed horse shall be the person in whose name such horse raced), or a stable representative designated by such owner or trainer, shall be present and witness the taking of such specimen and so signify in writing.

(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse by the commission veterinarian or his assistant at the detention barn shall be placed equally in double containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that

has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which such specimen was taken, as well as the race and day, verified by such witness, and such detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with these provisions, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature, as near as possible. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing thereon. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.

(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) [four (4)] laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative

of the persons notified under these rules may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. [A blind sample may be submitted only if there are fifty (50) ml. or more of urine available. If there are less than fifty (50) ml. of urine available,] The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances, and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until given clearance of chemical tests by the stewards.

(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission

veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.

LYLE G. ROBEY, Chairman

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: February 1, 1988

FILED WITH LRC: February 8, 1988 at 3 p.m.

#### STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor

HARRY J. COWHERD, Secretary

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management & Development

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245

PURSUANT TO: KRS 194.050

EFFECTIVE: January 18, 1988

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 907 KAR 1:011 and 907 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 for an individual and for a couple is set at \$1,700 and \$2,550, respectively, effective January 1, 1986; at \$1,800 and \$2,700, respectively, effective January 1, 1987; at \$1,900 and \$2,850, respectively, effective January 1, 1988; and at \$2,000 and \$3,000, respectively, effective January 1, 1989.

(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 if the face value of the life insurance is less than \$1,500. Burial spaces are excluded from consideration when computing the 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. 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 (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) 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 (65) dollars and one-half (1/2) 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. Standard of Need.** (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than \$546 [532], effective 1/1/88 [12/1/87];

(b) Family care home: not less than \$444 [430], effective 1/1/88 [1/1/87];

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than \$383 [369], effective 1/1/88 [1/1/87];

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than \$556 [534], effective 1/1/88 [1/1/87];

3. Married couple, both eligible and both requiring care: not less than \$594 [572], effective 1/1/88 [1/1/87].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

**Section 6. 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. 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. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as otherwise specified herein.

(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 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 preauthorized 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/her I.Q. is forty-nine (49) or less or he/she has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He/she is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he/she is incapable of indicating intent.

(4) An individual is institutionalized if he/she is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his/her state of residence is Kentucky if he/she is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his/her state of residence is Kentucky if he/she 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/her 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/she was living in Kentucky when he/she became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he/she 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/she 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 July 4, 1984, even if he/she does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his/her 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/she returns to this state and he/she 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/she 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.

MIKE ROBINSON, Commissioner  
HARRY J. COWHERD, M.D., Secretary  
APPROVED BY AGENCY: January 6, 1988  
FILED WITH LRC: January 18, 1988 at 3 p.m.

# STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor  
HARRY J. COWHERD, M.D., Secretary

## CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development

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

RELATES TO: KRS 205.200(2), 205.210(1)

PURSUANT TO: KRS 205.200(2)

EFFECTIVE: February 3, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his/her eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

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

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 8 of this regulation, and any educational allowance as set forth in Section 9 of this regulation.

(9) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(10) "Recoupment" means recovery of overpayments of assistance payments.

(11) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

(12) "Lump sum income" means income that is not earned, does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his/her parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

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

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

(b) Home furnishings, including all appliances;

(c) Clothing;

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

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot/space per family

member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

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

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

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and/or amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and/or amount deemed available from a stepparent(s) living in the home, and/or amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

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

application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

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

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

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

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

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Principal of loans;

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

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

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

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

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

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

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

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

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance; and

(aa) The first thirty (30) dollars of small nonrecurring gifts received per calendar quarter for each individual included in the assistance group.

(2) Applicant eligibility test. The

exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of seventy-five (75) dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$160 per month per individual for full-time employment or \$110 per month per individual for part-time employment.

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

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

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings

unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

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

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and/or parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

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

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or could be claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. The gross non-AFDC income and resources of an alien's sponsor and sponsor's spouse if living with the sponsor hereinafter referred to as sponsor shall be deemed available to the

alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

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

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

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

(c) Amounts paid by the sponsor to nonhousehold members who are or could be claimed as dependents in determining his/her federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

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

Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.

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

Number of Eligible Persons	Monthly Standard
1 child	\$147
2 persons	\$179
3 persons	\$207
4 persons	\$259
5 persons	\$303
6 persons	\$342
7 or more persons	\$381

Section 9. Educational Allowance. An educational allowance shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for said month(s) and funds are available. Households receiving the educational

allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly.

(1) Technical requirements. The following requirements must be met during any month for which an education allowance is paid.

(a) The caretaker relative must be included in the assistance grant;

(b) The caretaker relative must be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program for which no wage or child care allowance is received. If attending college, the caretaker relative must be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost must have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines said child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. The payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	\$ 20	-	\$ 25	-
GED	\$ 94	-	\$117	-
Elementary School/ Junior High	\$174	-	\$218	-
High School	\$174	-	\$218	-
Vocational School	\$174	-	\$218	-
College/University	\$174	\$103	\$218	\$129

(3) Limitations. The number of months an educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy:	Type of Program	Maximum 24 months
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(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his/her education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:  
(a) Repayment by the individual to the cabinet; and/or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8; and/or

(c) Civil action in the court of appropriate jurisdiction.

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

(5) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(6) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 004, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective April 1, 1988 unless otherwise specified [December 1, 1987].

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 28, 1948

FILED WITH LRC: February 3, 1988 at 2 p.m.

AS AMENDED AND EFFECTIVE FEBRUARY 8, 1988

DEPARTMENT OF AGRICULTURE  
(As Amended)

302 KAR 34:050. Grain dealer licensing of federal warehouses.

PURSUANT TO: KRS 251.700

RELATES TO: KRS 251.430, 251.600, 251.630, 251.640, 251.720

EFFECTIVE: February 8, 1988

NECESSITY AND FUNCTION: To further clarify requirements relating to federal grain warehouses operating in Kentucky in order to insure consistency in operation procedure.

Section 1. Any and all grain warehouses operating in Kentucky which are licensed under the United States Warehouse Act shall be required to:

(1) Hold a valid license to operate as a grain dealer in Kentucky;

(2) Post a surety bond as required by KRS 251.720(3); and

(3) Collect the one-half (1/2) cent per bushel of grain required by KRS 251.640.

Section 2. Exceptions. Any grain warehouse which does not buy grain from producers for resale or milling or processing shall be exempt from the requirements of this regulation.

DAVID E. BOSWELL, Commissioner

APPROVED BY AGENCY: July 2, 1987

FILED WITH LRC: July 2, 1987 at 4 p.m.

CORRECTIONS CABINET  
(As Amended)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: February 8, 1988

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December 4 [July 15], 1987 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media [(Amended 7/15/87)]
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
- 2.1 Inmate Canteen

- 2.10 Surplus Property
- 3.1 Code of Ethics
- 3.2 Inclement Weather and Emergency Conditions Policy
- 3.3 Holding of Second Jobs by Bureau Employees
- 3.7 Employment of Relatives
- 3.10 Staff Clothing and Personal Appearance
- 3.12 Institutional Staff Housing
- 3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
- 4.1 Attendance at Professional Meetings
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.4 Educational Assistance Program
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.4 Emergency Preparedness
- 9.1 Use of Force
- 9.3 Transportation of Convicted Offenders
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Return of Escapees by Automobile
- 9.6 Contraband
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents
- 9.8 Search Policy
- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control
- 9.15 Institutional Entry and Exit Policy and Procedures
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15.4 Governor's Meritorious Good Time Award
- 15.5 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 16.1 General Inmate Visiting Procedure
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates
- 18.4 Classification of the Inmate
- 18.5 Custody/Security Guidelines
- 18.6 Classification Document
- 18.7 Transfers
- 18.8 Guidelines for Transfers Between Institutions
- 18.9 Out-of-State Transfers [(Amended 7/15/87)]
- 18.10 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures

# ADMINISTRATIVE REGISTER - 1747

18.12	Referral Procedure for Inmates	27-12-10	Guidelines for Monitoring
18.13	Adjudicated Guilty But Mentally Ill	27-12-11	Supervision Fee (Added 12/4/87)
18.15	Population Categories		Guidelines for Monitoring Financial
19.1	Protective Custody		Obligations Ordered by the Releasing
19.2	Government Services Projects	27-12-12	Authority (Added 12/4/87)
20.1	Community Services Projects		Other Financial Obligations (Not
20.6	Study Release		Ordered by Releasing Authority)
22.1	Vocational Study Release	27-12-13	(Added 12/4/87)
25.1	Privilege Trips		Community Service Work (Added
25.2	Gratuities	27-12-14	12/4/87)
	Public Official Notification of Release		Client Travel Restrictions (Added
	of an Inmate	27-12-15	12/4/87)
25.3	Prerelease	27-13-02	Advanced Supervision (Added 12/4/87)
25.4	Inmate Furloughs	27-14-01	Alcohol Detection (Added 12/4/87)
25.6	Community Center Program		Interstate Compact Transfers (Added
25.7	Expedient Release	27-14-02	12/4/87)
25.8	Extended Furloughs		Interstate Compact Out-of-state
[27.1	Supervision: Case Classification (Deleted	27-15-01	Probation and Parole Violation
	12/4/87)]		(Added 12/4/87)
27.2	Risk/Needs Administration	27-17-01	Supervision Report: Violations,
[27.4	Supervision Plan: General (Deleted	27-18-01	Unusual Incidents (Added 12/4/87)
	12/4/87)]		Absconder Procedures (Added 12/4/87)
[27.8	Travel Restrictions (Deleted 12/4/87)]	27-21-01	Probation and Parole Issuance of
[27.9	Conditions of Supervision (Deleted		Detainer/Warrant (Added 12/4/87)
	12/4/87)]	27-22-01	Apprehension and Transportation of
27.10	Preliminary Revocation Procedures	27-22-02	Probation and Parole Violators
[27.11	Apprehension and Transportation of		(Added 12/4/87)
	Violators of Probation, Parole and	27-23-01	Fugitive Unit - Apprehensions (Added
	Conditional Release (Deleted 12/4/87)]	27-24-01	12/4/87)
[27.12	Fugitive Section/Probation and Parole		Fugitive Unit - Transportation of
	(Deleted 12/4/87)]	27-24-02	Fugitives (Added 12/4/87)
[27.13	Supervision Fee (Deleted 12/4/87)]	27-25-01	In-state Transfer (Added 12/4/87)
[27.14	Interstate Compact (Deleted 12/4/87)]	27-26-01	Closing Supervision Report (Added
[27.18	Absconder Procedures (Deleted 12/4/87)]		12/4/87)
[27.19	Technical Violators (Deleted 12/4/87)]	27-27-01	Reinstatement of Clients to Active
[27.20	Intensive Supervision (Deleted 12/4/87)]		Supervision (Added 12/4/87)
[28.2	Investigations: General (Deleted 12/4/87)]	28-01-01	Application for Final Discharge from
[28.3	Presentence Investigations (To the Court)		Parole (Added 12/4/87)
	(Deleted 12/4/87)]	28-01-02	Assistance to Former Clients and
[28.4	Preparole (Presentence) Investigation (To		Dischargees (Added 12/4/87)
	the Institution and State Parole Board)	28-01-03	Restoration of Civil Rights (Added
	(Deleted 12/4/87)]		12/4/87)
[28.5	Special Report to the Parole Board	28-01-04	Probation and Parole Investigation
	(Deleted 12/4/87)]		Reports (Introduction, Definitions,
[28.7	Out-of-State Investigations (Deleted	28-01-05	Confidentiality, Timing, and General
	12/4/87)]		Comments) (Added 12/4/87)
27-02-01	Duties of Probation and Parole	28-01-06	Probation and Parole Investigation
	Officers (Added 12/4/87)		Reports (Administrative
27-03-01	Workload Formula Supervisor/Staff	28-01-07	Responsibilities) (Added 12/4/87)
	Ratio (Added 12/4/87)	28-01-08	Probation and Parole Investigation
27-05-01	Testimony, Court Demeanor and		Reports (Presentence/Postsentence
	Availability of Legal Services	28-01-09	Investigation Interview Procedure)
	(Added 12/4/87)		(Added 12/4/87)
27-06-01	Availability of Supervision Services	28-01-10	Probation and Parole Investigation
	(Added 12/4/87)		Reports (Presentence/Postsentence
27-06-02	Equal Access to Services (Added	28-01-11	Verification, Composition, Case
	12/4/87)		Material and Submission Schedules)
27-07-01	Cooperation with Law Enforcement	28-01-12	(Added 12/4/87)
	Agencies (Added 12/4/87)	28-01-13	Probation and Parole Investigation
27-09-01	Kentucky Community Resources		Reports (Computation of Jail Custody
	Directory (Added 12/4/87)	28-01-14	Credit) (Added 12/4/87)
[27-10-01	Pretrial Diversion (Added 12/4/87)]	28-01-15	Probation and Parole Investigation
27-11-01	Intensive Supervision (Added 12/4/87)		Reports (Misdemeanant Presentence
27-12-01	Supervision: Case Classification	28-01-16	Investigation Reports for the
	(Added 12/4/87)		Circuit and District Courts) (Added
27-12-04	Conditions of Regular	28-01-17	12/4/87)
	Supervision/Request for Modification		Probation and Parole Investigation
	(Added 12/4/87)	28-01-18	Reports (Supplemental Postsentence
27-12-05	Releasee's Report (Added 12/4/87)		Investigation Report, Case Material,
27-12-06	Grievance Procedures for Offenders	28-01-19	and Submission Schedule) (Added
	(Added 12/4/87)		12/4/87)
27-12-07	Employment, Education/Vocational	28-01-20	Probation and Parole Investigation
	Referral (Added 12/4/87)		Reports (Partial Investigation
27-12-08	Supervision Plan (Added 12/4/87)		Reports and Submission Schedule)
27-12-09	Casebook (Added 12/4/87)		(Added 12/4/87)



28-01-09 Expedient Release Program (Added 12/4/87)

GEORGE W. WILSON, Secretary  
APPROVED BY AGENCY: December 4, 1987  
FILED WITH LRC: December 4, 1987 at 4 p.m.

CABINET FOR HUMAN RESOURCES  
Department for Social Services  
Division of Family Services  
(As Amended)

905 KAR 2:010. Standards for all child day care facilities.

RELATES TO: KRS 199.892 to 199.896

PURSUANT TO: KRS 194.050

EFFECTIVE: February 8, 1988

NECESSITY AND FUNCTION: KRS 199.896 grants authority to establish regulations and standards for day care of children. The function of this regulation is to set minimum standards for all child day care facilities.

Section 1. Definitions. The following definitions shall apply to all child day care regulations and standards:

(1) "Day care" means care of a child in any child [day] care facility, which provides full- or part-time care, day or night, to at least four (4) children not related to the operator of the child day care facility by blood, marriage, or adoption away from his own home and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision, when it is necessary or desirable for the parent or child to be out of the home for all or part of the day or night. The term shall not include child care facilities operated by religious organization while religious services are being conducted, or kindergarten programs that are part of a public or private educational school system. Child [or nursery schools which have as their primary function educational instruction.] day care includes:

(a) "Type I day care facility" means:

1.] any facility other than a dwelling unit which regularly receives four (4) or more children for day care; or

2.] any facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children. If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(b) "Type II child day care facility" means any home or dwelling unit which regularly provides care apart from parents for four (4), but not more than twelve (12) children. The director's own preschool children shall be included in the number for which the home is licensed.

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

(3) "Secretary" means the Secretary of the Cabinet for Human Resources.

(4) "Child" means a person under eighteen (18) years of age.

(5) "Director" means the person responsible for the day-to-day operation of a facility or program for the care of children.

(6) "Child day care staff" means all persons, including volunteers, who work in a Type I or

Type II child day care facility.

(7) "Facility" shall include both Type I and Type II child day care facilities.

(8) "Regularly" means the provision of child day care services at a facility on more than one (1) day in any one (1) week or more than ten (10) hours per week[, whichever is greater].

(9) "School-age child" shall be considered as one attending kindergarten [first grade] or above.

(10) "Infant/toddler" shall be considered to be under two (2) years of age.

(11) "Nighttime care facilities" are defined as facilities in which children are received for regular, full-, or part-time [periodic] care during the night. The hours of facilities providing nighttime care shall conform to the hours established by the state fire marshal for nighttime care, which pertain to day care facilities that are open after 6 p.m.

Section 2. Responsibilities of the Cabinet Licensing Authority. The cabinet shall be responsible [has responsibility] for the licensing and supervision of any agency, association, organization, group, or individual who regularly provides full or part-time care during any part [time] of the day or night for four (4) or more children not related to the licensee by blood, marriage or adoption. Authorized representatives of the cabinet shall at all times have the authority [right] to inspect premises, records required by this regulation, and programs of child day care facilities. Inspection by the cabinet shall be unannounced.

Section 3. Licensing Issuance. (1) The license shall be issued for a specified physical location and for operation by a designated sponsor or owner, for specific hours of operation, and for a specified maximum number of children on the premises at any one time. The number of children for which the facility is licensed shall be determined by available space, as determined by the state fire marshal's office; adequacy of program, equipment, and staff as defined in these regulations.

(2) Types of licenses.

(a) A regular license shall be issued when the facility has met all requirements provided for by the regulations of the cabinet under KRS 199.892 to 199.896.

(b) A provisional license shall be issued when, in the opinion of the cabinet, the facility has met all requirements for a regular license, except the required liability insurance and other requirements that require the presence of children in order to monitor. A provisional license may also [shall] be issued when the facility does not meet the requirements for a regular license but there is sufficient reason for belief that the facility will comply with minimum regulations within the time period designated by the licensing authority. A provisional license shall be issued for a period not to exceed six (6) months and shall not be renewable.

(3) A license shall [is] not be transferable. A change in ownership of a facility shall require[s] a new application and fee. When circumstances covered by the license change (i.e., number of children to be served, location, hours of operation when the difference is over one (1) hour or changes the facility



from day care to night care or vice versa), notification shall be made in writing to the Division for Licensing and Regulation. Notification shall be made within the time established under Section 11 of this regulation. This does not require an additional fee.

(4) The license shall be posted in a conspicuous place.

Section 4. (1) Licensing fees shall be:

(a) Fifty (50) dollars for all new Type I facilities.

(b) Twenty-five (25) dollars for all new Type II facilities.

(c) Twenty-five (25) dollars annual renewal [renewable] fee for all facilities.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the license application. Initial application fees shall not be refundable. Renewal fees shall be refunded if relicensure is denied but not if a license is revoked.

Section 5. Licensing Procedure. (1) To qualify for a license, a child day care facility shall comply with regulations and standards established by the cabinet.

(2) An applicant for licensure shall:

(a) [(c)] [(b)] Complete three (3) copies of the application, which may be obtained from the Cabinet for Human Resources, Division for Licensing and Regulation, Frankfort, Kentucky 40621.

(b) Comply with local zoning requirements.

(c) [(a)] Secure approval of the office of the state fire marshal or his designee.

(d) [(c)] Send application fee, and two (2) completed applications to the Cabinet for Human Resources, Division of Licensing and Regulation, Frankfort, Kentucky 40621. [;]

(e) [(d)] Keep one (1) copy on file.

(3) To obtain the license to open, a child day care facility shall [must] have:

(a) A current report (within the last year) of negative TB test on all child day care personnel and adults who reside on the premises.

(b) Approved sewage system in accordance with local, county and state laws.

(c) Been surveyed by a representative of the Cabinet for Human Resources to determine if the facility qualifies for licensing, based on the regulations.

(d) Adequate equipment, supplies, and staff to serve initial enrollment of children.

(4) No facility subject to licensing shall begin operation without a license to operate from the Cabinet for Human Resources.

(5) A facility operating without having a license shall be subject to legal action.

Section 6. License Renewal Procedure. (1) Facilities shall be relicensed annually from the date of issuance of the original license.

(2) To be eligible for relicensure, a child day care facility shall:

(a) Submit a renewal application and fee prior to the expiration date of the current license.

(b) Comply with the applicable provisions of the child day care licensure regulations. Compliance will be verified through on-site inspection by representatives of the Cabinet for Human Resources.

Section 7. Basis for Revocation or Denial. The secretary may deny[, suspend,] or revoke a

license for failure to meet the standards set by the secretary after the expiration of a period not to exceed to six (6) months from the date of the first official notice that standards have not been met. When a license is revoked the applicant/licensee shall not reapply for a period of at least six (6) months. [at any time the day care facility fails to meet the requirements as set forth in the regulations.]

Section 8. Right of Appeal. (1) When a regular license has been denied[, suspended,] or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the secretary.

(2) Upon receipt of the request for a hearing, the secretary or his representative shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing. The secretary shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. Such decision shall be considered final. The licensee shall be notified in writing of the decision of the hearing officer. Where regular license denials[, suspensions] or revocations are upheld, the cabinet's notification shall specify the date by which the facility shall close.

(4) A child day care facility continuing to have children in attendance after the closing date established by the secretary, shall be subject to legal action by the cabinet as provided by law. [Likewise, a facility operating without having received a license shall be subject to legal action.]

Section 9. Administrative Responsibilities.

(1) General.

(a) The licensee shall have primary responsibility to the cabinet for maintaining adequate standards of operation in accordance with the child day care regulations.

(b) Staff shall be instructed in the requirements for operation and a copy of the minimum standards shall [must] be available for their use.

(c) Liability insurance shall be carried by the facility.

(d) All information concerning children, their parents, relatives, or guardian shall be kept in strict confidence by the staff, except for sharing information with individuals who are personally or professionally responsible for the well-being of the child.

(e) Volunteers must abide by the policies and procedures of the center. [The licensee shall provide a safe and supervised environment which will protect children from hazardous situations.]

(f) Program policies and procedures shall be in writing and shall include personnel policies, job descriptions, organization charts, chain of command, and other rules and regulations pertaining to the operation of the facility.

(2) Services. The services to be provided within the child day care facility shall be clearly stated at the time of the application. A written statement of services and policies shall be given to parents.

(3) Staff-child ratios.

(a) Minimum staff-child ratios for all facilities shall be maintained throughout the times that a facility is in operation, as follows:

Age of Children	Ratio
Under one year	1 staff for 6 children
1 to 2 years	1 staff for 6 children
2 to 3 years	1 staff for 10 children
3 to 4 years	1 staff for 12 children
4 to 5 years	1 staff for 14 children
5 to 7 years	1 staff for 15 children
7 and older	1 staff for 25 children (for before and after school) 1 staff for 20 children (for full day of care)

(b) When only one (1) staff member is present in the facility, the age of the youngest child determines the staff-child ratio. In no case may one (1) adult alone provide care for more than ten (10) preschool children, or for more than fifteen (15) school-age children.

(c) Children under care shall never be left without adult supervision. Additional staff shall be employed during cooking and cleaning periods if necessary to insure adequate supervision of the children.

(d) In facilities where more than one (1) staff member is present, the age of the youngest child in the group shall determine the staff/child ratio as set forth in paragraph (a) of this subsection [following apply: mixed age groups including children under two (2) years, one (1) staff for seven (7) children; mixed age groups children, age two (2) to six (6), one (1) staff for ten (10) children; mixed age groups children, age six (6) and older, one (1) staff for fifteen (15) children.]

(4) Director.

(a) The director shall assume responsibility for supervision and conduct of staff.

(b) The director shall provide a child care program which meets the regulations herein set forth.

(c) The director shall have the ability to supervise personnel and carry out personnel policies, including scheduling of daily activities, conducting staff meetings, and visiting classrooms to guide teaching staff.

(d) The director shall be able to develop center plans, policies, procedures and budgets in compliance with state regulations.

(e) The director shall have the ability to provide for health, safety and comfort of children, including fire drills, regulating heating, lighting and carrying out emergency measures in case of illness, accident or fire, and reporting suspected child abuse or neglect.

(f) The director shall be able to evaluate the teaching activities of staff and identify any problems with emotional development, including identifying children's problems with vision, speech and hearing, and assist in obtaining appropriate treatment or necessary services.

(g) The director shall assure that additional staff is available during cooking or cleaning hours if necessary, to maintain supervision of the children.

(5) Staff.

(a) At all times a staff person shall be on duty who is trained in pediatric first aid including CPR.

(b) At all times one (1) adult shall be designated as being in charge. In the event that the director is not present in the center, the adult left in charge shall be capable of carrying out the duties of the director.

(c) A minimum of two (2) qualified substitutes with current negative tuberculin test reports at the time of employment, shall be available in case of need.

(d) The minimum of adult workers in a center shall be sufficient to ensure that minors under eighteen (18) years of age and student trainers are at all times under direct supervision. No person under age of sixteen (16) shall be counted as part of the staff/child ratio.

(e) No controlled substance or alcohol use, or staff [persons] under the influence shall be permitted on the premises.

(f) Smoking by staff shall be permitted only in designated areas away from the children.

(g) Staff members shall remain awake while on duty.

Section 10. Records. The [of the] following records shall be maintained at the facility:

(1) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician.

(2) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the center director at the time of enrollment.

(3) Except as provided in KRS 214.036 immunization records for preschool children shall be on file within thirty (30) days of admission. The facility shall [will] have ninety (90) days to obtain evidence that immunizations are current in accordance with 902 KAR 2:060 as revised.

(4) Permission for trips off the premises, signed by the parent or guardian.

(5) Daily attendance records of children.

(6) For each employee, a copy of the results of a TB skin test administered within the last year [thirty (30) days] of the date of his/her employment.

(7) A written schedule of staff working hours.

(8) A written record [Records] of staff training.

(9) A written plan for staff development.

(10) A written record [Records] of monthly fire drills and quarterly disaster drills.

(11) A written plan and/or diagram outlining the course of action in the event of natural or manmade disaster.

(12) Criminal records check on staff and volunteers [as required by KRS 17.165]. If the volunteer does not replace staff, is never alone with children, and has no supervising responsibility, then he would not be considered a volunteer for the purpose of criminal records check.

Section 11. Reports of the following shall be made to the cabinet:

(1) Any serious occurrences involving children including accident or injury requiring extensive medical care and/or hospitalization; or death; or any form of child abuse; or fire or other emergency situations; or any incident which results in legal action by or against the center

which affects any child or children or personnel; within twenty-four (24) hours.

(2) Change of director, within one (1) week.  
[Change of ownership, sponsorship or director; within one (1) week.]

(3) Notification of the following shall be made to the cabinet sufficiently in advance to allow for approval before implementation:  
[Change of location; sufficiently in advance to allow for approval of the facility.]

(a) Change of ownership/sponsorship.

(b) Change of location.

(c) Increase in capacity.

(d) Change of hours of operation.

(e) Change of services.

[(4) Change of hours of operation in advance.]

[(5) Change of services within one (1) week.]

[(6) Change in number of children to be served; increase in capacity must notify the cabinet and the state fire marshal for the purpose of relicensure.]

Section 12. Child Abuse or Neglect. (1) Each licensed facility shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect while said children are under the supervision of employees of the facility. Such a program is to include procedures to inform employees of the licensee of the laws of the Commonwealth pertaining to child abuse or neglect.

(2) No day care facility may employ any person convicted of child abuse or neglect.

Section 13. Staff Requirements. (1) Type I facility. After the effective date of this regulation, a director hired in a Type I facility shall have a minimum educational requirement of a child development associate credential (CDA), based on national competency standards, or associate of arts with an emphasis in child development or bachelor's degree in a related field from an accredited college or university or competency-based vocational training. This educational requirement shall be supplemented by a minimum of two (2) years of satisfactory full-time paid [day] experience in working with young children in a group. Three (3) years of full-time paid experience in a child care facility may be substituted for the required education, making a total of five (5) years experience necessary. All experience must be verified. The director shall be at least twenty-one (21) years of age and have at least two (2) character references from nonrelatives. This provision does not apply to directors employed prior to the effective date of this regulation. [The director shall be a literate adult who shall assume responsibility for supervision and conduct of staff.]

(2) Type II facility. A child care director in a Type II facility, after the effective date of this regulation, shall have as a minimum educational requirement of a general equivalency diploma (GED) or a high school diploma and have completed at least twelve (12) hours of child development training [completed] during the first six (6) months of operation. The director must be at least twenty-one (21) years of age. [The director shall provide a child care program which meets the regulations herein set forth.]

[(3) All members of the child care staff shall provide good care and maintain responsible supervision.]

[(4) Staff shall have practical knowledge of

first aid.]

[(5) At all times one (1) adult shall be designated as being in charge. At no time shall children be left without adult supervision.]

[(6) A minimum of two (2) qualified substitutes with current (within the past year) negative tuberculin test reports shall be available in case of need.]

[(7) The licensee shall assure that additional staff is available during cooking or cleaning, if necessary, to maintain supervision of the children.]

[(8) The number of adult workers in a center shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are at all times under direct supervision. No staff person under age of sixteen (16) shall be counted as part of the staff-child ratio.]

[(9) The total child care staff shall be qualified by experience and training to provide the services for which the facility is licensed considering the hours of care given, the program offered, the size of the facility, and the number and ages of children under care. Experience and training may be obtained on the job.]

Section 14. Staff Training. (1) Directors employed after the effective date of this regulation, unless qualified by a bachelor's degree in early childhood education/development or a bachelor's degree in a related field supplemented by a minimum of two (2) years of full-day experience in a child care setting, shall complete twelve (12) hours of specialized training prior to receiving a regular license. This training must be completed before or within the first six (6) months of operation while the facility operates on a provisional license.

(2) The director and all child care staff shall participate in at least six (6) hours of training annually beginning January 1, 1988 [July 1, 1987]. This training shall be designed to improve the quality of child care.

(3) Staff shall be trained in pediatric first aid, including CPR, to permit a staff member with this training to be on duty at all times.

(4) All training shall have prior approval of the cabinet according to guidelines developed by cabinet staff.

(5) Training shall be documented in writing by the provider.

Section 15. [14.] Physical Facilities. (1) Building.

(a) The building shall be suitable for the purpose intended and should maintain a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom, and storage areas. It shall be kept clean and in good repair.

(b) If all or any portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted, that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. In boy's bathrooms if urinals are used, urinals may be substituted for up to one-half (1/2)

[one-third (1/3)] of the number of toilets required. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food, and shall not be used for any other activities of the center.

(f) The center shall be equipped with a telephone accessible to the rooms used by the children.

(g) If care is provided school-age children, a separate area or room shall be provided.

(h) Separate toilet facilities for males and females, or a plan whereby the same facilities are used at separate times, shall be provided for school-age children.

(i) No child shall return from the toilet to activities without first washing hands. Children shall wash their hands with soap and warm, running water prior to eating and after toileting.

(j) [(i)] If the only food served by the center is an afternoon snack for the school-age children, a kitchen is not required if adequate refrigeration is available.

(k) [(j)] Indoor areas for infants/toddlers shall be provided separated from areas used by older children. The infants/toddlers may participate in activities with older children for short periods of time.

(l) [(k)] There shall be adequate crawling space for infants/toddlers protected from older children away from general traffic patterns of the center.

(m) [(l)] Each area used for infants/toddlers shall have direct access to hand-washing facilities.

(n) [(m)] If a facility provides an outdoor play area and cares for infants and toddlers, a protected outdoor area, with sun and shade and out of the traffic pattern of older children, shall be provided [if infants or toddlers are cared for].

(o) [(n)] Plans and specifications for new buildings and/or additions which are to be constructed for day care facilities shall be approved prior to construction by health and fire safety officials having jurisdiction.

(2) Grounds.

(a) Any outdoor play area shall be fenced unless a fence is determined unnecessary for the safety of the children and waived by the Office of Inspector General, Division of Licensing and Regulation in writing. The outdoor play area shall be [There shall be a fenced outdoor play area] free from litter, glass, rubbish, and inflammable materials and adequate in size to accommodate the number of children using the area at a particular time [unless the cabinet determines that fencing is not necessary for the protection of the children]. The outdoor area shall be safe and drained.

(b) If a facility does not have an outdoor play area, the indoor space to be used as a play area has to be a minimum of sixty (60) square feet per child using the area at any one time separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section, and include gross motor equipment and be well-ventilated and heated.

(c) If a facility does not have a fenced outdoor play area or an indoor play area, a bus may be used to transport children to a fenced playground. Transportation guidelines shall be

in accordance with Section 18 of this regulation.

(3) Equipment.

(a) All equipment and furnishings shall be in good repair. There shall be safe play equipment in good repair, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each center shall have enough toys, [and] play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day as specified in Section 16 [15] of this regulation.

(c) Tables and chairs shall be of a suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for children's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child in attendance for more than three and one-half (3 1/2) hours per day [, as appropriate]. [Crisbs shall be provided for children up to eighteen (18) months old.] Crisbs shall have a firm, comfortable waterproof mattress. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. Where mats are used, floors shall be warm and free from drafts and dampness. Cots and all other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be allowed.

(h) Supplies shall be stored so that the adult may reach them without leaving the child unattended.

(i) There shall be a variety of safe, clean, washable toys, appropriate to the age levels and number of children present. Toys shall be too large to swallow, durable, and without sharp points or edges.

(j) Chairs shall be provided for staff to use when feeding, holding or playing with children.

(k) There shall be safe equipment that encourages crawling, walking, and climbing.

Section 16. [15.] Care of the Children. (1) Program. The day care center shall provide a planned program of activities geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. Activities of anyone living in the facility shall not interfere with the day care program. The daily program shall be under adult supervision and shall provide:

(a) A variety of creative activities which may include the following: art, music, dramatic play, stories and books, science, and block building.

(b) Indoor and outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play alone, if he/she desires, or with others.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, hand-washing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of [physical] routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children must stand or sit.

[(j) Diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.]

[(k) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be always on hand.]

[(l) The infants/toddlers shall be kept clean, dry and comfortable throughout the day. Diapers and/or wet clothing shall be changed promptly.]

[(m) Soiled diapers shall be stored in covered containers temporarily and shall be washed at least once a day.]

[(n) When a child is diapered, the child shall be placed on a fresh washable surface or disposable covering.]

[(o) Individual washcloths and towels shall be used to thoroughly dry the child's buttocks.]

[(p) When training chairs are used, they shall be emptied promptly and sanitized at least once a day.]

[(q) Caregivers shall wash hands after diapering or toileting each child.]

[(r) The infant's formula shall be prepared and provided by the parent.]

[(s) Bottles shall be individually labeled and promptly refrigerated.]

[(t) Caregivers shall wash hands immediately before feeding children.]

[(u) At no time shall a child be placed in bed with a propped bottle.]

[(v) Infants/toddlers' shoes and restrictive clothing shall be removed for sleep periods.]

(2) Discipline. Disciplinary methods shall be in writing and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The center shall:

(a) Establish simple and consistent rules both for children and staff that set the limits of behavior.

(b) Not subject children to harsh or physical discipline; loud, profane, threatening, frightening or abusive language shall not be used by staff or any other person on the premises.

(c) Not associate discipline with rest, toileting, or food.

### (3) Health.

(a) Sufficient first aid supplies shall be available to provide prompt and proper first aid treatment. Written provisions shall be made for obtaining emergency medical care.

(b) Any child showing any signs of communicable illness may not be admitted. If a child becomes ill during the day, he/she shall be placed in a supervised area isolated from the rest of the children. In a situation where a child becomes ill, the parent or authorized person shall be contacted immediately and arrangements will be made to remove the child from the center. [ , until arrangements can be made for him/her to be taken home.]

(c) No medication shall be given to a child

except as prescribed by a duly licensed physician and/or on written daily request of the parent or guardian. The center shall keep a written record of the administration of each medication, including time, date and amount. Medication shall be properly labeled and stored in a separate place out of reach of children. Prescriptions shall be in the original bottle and properly labeled. At no time will medication be given to a child if the expiration date on the bottle has passed.

(d) Good personal hygiene shall be practiced by all persons in the center and children shall be helped with their personal care and cleanliness.

(e) Diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.

(f) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be always on hand.

(g) The infants/toddlers shall be kept clean, dry and comfortable throughout the day. Diapers and/or wet clothing shall be changed promptly.

(h) Soiled diapers shall be stored in covered containers temporarily and shall be washed or disposed of at least once a day.

(i) When a child is diapered, the child shall be placed on a fresh washable surface or disposable covering.

(j) Individual washcloths and towels shall be used to thoroughly clean and dry the child's buttocks.

(k) When training chairs are used, they shall be emptied promptly and sanitized after each use.

(l) Caregivers shall wash hands with soap and running water after diapering or toileting each child.

(m) The infant's formula shall be prepared and provided by the parent. An exception may be made for facilities [centers] that qualify for the child-care food program, or provide formula as a fringe benefit to the parent.

(n) Bottles shall be individually labeled and promptly refrigerated.

(o) Caregivers shall wash hands with soap and running water immediately before feeding children.

(p) At no time shall a child be placed in bed with a propped bottle.

(q) All children's shoes and restrictive clothing shall be removed for sleep periods.

(r) [(e)] The children in attendance shall have sufficient supervised rest not to exceed two (2) hours at any one time except in nighttime care, for their ages and for the number of hours spent at the facility.

(s) [(f)] The water supply shall be approved by the local health department. Drinking water shall be freely available and individual drinking cups provided where no fountains are provided.

(t) [(g)] Toilet articles such as combs, brushes, toothbrushes, towels and washcloths used by children shall be individual and plainly marked.

(u) [(h)] The facility shall provide all children present at meal times with [All children present at meal time shall be served] a meal which includes a food from each of the four (4) basic food groups except for breakfast, which shall be from the three (3) groups of bread and cereal, milk, fruit juices or vegetables. Adequate amounts of food shall be available. The center shall provide a midmorning

and midafternoon snack. All school-age children shall be provided a snack after school. Snacks shall include one (1) or more of the following foods: milk, fruit, vegetables, juice, enriched grain products, protein rich foods such as peanut butter or cheese.

(v) [(i)] Children shall be seated at eating time with sufficient room to manage food and tableware.

(w) [(j)] Individual eating utensils shall be of size and design that children can handle easily.

(x) [(k)] Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file for thirty (30) days.

(4) Nighttime care.

(a) No child in care is permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period or day. Where school-age children are served, time spent in school shall be included in the sixteen (16) hour limit.

[(b) Staff members shall remain awake while on duty.]

(b) [(c)] At least one (1) staff member shall be stationed in an area on the same floor with children, either in or adjacent to each sleeping room.

(c) [(d)] A nighttime care facility, if children are present for extended periods of time during their waking hours, shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the children served.

(d) [(e)] Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns. School children shall be offered breakfast if they go to school from the center.

Section 17. [16.] Health and Sanitation. (1) All facilities that serve a meal are to have a three (3) compartment sink or such other equipment and procedures approved by the cabinet for the purpose of washing and sanitizing all dishes, silverware, eating and cooking utensils after use.

(2) Type I and Type II facilities shall conform to the following minimum food service and sanitation guidelines for day care homes and centers:

(a) Food supplies. All food shall be from sources approved or considered satisfactory by the health authority and shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. No hermetically sealed, nonacid and low-acid food which has been processed in a place other than a commercial food-processing establishment shall be used. Food served shall be from a source which is in compliance with applicable state and local laws and regulations. Established commercial food stores may be assumed to be an acceptable source.

(b) Food protection.

1. All food, while being stored, prepared and displayed or served shall be protected against contamination from dust, flies, rodents and other vermin; unclean utensils and work surfaces; unnecessary handling; coughs and sneezes, flooding, drainage and overhead leakage.

2. All potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation.

3. Frozen food shall be kept at such

temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, or quick-thawed as part of the cooking process, or by any other method satisfactory to the health authority.

4. Each cold-storage facility used for storage of perishable food in nonfrozen state shall be provided with an indicating thermometer or other appropriate temperature measuring device.

5. Convenient and suitable utensils, such as forks, knives, tongs, spoons or scoops, shall be provided and used to minimize handling of food at all points where food is prepared.

6. Poultry, pork and their products which have not been specially treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

7. Meat salads, poultry salads, potato salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

8. All food shall be stored in clean racks, shelves or other clean surfaces. Food in nonabsorbent type containers may be stored on the floor when it is maintained in an acceptable sanitary condition.

9. Individual portions of food once served to a child shall not be served again; provided, however, that wrapped food, which is still wholesome and has not been unwrapped, other than potentially hazardous food, [which is still wholesome and has not been unwrapped] may be reserved.

10. All poisonous and toxic material shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(c) Personnel.

1. Health and disease controls: No person while infected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a facility in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other individuals. If the manager or person in charge of the facility has reason to believe any employee has contracted a disease, he shall advise that employee to seek appropriate treatment.

2. Cleanliness. All employees shall maintain personal cleanliness and conform to hygienic practices while on duty. They shall wash their hands thoroughly before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his/her hands.

(d) Food equipment and utensils.

1. All food contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, and also be accessible for cleaning, and nontoxic.

2. Cleanliness of equipment and utensils. All eating and drinking utensils shall be cleaned after each usage. All kitchenware and food contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in



preparation or serving of food or drink, and all food storage utensils, shall be cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food contact surfaces of equipment used in preparation, service, display, or storage of potentially hazardous food shall be cleaned prior to such use. Nonfood contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition. After cleaning and until use, all food contact surfaces of equipment and utensils shall be stored and handled as to be protected from contamination. All single-service articles shall be stored, handled, and dispensed in a sanitary manner, and shall be used only once.

(e) Sanitary facilities and controls. All facilities shall have lavatories located in or immediately adjacent to all toilet rooms.

(f) Vermin control.

1. Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

2. Unless flies and other flying insects are absent from the immediate vicinity of the establishment, all openings to the outer air shall be effectively protected against the entrance of such insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(g) Other facilities and operations (floors, walls and ceilings). Walls and ceilings shall be smooth and constructed to be easily cleanable. All walls and ceilings shall be kept clean and in good repair.

(h) Ventilation. The kitchen in a facility shall be adequately ventilated to the outside air.

(i) Water supply. The water supply for the facility shall be properly located, protected and operated, and shall be adequate and of an approved source.

1. The water supply is favorably located away from all possible sources of contamination and is easily accessible to encourage its use. The approved distance from toilets, septic tanks, etc., may vary, depending upon type of soil, topography, etc. The source of water supply is a public water supply, approved by the Cabinet for Natural Resources and Environmental Protection, or a spring, or well, or cistern which complies with the specifications for construction and protection required by the Cabinet for Natural Resources and Environmental Protection.

2. The water supply is adequate in quantity and pressure to permit unlimited use.

3. All ground water supplies for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department.

4. Individual drinking cups or paper cups are required.

(j) Sewage and solid waste disposal. All sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with local, county and state laws.

1. All sewage and liquid wastes are disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the Cabinet for Natural Resources and Environmental Protection. Consultation will be sought from the

Cabinet for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction on facilities in which the adequacy of the plumbing is questioned.

2. All waste paper and solid waste is disposed of in a manner approved by the state and local health regulations. Easily cleanable containers shall be provided for storage of waste materials. All garbage and rubbish containing food waste shall be stored in containers and kept covered.

(k) Toilet and hand-washing facilities. Each facility shall be provided with adequate and conveniently located toilet and hand-washing facilities. Toilets shall be kept in clean condition, in good repair, lighted and ventilated. In case privies are permitted and used, they shall be of sanitary type, constructed and operated in conformity with the standards of the Cabinet for Human Resources. Hot and cold water under pressure, soap and approved towels shall be provided at lavatories. Covered waste receptacles shall be provided in each toilet room.

1. Adequate toilet facilities, in desirable locations are provided. Hand-washing facilities shall be adequate and conveniently located. Privies shall be constructed and operated in accordance with the standards of the Cabinet for Human Resources.

2. Each toilet room shall be lighted, ventilated to the outside air, and kept in good repair.

3. A supply of toilet paper is to be on hand at all times. Soap and individual cloth or paper towels are provided. Most new commercial soap dispensers are satisfactory.

[4. No child shall return from the toilet to activities without first washing hands.]

4. [5.] Easily cleanable receptacles shall be provided for waste materials.

5. [6.] Hand-washing facilities are of such type that the washing of hands under warm running water may be accomplished.

6. [7.] All openings to the outer air in the toilet rooms are effectively screened.

Section 18. [17.] Transportation. (1) When transportation is provided directly, contracted for or arranged by a day care facility, these requirements shall apply:

(a) There shall be conformance to state laws pertaining to vehicles, drivers and insurance.

(b) The staff-child ratio set in this regulation in Section 9(3) of this regulation, shall apply when not inconsistent with special requirements or exceptions in this section.

(c) Any center providing transportation service shall have an individualized written plan and statement of transportation policies and procedures.

(d) Each child shall have a seat and remain seated while the vehicle is in motion.

(e) On any vehicle equipped with seat belts, these shall be used to secure individual children.

(f) All vehicles used to transport children shall be designed and offered with seats for each passenger as manufactured standard equipment.

(g) A vehicle containing children shall never be left unattended.

(h) The maximum number of children under the age of six (6) a driver shall supervise alone is five (5). The staff/child ratios shall apply

after this number. No children under two (2) years of age shall be transported unless restrained in an approved safety seat or accompanied by another adult.

(i) A child under age six (6) shall not be left unattended at the time of delivery.

(j) If the parent, or a person authorized by the parent to accept the child, is not present upon delivery of the child, a note shall be left explaining where the child can be picked up.

(k) If anyone other than the authorized person is to receive the child, such arrangements shall be made by the parent or guardian.

(2) The vehicle shall not pick up and deliver children to a location which would require the child to cross the street or highway unless accompanied by an adult.

(3) The following standards shall be met when transportation is provided by any means other than licensed public transportation:

(a) The vehicle shall be maintained in good mechanical/operable condition at all times.

(b) A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least every six (6) months.

(c) Vehicles used to transport children, which require other traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying color and words.

(d) The motor shall be turned off, keys removed, and brake set any time the driver is not in the driver's seat.

Section 19. Visitation. Parents or persons exercising custodial control of a child shall be permitted to visit the facility at any time during regular hours of operation.

ANNA GRACE DAY, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: November 4, 1987

FILED WITH LRC: November 5, 1987 at 11 a.m.

#### AMENDED AFTER HEARING

#### 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, 224.830 through 224.889, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033

NECESSITY AND FUNCTION: KRS 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 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) "Accumulated speculatively" see Section 1 of 401 KAR 31:010.

(2) "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.

(3) "Active life" of a facility means the [that] period from the initial receipt of hazardous waste at the facility until the secretary receives certification of final closure. [of time for a facility between the beginning of construction and continuing through the closure period.]

(4) "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.

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

(6) "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.

(7) "Agricultural waste" means any nonhazardous waste resulting from the production and processing of on-the-farm agricultural products, including manures, prunings and crop residues.

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

(9) "Ancillary equipment" means any device including but not limited to such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to hazardous waste management units including tanks between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(10) [(9)] "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.

(11) [(10)] "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.

(12) [(11)] "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.

(13) [(12)] "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 equaled or exceeded once in 100 years on the average over a significantly long period.

(14) [(13)] "Board" means the Kentucky regional integrated waste treatment and disposal facility siting board (KRS 224.2201).

(15) [(14)] "Boiler" see "hazardous waste site or facility-boiler."

(16) [(15)] "By-product" see Section 1 of 401 KAR 31:010.

(17) [(16)] "Cabinet" means the Natural Resources and Environmental Protection Cabinet (KRS 224.005).

(18) [(17)] "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.

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

(20) [(19)] "Certificate" means a certificate of environmental safety and public necessity (KRS 224.2201).

(21) [(20)] "Certification" means a statement of professional opinion based upon knowledge and belief.

(22) [(21)] "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.

(23) [(22)] "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 postclosure monitoring and maintenance or to make it suitable for other uses (KRS 224.005).

(24) [(23)] "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.

(25) [(24)] "Coal mining waste" means earth materials which are combustible, physically 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.

(26) [(25)] "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.

(27) [(26)] "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 Section 5(3) of 401 KAR 31:030.

(28) [(27)] "Construction materials" means nonhazardous nonsoluble 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.

(29) [(28)] "Contained landfill" see "solid waste site or facility - contained landfill."

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

(31) [(30)] "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 8.

(b) An increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in 401 KAR 30:030, Section 2 or 401 KAR 34:060, Section 8.

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

(33) [(32)] "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.

(34) "Corrosion expert" means a person who by reason of his knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks documented by credentials submitted to the cabinet. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged

metal piping systems and metal tanks.

(35) [(33)] "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.

(36) [(34)] "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received a hazardous waste site or facility permit (or a facility with interim status) in accordance with the requirements of 401 KAR Chapter 38, a permit from a state authorized in accordance with 40 CFR Part 271, and EPA permit (or a facility with interim status) in accordance with 40 CFR Parts 270 and 124, or that is regulated under Section 6(3)(b) of 401 KAR 31:010 or 401 KAR Chapter 36, 40 CFR 261.6(c)(2) or 40 CFR Part 266, and that has been designated on the manifest by the generator pursuant to Section 1 of 401 KAR 32:020.

(37) [(35)] "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.

(38) [(36)] "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

(39) [(37)] "Director" means the director of the cabinet's division of waste management.

(40) [(38)] "Discharge" means but is not limited to spilling, leaking, pumping, pouring, emitting, emptying, or dumping (KRS 224.877(a)).

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

(42) [(40)] "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).

(43) [(41)] "Disposal facility" see "hazardous waste site or facility - disposal facility."

(44) [(42)] "Elementary neutralization unit" see "hazardous waste site or facility - elementary neutralization unit."

(45) [(43)] "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.

(46) [(44)] "Environmental emergency" includes any release or threatened release of materials into the environment in such quantities or concentrations as to 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)).

(47) [(45)] "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.

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

(49) [(47)] "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.

(50) [(48)] "Equivalent method" means any testing or analytical method, approved jointly by the administrator and 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.

(51) [(49)] "Existing hazardous waste site or 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 commenced construction if:

(a) The owner or operator had obtained the federal, state and local 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.

(52) [(50)] "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.

(53) [(51)] "Explosive gas" means methane (CH<sub>4</sub>) in 401 KAR 30:030, Section 1(1).

(54) [(52)] "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).

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

(56) [(54)] "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.

(57) [(55)] "Final closure" means the closure of all hazardous waste facilities in accordance with all applicable closure requirements so that hazardous waste management activities under 401 KAR Chapters 34 and 35 are no longer conducted at the facility unless subject to the provisions in Section 5 of 401 KAR 32:030. [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.]

(58) [(56)] "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.

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

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

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

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

(63) [(61)] "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.

(a) "Small quantity generator" means a generator who generates more than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(b) "Limited quantity generator" means a generator who generates less than 100 kilograms of hazardous waste in a calendar month.

(c) If a limited quantity generator generates acutely hazardous waste listed in Sections 2, 3, and 4(5) of 401 KAR 31:040 in a calendar month in quantities greater than one (1) kilogram, all quantities of that acutely hazardous waste are subject to regulation under 401 KAR Chapters 32 through 39, and the notification and permitting requirements of KRS 224.855 and 224.864 through 224.877.

(64) [(62)] "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."

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

(66) [(64)] "Hazardous substance" means any substance or combination of substances including wastes of a solid, liquid, gaseous or semisolid 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)).

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

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

(69) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(a) Hazardous waste tanks:

1. "Above-ground tank" means a device meeting the definition of "tank" in this section [regulation] and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Component" means either the tank or ancillary equipment of a tank system.

3. "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

a. A continuous on-site physical construction or installation program has begun; or

b. The owner or operator has entered into contractual obligations - which cannot be cancelled or modified without substantial loss - for physical construction of the site or installation of the tank system to be completed within a reasonable time.

4. "In-ground tank" means a device meeting the definition of "tank" in this section [regulation] whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

5. "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986 except, however, for purposes of Section 4(7)(b) of 401 KAR 34:190 and Section 4(7)(b) of 401 KAR 35:190, a new

tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)

6. "On-ground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

7. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

8. "Underground tank" means a device meeting the definition of "tank" in this section [regulation] whose entire surface area is totally below the surface of and covered by the ground.

9. "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(70) [(67)] "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) "Boiler" means an enclosed device using control flame combustion and having the following characteristics:

1.a. The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

b. The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as water walls and superheaters) must be physically formed into one (1) manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally design, however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

c. While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty (60) percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

d. The unit must export and utilize at least seventy-five (75) percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

2. The unit is one (1) which the cabinet has determined, on a case-by-case basis, to be a boiler, after considering the standards in 401 KAR 30:080.

(b) "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.

(c) "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.

(d) "Incinerator" means any enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.

(e) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

1. Cement kilns.
2. Lime kilns.
3. Aggregate kilns.
4. Phosphate kilns.
5. Coke ovens.
6. Blast furnaces.
7. Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces).
8. Titanium dioxide chloride process oxidation reactors.

9. Methane reforming furnaces.

10. Pulping liquor recovery furnaces.

11. Combustion devices used in the recovery of sulfur values from spent sulfuric acid.

12. Such other devices as the cabinet may, after notice and comment, add to this list on the basis of criteria and Section 5 of 401 KAR 30:080.

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

(g) "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.

(h) "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.

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

(j) "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.

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

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

(m) "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.

(n) "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.

(o) "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 nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(p) "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.

(71) [(68)] "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene to the present.

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

(73) [(70)] "Incinerator" see "hazardous waste site or facility - incinerator."

(74) [(71)] "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.

(75) [(72)] "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.

(76) [(73)] "Industrial furnace" see "hazardous waste site or facility - industrial furnace."

(77) [(74)] "Inert landfill" see "solid waste site or facility - inert landfill."

(78) [(75)] "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.

(79) [(76)] "Injection well" see "hazardous waste site or facility - injection well."

(80) [(77)] "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.

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

(82) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of a hazardous waste management unit including tank systems.

(83) [(79)] "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 and is treated as having a permit until such time as final administrative disposition of such application is made.

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

(85) [(81)] "KPDES" means Kentucky Pollutant Discharge Elimination System.

(86) [(82)] "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.

(87) [(83)] "Landfarming facility" see "solid waste site or facility - landfarming facility."

(88) [(84)] "Landfill" see "hazardous waste site or facility - landfill."

(89) [(85)] "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.

(90) [(86)] "Land treatment facility" see "hazardous waste site or facility - land treatment facility."

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

(92) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment system or the presence of a release of hazardous waste constituents or accumulated liquid in the secondary containment system. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of above-ground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment system or the presence of

a release of hazardous waste constituents or accumulated liquids into the secondary containment system.

(93) [(88)] "Liner" means a continuous layer of natural or manmade 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.

(94) [(89)] "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.

(95) [(90)] "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 of 401 KAR 38:040.)

(96) [(91)] "Manifest" means the shipping document form contained in Appendix A of 401 KAR 32:100, and if necessary the form contained in Appendix B of 401 KAR 32:100, originated and signed by the generator in accordance with the instructions included in 401 KAR 32:100.

(97) [(92)] "Manifest document number" means the U.S. EPA twelve (12) digit identification number assigned to the generator plus a unique, serially increasing, five (5) digit document number assigned to the manifest by the generator for recordkeeping and reporting purposes.

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

(99) [(94)] "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.

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

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

(102) [(97)] "NPDES" means National Pollutant Discharge Elimination System (KRS 224.005(29)).

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

(104) [(99)] "Off-site" means properties noncontiguous to the generation site.

(105) [(100)] "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 crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous 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.

(106) [(101)] "100 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 equaled or exceeded once in 100 years on the average over a significantly

long period, taking into consideration the present engineering aspect of the flood plain.

(107) [(102)] "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.

(108) [(103)] "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 cabinet 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).

(109) [(104)] "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.

(110) [(105)] "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.

(111) [(106)] "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.

(112) [(107)] "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 38:210. Specifically, Part B consists of submitting all of the information required in 401 KAR 38:090 through 401 KAR 38:210; there are no official forms for the submission.

(113) [(108)] "Partial closure [of a hazardous waste facility]" means the closure of a hazardous waste management unit [discrete part of a facility] in accordance with the applicable closure requirements of 401 KAR Chapters 34 and [or] 35 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(114) [(109)] "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.

(115) [(110)] "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, Section 2.

(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 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. Both hazardous and solid waste sites or facilities may be considered to hold a permit by rule.

1. Examples of hazardous waste sites or facilities which are permitted by rule include facilities operating under an interim status permit and facilities identified in Section 1 of 401 KAR 38:060.

2. Examples of solid waste sites or facilities which are permitted by rule include facilities identified in Section 1(4) of 401 KAR 47:020 and Section 1(2) of 401 KAR 47:050.

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

(117) [(112)] "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).

(118) [(113)] "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.

(119) [(114)] "Pile" see subsection (63)(g) of this section.

(120) [(115)] "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, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(121) [(116)] "Postclosure care" means the manner in which a facility must be maintained when it no longer accepts hazardous waste for disposal.

(122) [(117)] "Postclosure 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.

(123) [(118)] "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)).

(124) [(119)] "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and recovery) of any municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth (KRS 224.005).

(125) [(120)] "Putrescible" means susceptible to rapid decomposition by bacteria, fungi, or oxidation sufficient to cause nuisances such as

odors, gases, or other offensive conditions.

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

(127) [(122)] "Reclaimed" see Section 1 of 401 KAR 31:010.

(128) [(123)] "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).

(129) [(124)] "Recycling" means any treatment process for the reclamation of material or energy from waste (KRS 224.005). See also Section 1 of 401 KAR 31:010.

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

(131) [(126)] "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)).

(132) [(127)] "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.

(133) [(128)] "Residential landfill" see "solid waste site or facility - residential landfill."

(134) [(129)] "Residual landfill" see "solid waste site or facility - residual landfill."

(135) [(130)] "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(136) [(131)] "Resource recovery" means the recovery of material or energy from waste.

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

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

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

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

(141) [(136)] "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.

(142) [(137)] "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.

(143) [(138)] "Scrap metal" see Section 1 of

401 KAR 31:010.

(144) [(139)] "Secretary" means the secretary of the Natural Resources and Environmental Protection Cabinet (KRS 224.005).

(145) [(140)] "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.

(146) [(141)] "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 multicounty solid waste management plan (KRS 224.005).

(147) [(142)] "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).

(148) [(143)] "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).

(149) [(144)] "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, nonsoluble and nonputrescible 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, wood chips, and tree trimmings, 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 nonhazardous 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" in 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.

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

(151) [(146)] "Spent material" see Section 1 of 401 KAR 31:010.

(152) [(147)] "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.

(153) [(148)] "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.

(154) [(149)] "Storage facility" see "hazardous waste site or facility - storage facility."

(155) [(150)] "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.

(156) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste management units.

(157) [(151)] "Surface impoundment" see "hazardous waste site or facility - surface impoundment."

(158) [(152)] "Tank" see "hazardous waste site or facility - tank."

(159) [(153)] "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 postclosure monitoring and maintenance cease (KRS 224.005).

(160) [(154)] "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").

(161) [(155)] "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

(162) [(156)] "Totally enclosed treatment facility" see "hazardous waste site or facility - totally enclosed treatment facility."

(163) [(157)] "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.

(164) [(158)] "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.



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

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

(167) [(161)] "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).

(168) [(162)] "Treatment facility" see "hazardous waste site or facility - treatment facility."

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

(170) [(164)] "Trenching or burial operation" means the placement of sewage sludge or septic tank pumpings in a trench or other natural or manmade 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.

(171) [(165)] "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.

(172) [(166)] "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.")

(173) [(167)] "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.

(174) [(168)] "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.

(175) [(169)] "Used or reused" see Section 1 of 401 KAR 31:010.

(176) [(170)] "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.

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

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

(179) [(173)] "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);

(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) except as provided in KRS 224.867 [(KRS 224.005)].

(180) [(174)] "Waste boundary" means:

(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.

(181) [(175)] "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 Conservation and Recovery Act of 1976, as amended (P.L. 94-580) (KRS 224.005).

(182) [(176)] "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit."

(183) [(177)] "Water (bulk shipment)" means the bulk transportation of hazardous waste which

is loaded or carried on board a vessel without containers or labels.

(184) [(178)] "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).

(185) [(179)] "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.

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

(187) "Zone of engineering control" means an area under the control of the owner/operator that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to waters of the Commonwealth.

(188) [(181)] "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 <sup>2</sup>	Centimeter squared
CO	Carbon monoxide
CO <sub>2</sub>	Carbon dioxide
CWA	Clean Water Act
DOT	United States 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 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 Air Pollutants
NPDES	National Pollutant 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
ppm	parts per million
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 (P.L. 94-580)
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	Underground 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 Chapters 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, available 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 Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (Second Edition, 1982 as amended by Update I (April 1984), and Update II (April 1985)). The second edition of SW-846 and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, (703) 487-4600, as document no. PB87-120-291. [Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202) 783-3238, on a subscription basis.]

(4) Appendix X of 40 CFR 261 on the method of analysis for chlorinated dibenzo-p-dioxins and dibenzofurans is adopted by reference and included in "The Test Methods for Evaluating Solid Waste, Physical/Chemical Methods."

(5) Appendix I of 40 CFR 268 on Toxicity Characteristics Leaching Procedure (TCLP) a method used to determine whether a solvent waste or a dioxin containing waste requires treatment or when a treated waste meets the applicable treatment standards of Section 1 of 401 KAR

37:100.

(6) The paint filter liquid test is Method 9095 and is a part of EPA publication SW 846 incorporated by reference in subsection (3) of this section.

CARL H. BRADLEY, Secretary

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

**401 KAR 30:020. General provisions.**

RELATES TO: KRS 224.033, 224.036, 224.830 through 224.889, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033

NECESSITY AND FUNCTION: KRS 224.033 and the waste management provisions of KRS Chapter 224 require the cabinet to adopt rules and regulations for the generation, treatment, storage, recycling and disposal of hazardous wastes and the disposal of solid wastes. This chapter establishes the general administrative procedures which are applicable 401 KAR Chapters 31 through 49. This regulation sets forth general provisions which apply to the waste management regulations with regard to applicability, scope, exceptions, variances, general prohibitions, compatibility, conflicting provisions, [and] severability, availability and confidentiality of information.

Section 1. Applicability. The waste management regulations shall apply to the disposal of solid waste and the management of all liquid, semisolid, solid, or gaseous waste defined or identified as hazardous in KRS Chapter 224 or the appropriate regulations (401 KAR 30:010, 401 KAR Chapter 31) by all persons and state and federal agencies who engage in the generation, treatment, storage, or disposal of such wastes, including hazardous substances spilled into the environment, thereby meeting the criteria of hazardous waste.

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

(a) Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works for treatment. (Note: these exemptions do not apply to sludges generated by the treatment of domestic sewage.)

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. (Note: these exemptions do not apply to sludges generated by the treatment of industrial wastewater.)

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

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

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

(2) Any waste that is not excepted by subsection (1) of this section and that is

identified or listed under 401 KAR Chapter 31 is subject to the waste management regulations pertaining to hazardous waste.

(3) Any waste which is not excepted by subsection (1) of this section or granted a variance under the conditions of 401 KAR 30:080, or Sections 8 and 9 of 401 KAR 31:010, and which is not subject to subsection (2) of this regulation is subject to the waste management regulations pertaining to solid waste except for:

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

(b) Overburden resulting from mining operations intended for return to the mine site and coal mining wastes, refuse, overburden and coal mining by-products.

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

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

Section 2. Variance. A variance, except as provided in 401 KAR Chapter 38, is a written waiver from any provision of the waste management regulations, upon the finding by the cabinet that the absence of such provision(s) will provide adequate protection to health and the environment in a manner consistent with the purpose of the waste management regulations and KRS Chapter 224. Variances may be granted for recycling operations in accordance with the standards contained in 401 KAR 30:080.

(1) The cabinet may grant a variance or permit modification from the requirements of the waste management regulations if a waste permit requirement, or the process and equipment used is determined by the cabinet to be either:

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

(b) Handled, processed, or disposed of pursuant to regulations of another governmental agency, providing the regulations of other agencies meet the requirements of the waste management regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

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

(3) The cabinet will not grant any request for a variance which:

(a) Would make the program less stringent than the federal hazardous waste management program; or

(b) Would be in conflict with Kentucky Revised Statutes; or

(c) Would be in conflict with a regulatory provision stating that no variance shall be granted; or

(d) Would vary the requirements of 401 KAR

30:030; or

(e) Would vary the financial responsibility requirements in a manner conflicting with Section 1 of 401 KAR 34:080 or Section 1 of 401 KAR 35:080.

Section 3. Compatibility with the Federal Acts. The regulations promulgated pursuant to the waste management provisions of KRS Chapter 224 are intended to be compatible with federal regulations adopted pursuant to Public Law 94-580, the "Resource Conservation and Recovery Act of 1976," as amended.

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

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

Section 6. Use of Number and Gender. As used in 401 KAR Chapters 30 through 49:

(1) Words in masculine gender also include the feminine and neuter genders; and

(2) Words in the singular include the plural; and

(3) Words in the plural include the singular.

Section 7. Applicability of Regulations. (1) At the time of permit issuance, the applicable regulations shall be those waste management regulations which are in effect upon the date of permit issuance.

(2) For permit modifications, revocation and reissuance, or termination, the applicable regulations shall be those regulatory provisions which are in effect upon the date that the cabinet makes a final determination (i.e., approval of a permit modification) upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued. The procedures which shall be used for permit modifications, revocation and reissuance, or termination shall be those regulatory procedures which are in effect upon the date of the cabinet's final determination.

Section 8. Availability of Information: Confidentiality of Information. (1) Any information provided to the cabinet under 401 KAR Chapters 30 through 49 [35 and 37] will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C. section 552, KRS 224.035 and 224.036 [224.886] and Chapter 61 and EPA regulations implementing the Freedom of Information Act and 400 KAR 1:060 as applicable.

(2) Any person who submits information to the cabinet in accordance with 401 KAR Chapters 30 through 49 [37] and 400 KAR 1:060 may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures set forth in 400 KAR 1:060. Information covered by such a claim will be disclosed by the cabinet only to the extent, and by means of the procedures, set forth in 400

KAR 1:060 and KRS Chapter 61 except that information required by Section 4(1) of 401 KAR 32:050 which is submitted in notification of intent to export a hazardous waste will be provided to the U.S. Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by the cabinet, it may be made available to the public without further notice to the person submitting it.

Section 9. Compliance Deadlines. After promulgation of regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as hazardous waste subject to the hazardous waste management regulations, any person generating or transporting such substance or owning or operating a facility for treatment, storage, disposal or recycling of such substance shall register with the cabinet. Such registration shall be filed within ninety (90) days after promulgation or revision of the regulations unless another notification date is specified.

CARL H. BRADLEY, Secretary

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**NATURAL RESOURCES AND  
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Department for Environmental Protection  
Division of Waste Management  
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401 KAR 30:070. Reference documents.

RELATES TO: KRS 13A.130, 13A.190, 224.005, 224.033, 224.830 through 224.889, 224.994

PURSUANT TO: KRS 13A.210, 224.033

NECESSITY AND FUNCTION: KRS 224.033 and the waste management provisions of KRS Chapter 224 require the Natural Resources and Environmental Protection Cabinet to promulgate regulations for the management of solid and hazardous wastes. This chapter establishes the general administrative procedures which are applicable to 401 KAR Chapters 30 through 49. This regulation incorporates by reference as provided under 1 KAR 1:010 essential documents used in connection with the waste management regulations.

Section 1. Documents Incorporated by Reference. The documents listed in subsections (1) through (8) of this section are adopted and filed herein by reference. Copies of these documents may be obtained from the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

(1) Waste Management Policy I.2.a., "Closure of Permitted Solid Waste Sites," (July 29, 1983).

(2) Waste Management Policy IV.1.a., "Sampling Procedure-splitting Samples," (September 15, 1983).

(3) Waste Management Policy VI.1.b., "Regulatory Interpretation: Sham Recycling," (November 8, 1985).

[(4) Waste Management Policy VI.1.c., "Regulatory Interpretation: Mixture of "F" Listed Solvents," (April 6, 1984).]

(4) [(5)] Waste Management Policy VI.1.d., "Regulatory Interpretation: EPA Guidance on K061 Listing," (April 6, 1984).

(5) [(6)] Waste Management Policy VI.1.e., "Regulatory Interpretation: Plating Waste Generators," (April 6, 1984).

(6) [(7)] Waste Management Policy VI.1.f. (AMENDMENT), "Regulatory Interpretation: Empty Containers," (July 9, 1984).

(7) Waste Management Policy VI.1.g. "Regulatory Interpretation: The Scope of the F006 Hazardous Waste Listing." (December 14, 1987). This policy incorporates the December 2, 1986 (51 FR 43350-43351) Interpretive Rule adopted by the U.S. Environmental Protection Agency which narrows the scope of the F006 waste listing.

(8) Waste Management Policy VI.1.h. "Regulatory Interpretation: Status of Sludges from Land Treatment of Wood Preserving Wastewaters." (December 14, 1987). This policy incorporates a memorandum from John H. Skinner, Office of Solid Waste, U.S. Environmental Protection Agency to James H. Scarbrough, Chief, Residuals Management Branch, Region IV, Environmental Protection Agency regarding the Regulatory Status of Sludges From Land Treatment of Wood Preserving Wastewaters dated November 23, 1984. This policy states that spray irrigation units or any other land spreading of wastewaters from wood preserving operations is considered hazardous waste treatment of K001 wastes.]

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**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

PURSUANT TO: KRS Chapter 13A, 224.033, 224.864  
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 wastes which are excluded from regulation under 401 KAR Chapters 32 through 40 and establishes special management requirements for hazardous waste produced by limited [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)(a) The definition of waste contained in this chapter applies only to wastes that are also hazardous for purposes of the regulations implementing those provisions of KRS Chapter 224 relating to hazardous waste management. This chapter identifies only some of the materials which are hazardous wastes under KRS 224.033(10), 224.071, and 224.877. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(b) This chapter identifies only some of the materials which are wastes and hazardous wastes under KRS 224.033(10), 224.071, and 224.877. A material which is not defined as a waste in this chapter, or is not a hazardous waste identified or listed in this chapter is still a waste and a hazardous waste for purposes of this regulation if:

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

2. In the case of KRS 224.071, the statutory elements are established.

(3) For the purposes of Sections 2, 6, 8 and 9 of this regulation:

(a) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(b) "Sludge" has the same meaning used in Section 1 of 401 KAR 30:010;

(c) A "by-product" is a material that is not one (1) of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(d) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(e) A material is "used or reused" if it is either:

1. Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one (1) process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

2. Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(f) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire)

or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.

(g) A material is "recycled" if it is used, reused, or reclaimed.

(h) A material is "accumulated speculatively" if it is accumulated before being recycled.

1. A material is not accumulated speculatively, if the person accumulating it can show:

a. That the material is potentially recyclable and has a feasible means of being recycled; and

b. That - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five (75) percent by weight or volume of the amount of that material accumulated at the beginning of the calendar year (including any material accumulated from previous years).

2. In calculating the percentage of turnover, the seventy-five (75) percent requirement is to be applied to each material of the same type that is recycled in the same way. Materials accumulating in units that would be exempt from regulation under Section 4(3) of this regulation are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling.

Section 2. Definition of a Waste. (1)(a) A "waste" is any discarded material that is not excluded by Section 4(1) of this regulation or that is not excluded by a variance granted under Section 1 or 2 of 401 KAR 30:080, or Section 8 or 9 of this regulation.

(b) A "discarded material" is any material which is:

1. "Abandoned," as explained in subsection (2) of this section; or

2. "Recycled," as explained in subsection (3) of this section; or

3. Listed in subsection (4) of this section.

(2) Materials are waste if they are "abandoned" by being:

(a) Disposed of; or

(b) Burned or incinerated; or

(c) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned

by being disposed of, burned, or incinerated.

(3) The following materials are wastes if they are "recycled" - or accumulated, stored, or treated before recycling - as specified in paragraphs (a) through (d) of this subsection.

(a) "Used in a manner constituting disposal."

1. Materials noted with a "(waste)" in column (1) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Applied to or placed on the land in a manner that constitutes disposal; or

b. Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are applied to the land and that is their ordinary manner of use.

(b) The following materials are "burned for energy recovery:"

1. Materials noted with a "(waste)" in column (2) of Table 1 in paragraph (e) of this subsection are wastes when they are:

a. Burned to recover energy;

b. Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

2. However, commercial chemical products listed in Section 4 of 401 KAR 31:040 are not wastes if they are themselves fuels.

(c) The following materials are "reclaimed." Materials noted with a "(waste)" in column (3) of Table 1 in paragraph (e) of this subsection are wastes when reclaimed.

(d) The following materials are "accumulated speculatively." Materials noted with a "(waste)" in column (4) of Table 1 in paragraph (e) of this subsection are wastes when accumulated speculatively.

(e) The following Table 1 identifies materials which are wastes when "used in a manner constituting disposal," "burned for energy recovery," "reclaimed," or "accumulated speculatively." Materials noted with the word "(waste)" in Table 1 are considered to be wastes for the purposes of 401 KAR Chapters 32 through 40 and KRS Chapter 224. Materials noted with a dash "-" in Table 1 are not considered to be a waste for the purposes of 401 KAR Chapters 32 through 40 and KRS Chapter 224.

(See Table 1 on following page)

TABLE 1

	Use constituting disposal 401 KAR 31:010 Section 2(3)(a) (1)	Energy recovery/ fuel 401 KAR 31:010 Section 2(3)(b) (2)	Reclamation 401 KAR 31:010 Section 2(3)(c) (3)	Speculative accumulation 401 KAR 31:010 Section 2(3)(d) (4)
Spent materials	(waste)	(waste)	(waste)	(waste)
Sludges (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
Sludges exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
By-products (listed in Sections 2 or 3 of 401 KAR 31:040)	(waste)	(waste)	(waste)	(waste)
By-products exhibiting a characteristic of hazardous waste	(waste)	(waste)	-	(waste)
Commercial chemical products listed in Section 4 of 401 KAR 31:040	(waste)	(waste)	-	-
Scrap metal	(waste)	(waste)	(waste)	(waste)

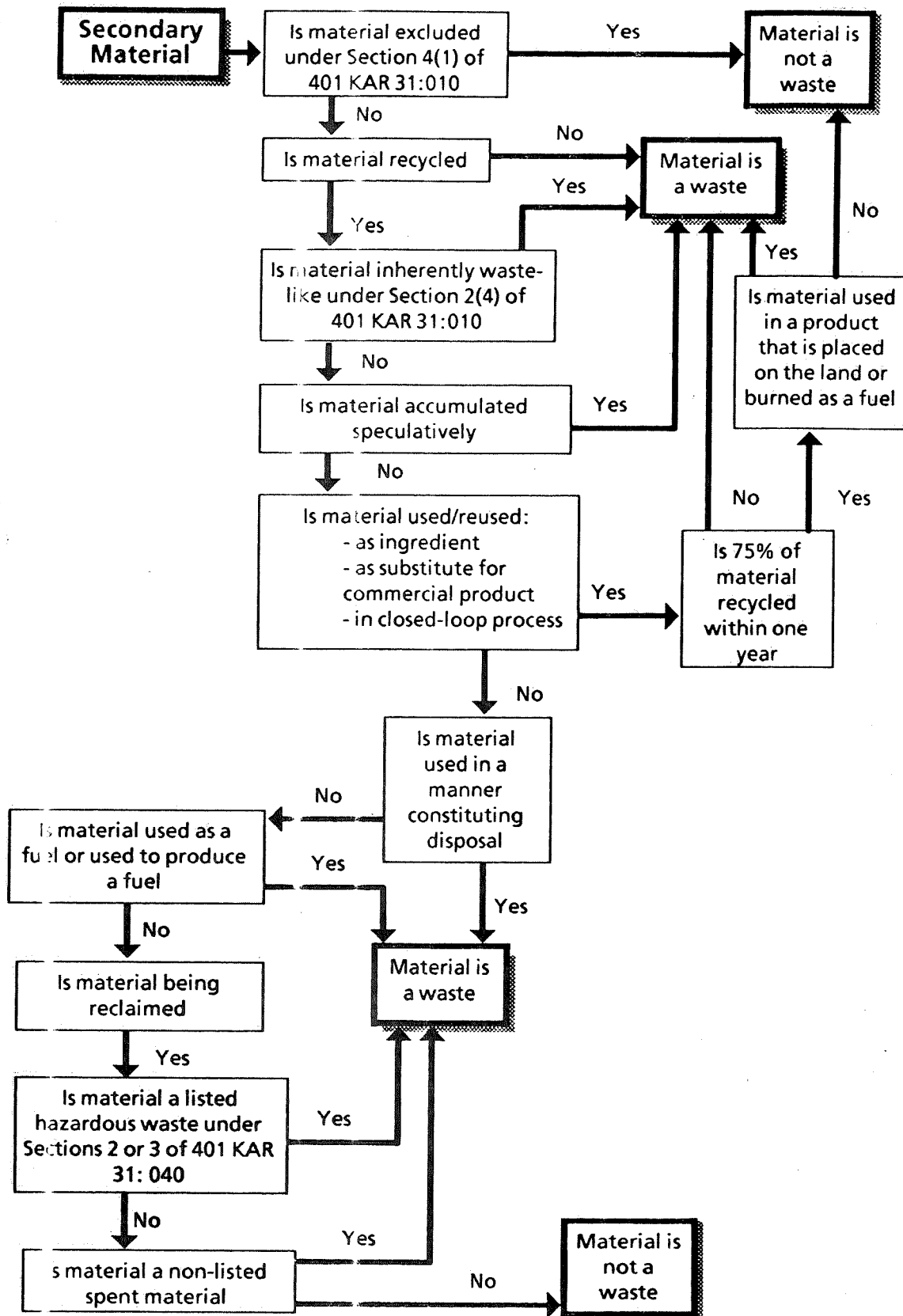
NOTE - The terms "spent materials," "sludges," "by-products," and "scrap metal" are defined in Section 1 of this regulation.

(f) The following Table 2 is a decision tree for deciding which secondary materials are wastes when recycled.

(See Table 2 on following page)



TABLE 2. Decision Tree for Deciding Which Secondary Materials Are Wastes When Recycled



(4) The following materials are wastes when they are recycled in any manner:

(a) Hazardous Waste Numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028 (chlorinated dioxins, chlorinated dibenzofurans and chlorinated phenols).

(b) The cabinet will use the following criteria to add wastes to the list in paragraph (a) of this subsection:

1.a. The materials are ordinarily disposed of, burned, or incinerated; or

b. The materials contain toxic constituents listed in Section 1 of 401 KAR 31:170 and these constituents are not ordinarily found in raw materials or products for which the material substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

2. The material may pose a substantial hazard to human health and the environment when recycled.

(5) "Materials that are not wastes when recycled."

(a) Materials are not wastes when they can be shown to be recycled by being:

1. Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

2. Used or reused as effective substitutes for commercial products; or

3. Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

(b) The following materials are wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraph (a) 1 through 3 of this subsection):

1. Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

2. Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

3. Materials accumulated speculatively; or

4. Materials listed in subsection (4)(a) of this section.

(6) "Documentation of claims that materials are not wastes or are conditionally exempt from regulation." Respondents in actions to enforce regulations implementing the provisions in KRS Chapter 224 relating to hazardous waste management who raise a claim that a certain material is not waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

#### 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 under 401 KAR 31:060 and 401 KAR 31:070.

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 pretreatment 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 pretreatment 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 pretreatment 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 pretreatment 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 (including wastes subject to the Atomic Energy Act) 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 or wastes subject to the Atomic Energy Act) 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)1. Except as otherwise provided in subparagraph 2 of this paragraph, 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. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

2. The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one (1) or more of the characteristics of hazardous waste:

a. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

b. Waste burning any of the materials exempted from regulation by Section 6(1)(c)5-9 [4, 6, 7 or 8] of this regulation.

(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(3) of 401 KAR 31:060 and 401 KAR 31:070.

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. except as provided in Section 3 of this regulation;

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

(f) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively as defined in Section 1(3) of this regulation.

(g) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 1(3) of this regulation.

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

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

(j) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

1. Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

2. Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

3. The secondary materials are never accumulated in such tanks for over twelve (12) months without being reclaimed; and

4. The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal, as provided in 401 KAR Chapter 36.

(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, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be

deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under the waste management regulations, if such facility:

1. Receives and burns only:

a. Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); or

b. Waste from commercial or industrial sources that does not contain hazardous waste; and

2. Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(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 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 nonoxidizing 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 beam house; 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 beam house; 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 beam house; 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 beam house; 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 beam house; 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<sub>2</sub> 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) 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 nonwaste-treatment-manufacturing unit, is not subject to regulation under 401 KAR Chapters 32, 33, 34, 35, 37, 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, 37, 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 Limited Quantity Generators.

(1) A generator is a limited quantity generator in a calendar month if he generates less than 100 kilograms of hazardous waste in that month.

(2) Except for those wastes identified in subsections (5), (6), (7), and (10) of this section, a limited quantity generator's hazardous wastes are not subject to regulation under 401 KAR Chapters 32 through 39 and the notification requirements of KRS 224.864(3) provided the generator complies with the regulations of subsections (6), (7), and (10) of this section.

(3) Hazardous waste that is not subject to regulation or that is subject only to Sections 2 and 3 of 401 KAR 32:010 and Sections 1(3) and 2 of 401 KAR 32:040 [recycled] and [that is excluded from regulation under Sections 6(2) and (3) [(1)(b)3 and (1)(b)5, or 6(1)(c)] of this regulation and [or] Section 1 through 6 [7] of 401 KAR 36:040] is not included in the quantity determinations of this chapter and 401 KAR Chapters 32 through 40 [section] and is not subject to any requirements of those regulations [this section]. Hazardous waste that is subject to the requirements of Sections 6(2) and (3) of this regulation and 401 KAR 36:030, 401 KAR 36:040, and 401 KAR 36:060 is included in the quantity determination of this chapter [section], and is subject to the requirements of 401 KAR Chapters 32 through 40 [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, so long as the hazardous waste that is treated was counted once; or

(c) Spent materials that are generated, reclaimed, and subsequently reused on site, so

long as spent materials have been counted once.

(5) If a limited 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 39, and the notification and permitting requirements of KRS 224.855 and 224.864 through 224.877:

(a) A total of one (1) kilogram of acute hazardous wastes listed in Sections 2, 3, and 4(5) of 401 KAR 31:040.

(b) A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in Sections 2, 3 and 4(5) of 401 KAR 31:040.

(6) A limited 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 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 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 limited quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a limited 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. To ensure delivery of a waste, the manifested or unmanifested shipment shall be sent to a registered or permitted 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;

4. 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;

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

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 nonhazardous 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 limited 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.

(10) If a limited quantity generator's hazardous wastes are mixed with used oil, the mixture is subject to Sections 1 through 5 [7 through 11] of 401 KAR 36:050 [040] if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

Section 6. Requirements for Recyclable Materials. (1)(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (2) and (3) of this section, except for the materials listed in paragraphs (b) and (c) of this subsection. Hazardous wastes that are recycled will be known as "recyclable materials."

(b) The following recyclable materials are not subject to the requirements of this section but are regulated under 401 KAR Chapter 36 and all applicable provisions of [in] 401 KAR Chapters 38 and 39:

1. Recyclable materials used in a manner constituting disposal (see 401 KAR 36:030);

2. Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 or 401 KAR 35:240 (see 401 KAR 36:040);

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under 401 KAR 34:240 and 35:240 (see 401 KAR 36:040);

4. Recyclable materials from which precious metals are reclaimed (see 401 KAR 36:060); and

5. Spent lead-acid batteries that are being reclaimed (see 401 KAR 36:070).

(c) The following recyclable materials are not subject to regulation under 401 KAR Chapters 32 through 38, and are not subject to the notification requirements of KRS 224.864(3):

1. Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 401 KAR 32:050:

a. A person initiating a shipment for reclamation in a foreign country and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in Sections 4, 7(1)(a) through (d), (f), and (2) and Section 8 of 401 KAR 32:050, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 401 KAR 32:050, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

b. Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

2. Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

3. Used oil that exhibits one (1) or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

4. Scrap metal;

5. Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

6. Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

7. Coke and coal tar from the iron and steel industry that contains EPA Hazardous Waste No. K087 (Decanter tank tar sludge from coking operations) from the iron and steel production process;

8.a. Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Section 7(5) of 401 KAR 36:040 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

b. Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Section 7(5) of 401 KAR 36:040; and

c. Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Section 7(5) of 401 KAR 36:040; and

9. Petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one (1) or more of the characteristics of hazardous waste in 401 KAR 31:030.

(2) Generators and transporters of recyclable materials are subject to the applicable requirements of 401 KAR Chapters 32 and 33 and the notification requirements under KRS 224.864(3) and 224.873, except as provided in subsection (1) of this section.

(3)(a) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of 401 KAR 34:010 through 34:210; 401 KAR 35:010 through 35:210; [and] 401 KAR Chapters 36 through 38 and the notification requirements under KRS 224.864(3) and 224.866, except as provided in subsection (1) of this section. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in

subsection (1) of this section:

1. The owner or operator shall submit a notification to the cabinet; and
2. Sections 2 and 3 of 401 KAR 35:050 (dealing with the use of the manifest and manifest discrepancies).

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, 37, 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, 37, 38 and 39, and 401 KAR 30:020 and 401 KAR 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 as an acute hazardous waste listed in Sections 2, 3, or 4(5) 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 an acute hazardous waste listed in Sections 2, 3, or 4(5) 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.

Section 8. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-case Basis. (1) The cabinet may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Section 6(1)(b)3 of 401 KAR 31:010 should be regulated under Section 6(2) and (3) of this regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials

or their toxic constituents have not been adequately contained or because the materials being accumulated or stored together are incompatible. In making this decision, the cabinet will consider the following factors:

- (a) The types of materials accumulated or stored and the amounts accumulated or stored;

- (b) The method of accumulation or storage;

- (c) The length of time the materials have been accumulated or stored before being reclaimed;

- (d) Whether any contaminants are being released into the environment, or are likely to be so released; and

- (e) Other relevant factors.

- (2) The procedures for this decision are set forth in Section 9 of this regulation.

Section 9. Procedures for Case-by-case Regulation of Hazardous Waste Recycling Activities. The cabinet will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Section 6(1)(b)3 of 401 KAR 31:010 under the provisions of Section 6(2) and (3) of 401 KAR 31:010 rather than under the provisions of 401 KAR 36:060 (spent lead-acid batteries being reclaimed).

- (1) If a generator is accumulating the waste, the cabinet will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of 401 KAR 32:010, 32:030, 32:040, and 32:050. The notice will become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the cabinet will hold a public hearing. The cabinet will provide notice of the hearing to the public and allow public participation at the hearing. The cabinet will issue a determination after the hearing stating whether or not compliance with 401 KAR Chapter 32 is required. The order becomes effective thirty (30) days after service of the determination unless the cabinet specifies a later date.

- (2) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of 401 KAR Chapter 38. The owner or operator of the facility must apply for a permit within no more than six (6) months of notice. If the owner or operator of the facility wishes to challenge the cabinet's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the cabinet's determination. The question of whether the cabinet's decision was proper will remain open for consideration during the public comment period discussed under Section 8 of 401 KAR 38:050 and in any subsequent hearing.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

FILED WITH LRC: February 12, 1988 at 11 a.m.



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

**401 KAR 31:040. Lists of hazardous wastes.**

RELATES TO: KRS 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.864(3), 224.867

NECESSITY AND FUNCTION: KRS 224.864(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This chapter identifies and lists hazardous waste. This regulation establishes the lists of hazardous wastes.

Section 1. General Applicability and Delisting Procedures. (1) A waste is a hazardous waste if it is listed in any section of this regulation unless it has been excluded from that list under 401 KAR 31:060 and 31:070.

(2) The cabinet will indicate the basis for listing the classes or types of wastes listed in this regulation by employing one (1) or more of the following Hazard Codes:

Hazard Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	EP toxic waste
(H)	Acute hazardous waste
(T)	Toxic waste

401 KAR 31:160 identifies the constituent which caused the cabinet to list the waste as an EP toxic waste (E) or toxic waste (T) in Sections 2 and 3 of this regulation.

(3) Each hazardous waste listed in this regulation is assigned an EPA Hazardous Waste Number, which precedes the name of the waste. This number must be used in complying with the notification requirements of KRS 224.864 and certain recordkeeping and reporting requirements under 401 KAR Chapters 32 through 40.

(4) The following hazardous wastes listed in Section 2 or 3 of this regulation are subject to the exclusion limits for acutely hazardous wastes established in Section 5 of 401 KAR 31:010: EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

Section 2. Hazardous Wastes from Nonspecific Sources. Hazardous wastes from nonspecific sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
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**Generic:**

F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of	(T)
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ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F002 The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, [and] trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above halogenated solvents or those solvents listed in F001, F004, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)

F003 The following spent nonhalogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one (1) or more of the above nonhalogenated solvents, and, a total of ten (10) percent or more (by volume) of one (1) or more of those solvents listed in F001, F002, F004, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I)\*

F004 The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)

F005 The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, [and] pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, and F004; and the still bottoms from the recovery of these spent

	solvents and spent solvent mixtures.				phenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)		F024	Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one (1) to five (5), utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 2 of this regulation.)	(T)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)				
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)		F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)				
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)		F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)	(H)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)				
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)		F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)				
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)		*	(I,T) should be used to specify mixtures containing ignitable and toxic constituents.	
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)				
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)				
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachloro-	(H)				
					Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:	
					Industry and EPA Hazardous Waste No.	Hazardous Waste
						Hazard Code
					Wood Preservation:	
				K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
					Inorganic Pigments:	
				K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
				K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
				K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
				K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
				K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)

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K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)	K030	Column bottoms or heavy ends from the combined production of tri-chloroethylene and perchloro-ethylene.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)	K083	Distillation bottoms from aniline production.	(T)
Organic Chemicals:			K103	Process residues from aniline extraction from the production of aniline.	(T)
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)	K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)	K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)	K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)	K111	Product wash waters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	(T)	K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)	K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)	K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)	K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)	K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)	K117	<u>Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.</u>	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)	K118	<u>Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.</u>	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)	K136	<u>Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.</u>	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)	Inorganic Chemicals:		
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)	K071	Brine purification muds from the mercury cell process in chlorine production, where separately pre-purified brine is not used.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)	K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	(T)	K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)	Pesticides:		
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)	K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K026	Stripping still tails from the production of methyl ethyl pyridines.	(T)	K032	Wastewater treatment sludge from the production of chlordane.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)	K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)			
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)			
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)			
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)			

K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)			electric furnaces.	
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)		K062	Spent pickle liquor <u>generated by [from] steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).</u>	(C,T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)			Secondary Lead:	
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)		K069	Emission control dust/sludge from secondary lead smelting.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)		K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)			Veterinary Pharmaceuticals:	
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)		K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)		K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)		K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)			Ink Formulation:	
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)		K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)			Coking:	
K099	Untreated wastewater from the production of 2,4-D.	(T)		K060	Ammonia still lime sludge from coking operations.	(T)
K123	<u>Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebis-dithiocarbamic acid and its salts.</u>	(T)		K087	Decanter tank tar sludge from coking operations.	(T)
K124	<u>Reactor vent scrubber water from the production of ethylenebis-dithiocarbamic acid and its salts.</u>	(C,T)			Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and <u>Spill</u> Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded <u>as described in Section 2(1)(b)1 of 401 KAR 31:010</u> , when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, <u>when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use</u> , or when in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.	
K125	<u>Filtration, evaporation, and centrifugation solids from the production of ethylenebis-dithiocarbamic acid and its salts.</u>	(T)			(1) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section.	
K126	<u>Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebis-dithiocarbamic acid and its salts.</u>	(T)			(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.	
	Explosives:				(3) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic names	
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)				
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)				
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)				
K047	Pink/red water from TNT operations.	(T)				
	Petroleum Refining:					
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)				
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)				
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)				
K051	API separator sludge from the petroleum refining industry.	(T)				
K052	Tank bottoms (lead) from the petroleum refining industry.	(T)				
	Iron and Steel:					
K061	Emission control dust/sludge from the primary production of steel in	(T)				

listed in subsection (5) of this section, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) of this section unless:

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

(b) The container or inner liner has been cleansed by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

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

(4) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediate or off-specification commercial chemical products [or manufacturing chemical intermediates] referred to in subsections (1) through (4) of this section, are identified as acute hazardous wastes (H) and are subject to the limited [small] quantity generator exclusion defined in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(Aminothiooxomethyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
P066	Acetimidic acid, N-((methylcarbamoyl)-oxy)thio-, methyl ester	16752-77-5
P001	3-(alpha-acetonyl-benzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%	81-81-2
P002	1-acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(aminomethyl)-3-isoxazolo	2763-96-4
P008	4-alpha-[a]Aminopyridine	504-24-5

P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P010	Arsenic acid	7778-39-4
P012	Arsenic [(III)] oxide	1327-53-3
	As <sub>2</sub> O <sub>3</sub>	
P011	Arsenic [(V)] oxide	1303-28-2
	As <sub>2</sub> O <sub>5</sub>	
P011	Arsenic pentoxide	1303-28-2
P012	Arsenic trioxide	1327-53-3
P038	Arsine, diethyl[-]	692-42-2
P036	Arsonous dichloride, phenyl-	696-28-6
P054	Aziridine	151-56-4
P013	Barium cyanide	542-62-1
P024	Benzenamine, 4-chloro-	106-47-8
P077	Benzenamine, 4-nitro-	100-01-6
P028	Benzene, (chloromethyl)-	100-44-7
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4
P046	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8
P014	Benzenethiol	108-98-5
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts when present at concentrations greater than 0.3%	81-81-2
P028	Benzyl chloride	100-44-7
P015	Beryllium dust	7440-41-7
P016	Bis(chloromethyl) ether	542-88-1
P017	Bromoacetone	598-31-2
P018	Brucine	357-57-3
P021	Calcium cyanide	592-01-8
P123	Camphene, octachloro-	
P103	Carbamimidoseleonic acid]	
P022	Carbon bisulfide	75-15-0
P022	Carbon disulfide	75-15-0
P095	Carbonic [yl] dichloride	75-44-5
P033	Chlorine cyanide]	
P023	Chloroacetaldehyde	107-20-0
P024	p-Chloroaniline	106-47-8
P026	1-(o-Chlorophenyl)thiourea	
P027	3-Chloropropionitrile]	
P029	Copper cyanide	544-92-3
P030	Cyanides (soluble cyanide salts), not otherwise [elsewhere] specified	-----
P031	Cyanogen	460-19-5
P033	Cyanogen chloride	506-77-4
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
P036	Dichlorophenylarsine	696-28-6
P037	Dieldrin	60-57-1
P038	Diethylarsine	692-42-2
P039	0,0-Diethyl S-(2-(ethylthio)ethyl) phosphorothioate]	
P041	Diethyl-p-nitrophenyl phosphate	311-45-5
P040	0,0-Diethyl O-pyrazinyl phosphorothioate	297-97-2
P043	Diisopropyl fluorophosphate (DEP)	55-91-4
P004	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	309-00-2
P060	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-	465-73-6
P037	2,7:3,6-Dimethanonaphth(2,3b) oxirane, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha, 7beta, 7aalpha)-	60-57-1

P051	<u>2,7:3,6-Dimethanonaphth(2,3b) oxirane, octahydro-, (1aalpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-</u>	<u>72-20-8</u>	P066	Methomyl	<u>16752-77-5</u>
P044	Dimethoate	<u>60-51-5</u>	P067	2-Methylaziridine	<u>75-55-8</u>
P045	3,3-Dimethyl-1-(methylthio)-2-butanone, O-((methylamino)-carbonyl) oxime	<u>39196-18-4</u>	P068	Methyl hydrazine	<u>60-34-4</u>
[P071	0,0-Dimethyl O-p-nitrophenyl phosphorothioate		P064	Methyl isocyanate	<u>624-83-9</u>
P082	Dimethylnitrosamine]		P069	2-Methyl lactonitrile	<u>75-86-5</u>
P046	alpha, alpha-Dimethylphenethylamine	<u>122-09-8</u>	P071	Methyl parathion	<u>298-00-0</u>
P047	4,6-Dinitro-o-cresol and salts	<u>534-52-1</u>	P072	alpha-Naphthylthiourea	<u>86-88-4</u>
[P034	4,6-Dinitro-o-cyclohexyphenol]		P073	Nickel carbonyl	<u>13463-39-3</u>
P048	2,4-Dinitrophenol	<u>51-28-5</u>	P073	<u>Nickel carbonyl, (T-4)-</u>	<u>13463-39-3</u>
P020	Dinoseb	<u>88-85-7</u>	[P074	Nickel cyanide	
P085	Diphosphoramidate, octamethyl-	<u>152-16-9</u>	P074	Nickel (II) cyanide	
P039	Disulfoton	<u>298-04-4</u>	P073	Nickel tetracarbonyl]	
P049	2,4-Dithiobiuret	<u>541-53-7</u>	P075	Nicotine and salts	<u>54-11-5</u>
[P109	Dithiopyrophosphoric acid, tetraethyl ester]		P076	Nitric oxide	<u>10102-43-9</u>
P050	Endosulfan	<u>115-29-7</u>	P077	p-Nitroaniline	<u>100-01-6</u>
P088	Endothall	<u>145-73-3</u>	P078	Nitrogen dioxide	<u>10102-44-0</u>
P051	Endrin	<u>72-20-8</u>	P076	Nitrogen [(II)] oxide NO	<u>10102-43-9</u>
P042	Epinephrine	<u>51-43-4</u>	P078	Nitrogen [(IV)] oxide NO <sub>2</sub>	<u>10102-44-0</u>
[P046	Ethanamine, 1,1-dimethyl-2-phenyl-		P081	Nitroglycerine (R)	<u>55-63-0</u>
P084	Ethenamine, N-methyl-N-nitroso-]		P082	N-Nitrosodimethylamine	<u>62-75-9</u>
P101	Ethyl cyanide	<u>107-12-0</u>	P084	N-Nitrosomethylvinylamine	<u>4549-40-0</u>
P054	Ethylenimine	<u>151-56-4</u>	P074	<u>Nickel cyanide</u>	<u>557-19-7</u>
P097	Famphur	<u>52-85-7</u>	[P050	5-Norbornene-2,3-dimethanol, 1,4,5,6,7, 7-hexachloro, cyclic sulfite]	
P056	Fluorine	<u>7782-41-4</u>	P085	Octamethylpyrophosphoramidate	<u>152-16-9</u>
P057	Fluoroacetamide	<u>640-19-7</u>	P087	Osmium oxide	<u>20816-12-0</u>
P058	Fluoroacetic acid, sodium salt	<u>62-74-8</u>	P087	Osmium tetroxide	<u>20816-12-0</u>
P065	Fulminic acid, mercury (2+ [II]) salt (R,T)	<u>628-86-4</u>	P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	<u>145-73-2</u>
P059	Heptachlor	<u>76-44-8</u>	P089	Parathion	<u>56-38-2</u>
[P051	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a, 5,6,7,8,8a-octahydro-endo, endo-1,4:5,8-dimethanonaphthalene		P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	<u>131-89-5</u>
P037	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4, 4a,5,6,7,8,8a-octahydro-endo, exo-1, 4:5, 8-demethanonaphthalene		P048	Phenol, 2, 4-dinitro	<u>51-28-5</u>
P060	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene		P047	Phenol, 2[,4-dinitro-6]-methyl-4,6-dinitro- and salts	<u>534-52-1</u>
P004	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, exodi-methanonaphthalene]		[P020	Phenol, 2,4-dinitro-6-(1-methylpropyl)-]	
P060	Hexachlorohexahydro-endo,endo [exo-exo]-dimethanonaphthalene	<u>465-73-6</u>	P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	<u>88-85-7</u>
P062	Hexaethyl tetraphosphate	<u>757-58-4</u>	P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	<u>131-74-8</u>
P116	Hydrazinecarbothioamide	<u>79-19-6</u>	[P036	Phenyl dichloroarsine]	
P068	Hydrazine, methyl	<u>60-34-4</u>	P092	Phenylmercury [ic] acetate	<u>62-38-4</u>
P063	Hydrocyanic acid	<u>74-90-8</u>	P093	[N-]Phenylthiourea	<u>103-85-5</u>
P063	Hydrogen cyanide	<u>74-90-8</u>	P094	Phorate	<u>298-02-2</u>
P096	Hydrogen phosphide	<u>7803-51-2</u>	P095	Phosgene	<u>75-44-5</u>
P064	Isocyanic acid, methyl ester	<u>624-83-9</u>	P096	Phosphine	<u>7803-51-2</u>
P060	<u>Isodrin</u>	<u>465-73-6</u>	P041	Phosphoric acid, diethyl 4 [p]-nitrophenyl ester	<u>311-45-5</u>
P007	3(2H)-Isoxazolone,5-(amino-methyl)-	<u>2763-96-4</u>	P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	<u>298-04-4</u>
P092	Mercury, (acetato-0) phenyl-	<u>62-38-4</u>	P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	<u>298-02-2</u>
P065	Mercury fulminate (R,T)	<u>628-86-4</u>	P044	Phosphorodithioic acid, 0, 0-dimethyl S-(2(methylamino)-2-oxoethyl) ester	<u>60-51-5</u>
P082	<u>Methamine, N-methyl-N-nitroso-</u>	<u>62-75-9</u>	P043	Phosphorofluoric acid, bis (1-methylethyl) ester	<u>55-91-4</u>
P016	Methane, oxybis (chloro-[])	<u>542-88-1</u>	[P094	Phosphorothioic acid, 0, 0-diethyl S-(ethylthio) methyl ester]	
P112	Methane, tetranitro-(R)	<u>509-14-8</u>	P089	Phosphorothioic acid, 0, 0-diethyl O-(p-nitrophenyl) ester	<u>56-38-2</u>
P118	Methanethiol, trichloro-	<u>75-70-7</u>	P040	Phosphorothioic acid, 0, 0-diethyl O-pyrazinyl ester	<u>297-97-2</u>
P050	<u>6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-3-oxide</u>	<u>115-29-7</u>	P097	Phosphorothioic acid, 0[,0]- (4-((dimethylamino) [O-(p((dimethylamino)-] sulfonyl)phenyl) 0,0-dimethyl ester	<u>52-85-7</u>
P059	4,7-Methano-1H-indene,1,4,5,6, 7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	<u>76-44-8</u>	P071	Phosphorothioic acid, 0,0-dimethyl O-(4-nitrophenyl) ester	<u>298-00-0</u>
			P110	Plumbane, tetraethyl-	<u>78-00-2</u>

P098	Potassium cyanide	<u>151-50-8</u>
P099	Potassium silver cyanide	<u>506-61-6</u>
P070	Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime	<u>116-06-3</u>
P101	Propanenitrile	<u>107-12-0</u>
P027	Propanenitrile, 3-chloro-	<u>542-76-7</u>
P069	Propanenitrile, 2-hydroxy-2-methyl-	<u>75-86-5</u>
P081	1,2,3-Propanetriol, trinitrate-(R)	<u>55-63-0</u>
P017	2-Propanone, 1-bromo-	<u>598-31-2</u>
P102	Propargyl alcohol	<u>107-19-7</u>
P003	2-Propenal	<u>107-02-8</u>
P005	2-Propen-1-ol	<u>107-18-6</u>
P067	1,2-Propylenimine	<u>75-55-8</u>
P102	2-Propyn-1-ol	<u>591-08-2</u>
P008	[4-Pyridinamine	<u>504-24-5</u>
P075	Pyridine, (S)-3-(1-methyl-2-pyrroli- danyl)- and salts	<u>54-11-5</u>
P111	Pyrophosphoric acid, tetraethyl ester	<u>107-49-3</u>
P103	Selenourea	<u>630-10-4</u>
P104	Silver cyanide	<u>506-64-9</u>
P105	Sodium azide	<u>26628-22-8</u>
P106	Sodium cyanide	<u>143-33-9</u>
P107	Strontium sulfide	<u>1314-96-1</u>
P108	Strychnidin-10-one, and salts	<u>57-24-9</u>
P018	Strychnidin-10-one, 2, 3-dimethoxy	<u>357-57-3</u>
P108	Strychnine and salts	<u>57-24-9</u>
P115	Sulfuric acid, thallium(I) salt	<u>10031-59-1</u>
P109	Tetraethyldithiopyrophosphate	<u>3689-24-5</u>
P110	Tetraethyl lead	<u>78-00-2</u>
P111	Tetraethylpyrophosphate	<u>107-49-3</u>
P112	Tetranitromethane (R)	<u>509-14-8</u>
P062	Tetraphosphoric acid, hexaethyl ester	<u>757-58-4</u>
P113	Thallic oxide	<u>1314-32-5</u>
P113	Thallium (III) oxide	<u>1314-32-5</u>
P114	Thallium (I) selenide [selenite]	<u>12039-52-0</u>
P115	Thallium (I) sulfate	<u>10031-59-1</u>
P109	Thiodiphosphoric acid, tetraethyl ester	<u>3689-24-5</u>
P045	Thiofanox	<u>39196-18-4</u>
P049	Thioimidodicarbonic diamide	<u>541-53-7</u>
P014	Thiophenol	<u>108-98-5</u>
P116	Thiosemicarbazide	<u>79-19-6</u>
P026	Thiourea, (2-chlorophenyl)-	<u>5344-82-1</u>
P072	Thiourea, 1-naphthalenyl-	<u>86-88-4</u>
P093	Thiourea, phenyl-	<u>103-85-5</u>
P123	Toxaphene	<u>8001-35-2</u>
P118	Trichloromethanethiol	<u>75-70-7</u>
P119	Vanadic acid, ammonium salt	<u>7803-55-6</u>
[P120]	Vanadium pentoxide]	
P120	Vanadium (V) oxide	<u>1314-62-1</u>
P084	Vinylamine, N-methyl-N-nitroso-	<u>4549-40-0</u>
P001	Warfarin, when present at concentrations greater than 0.3% or in unknown concentrations	<u>81-81-2</u>
P121	Zinc cyanide	<u>557-21-1</u>
P122	Zinc phosphide (R,T), when present at concentrations greater than 10% or in unknown concentrations	<u>1314-84-7</u>

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as toxic wastes

(T), unless otherwise designated and are subject to the limited [small] quantity generator exclusion defined in Section 5(1), [and] (6), and (7) of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
U001	Acetaldehyde (I)	<u>75-07-0</u>
U034	Acetaldehyde, trichloro-	<u>75-87-6</u>
U187	Acetamide, N-(4-ethoxyphenyl)-	<u>62-44-2</u>
U005	Acetamide, N-9H-fluoren-2-yl-	<u>53-96-3</u>
U112	Acetic acid, ethyl ester (I)	<u>141-78-6</u>
U144	Acetic acid, lead salt	<u>301-04-2</u>
U214	Acetic acid, thallium (1+)	<u>563-68-8</u>
	[(I)] salt	
U232	Acetic acid, (2,4,5-trichlorophenoxy)-	<u>93-76-5</u>
U002	Acetone (I)	<u>67-64-1</u>
U003	Acetonitrile (I,T)	<u>75-05-8</u>
U004	Acetophenone	<u>98-86-2</u>
U005	2-Acetylaminofluorene	<u>53-96-3</u>
U006	Acetyl chloride (C,R,T)	<u>75-36-5</u>
U007	Acrylamide	<u>79-06-1</u>
U008	Acrylic acid (I)	<u>79-10-7</u>
U009	Acrylonitrile	<u>107-13-1</u>
[U150]	Alanine, 3-(p-bis(2-chlorethyl)amino) phenyl-,L-	
U248	3-(alpha-Acentonylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations of 0.3% or less	
U328	2-Amino-1-methylbenzene	
U353	4-Amino-1-methylbenzene]	
U011	Amitrole	<u>61-82-5</u>
U012	Aniline (I,T)	<u>62-53-3</u>
U014	Auramine	<u>492-80-8</u>
U015	Azaserine	<u>115-02-6</u>
U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl) oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-	<u>50-07-7</u>
U157	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	<u>50-49-5</u>
[U016]	Benz(c)acridine]	
U016	3,4-Benzacridine	<u>225-51-4</u>
U017	Benzal chloride	<u>98-87-3</u>
U192	Benzamide, 3,5-dichloro-N-(1,1-diethyl-2-propynyl)-	<u>23950-58-5</u>
[U018]	Benz(a)anthracene]	
U018	1,2-Benzanthracene	<u>56-55-3</u>
U094	[1,2-Benz(a)anthracene, 7,12-dimethyl-	<u>57-97-6</u>
U012	Benzenamine (I,T)	<u>62-53-3</u>
U014	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-[]]	<u>492-80-8</u>
U049	Benzenamine, 4-chloro-2-methyl-	<u>3165-93-3</u>
U093	Benzenamine, N, N[']-dimethyl-4-(phenylazo-)	<u>60-11-7</u>
U328	Benzenamine, 2-methyl-	<u>95-53-4</u>
U353	Benzenamine, 4-methyl-	<u>106-49-0</u>
U158	Benzenamine, 4,4'-methylenebis (2-chloro-[]]	<u>101-14-4</u>
U222	Benzenamine, 2-methyl-, hydrochloride	<u>636-21-5</u>
U181	Benzenamine, 2-methyl-5-nitro	<u>99-55-8</u>



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U019	Benzene [(I,T)]	71-43-2	U073	(1,1'-Biphenyl)-4,4'-diamine,	91-94-1
U038	Benzenecetic acid, 4-chloro- alpha-(4-chlorophenyl)-alpha- hydroxy, ethyl ester	510-15-6	U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3',dimethoxy-	119-90-4
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3	U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3',dimethyl-	119-93-7
U035	Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3	[U024	Bis(2-chloroethoxy) methane]	
U037	Benzene, chloro-	108-90-7	U027	Bis(2-chloroisopropyl) ether	39638-32-9
U221	Benzenediamine, ar-methyl-	25376-45-8	U024	Bis(2-chloromethoxy) ethane	111-91-1
[U190	1,2-Benzenedicarboxylic acid anhydride]		[U244	Bis(dimethylthiocarbamoyl) disulfide]	
U028	1,2-Benzenedicarboxylic acid, (bis(2-ethylhexyl[1])) ester	117-81-7	U028	Bis(2-ethylhexyl) phthalate	117-81-7
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	[U246	Bromine cyanide]	
U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	U225	Bromoform	75-25-2
U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	U030	4-Bromophenyl phenyl ether	101-55-3
U107	1,2-Benzenedicarboxylic acid, di-n-octyl ester	117-84-0	U128	1,3-Butadiene, 1,1,2,3,4,4- hexachloro-	87-68-3
U070	Benzene, 1,2-dichloro-	95-50-1	U172	1-Butanamine, N.-butyl-N- nitroso	924-16-3
U071	Benzene, 1,3-dichloro-	541-73-1	U035	Butanoic acid, 4-(Bis(2- chloroethyl)amino benzene-	305-03-3
U072	Benzene, 1,4-dichloro-	106-46-7	U031	1-Butanol (I)	71-36-3
U060	Benzene, 1,1'-(2,2-dichloro- ethylidene)bis(4-chloro-	72-54-8	U159	2-Butanone (I,T)	78-93-3
U017	Benzene, (dichloromethyl)-	98-87-3	U160	2-Butanone peroxide (R,T)	1338-23-4
U223	Benzene, 1,3-diisocyanato- methyl- (R,T)	26471-62-5	U053	2-Butenal	4170-30-3
U239	Benzene, dimethyl- (I,T)	1330-20-7	U074	2-Butene, 1,4-dichloro- (I,T)	
U201	1,3-Benzenediol	106-46-3	U143	2-Butenoic acid, 2-methyl-, 7- ((2,3-dihydroxy-2-(1-methoxy- ethyl)-3-methyl-1-oxobutoxy) methyl)-2,3,5,7a-tetrahydro- 1-pyrrolizin-1-yl ester, (1S- (1alpha(Z),7(2S,3R),7aalpha))-	303-34-4
U127	Benzene, hexachloro-	118-74-1	U031	n-Butyl alcohol (I)	71-36-3
U056	Benzene, hexahydro (I)-	110-82-7	U136	Cacodylic acid	75-60-5
[U188	Benzene, hydroxy-]		U032	Calcium chromate	13765-19-0
U220	Benzene, methyl-	108-88-3	U238	Carbamic acid, ethyl ester	51-79-6
U105	Benzene, 1-methyl-[1-12, 4-dinitro-	121-14-2	U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2
[U106	Benzene, 1-methyl-2,6-dinitro-]		U097	Carbamic chloride, dimethyl-	79-44-7
U106	Benzene, 2-methyl-1,3-dinitro-	606-20-2	[U176	Carbamide, N-ethyl-N-nitroso-	
[U203	Benzene, 1,2-methylenedioxy-4-allyl-		U177	Carbamide, N-methyl-N-nitroso-	
U141	Benzene, 1,2-methylenedioxy-4-propenyl-		U219	Carbamide, thio-]	
U090	Benzene, 1,2-methylenedioxy-4-propyl-]		U114	Carbamodithioic acid, 1,2- ethanedivylbis-, salts and esters	111-54-6
U055	Benzene, (1-methylethyl), (I)	98-82-8	U062	Carbamothioic acid, bis(1- methyl-ethyl)-S-(2,3-dichloro- 2-propenyl) ester	2303-16-4
U169	Benzene, nitro- (I,T)	98-95-3	[U097	Carbamoyl chloride, dimethyl-]	
U183	Benzene, pentachloro-	508-93-5	U215	Carbonic acid, dithallium (1+) [(I)] salt	6533-73-9
U185	Benzene, pentachloronitro-	82-68-8	U033	Carbonic difluoride	353-50-4
U020	Benzenesulfonic acid chloride (C,R)	98-09-9	U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1
U020	Benzenesulfonyl chloride (C,R)	98-09-9	U033	Carbon oxyfluoride (R,T)	353-50-4
U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3	U211	Carbon tetrachloride	56-23-5
U061	Benzene, 1,1'-(2,2,2-tri- chloroethylidene)bis(4-chloro-	50-29-3	[U033	Carbonyl fluoride (R,T)]	
U247	Benzene, 1,1'-(2,2,2-tri- chloroethylidene)(4-methoxy-	72-43-5	U034	Chloral	75-87-6
U023	Benzene, (trichloromethyl)- (C,R,T)	98-07-7	U035	Chlorambucil	305-03-3
U234	Benzene, 1,3,5-trinitro- (R,T)	99-35-4	U036	Chlordane[, technical]	12789-03-6
U021	Benzidine	92-87-5	U026	Chlornaphazine	494-03-1
U202	1,2-Benzisothiazilin-3-one, 1, 1-dioxide, and salts	81-07-2	U037	Chlorobenzene	108-90-7
U202	1,2-Benzisothiazol-3-(2H)-one, 1,1-dioxide and salts	81-07-02	U039	p[4]-Chloro-m-cresol	59-50-7
U203	1,3-Benzodioxole, 5-(2- propenyl)-	94-59-7	U041	1-Chloro-2,3-epoxypropane	106-89-8
U141	1,3-Benzodioxole, 5-(1- propenyl)-	120-58-1	U042	2-Chlorethyl vinyl ether	110-75-8
U090	1,3-Benzodioxole, 5-propyl-	94-58-6	U044	Chloroform	67-66-3
[U120	Benzo(j,k)fluorene]		U046	Chloromethyl methyl ether	107-30-2
U064	Benzo(rst)pentaphene	189-55-9	U047	beta-Chloronaphthalene	91-58-7
U022	Benzo(a)pyrene	50-32-8	U048	o-Chlorophenol	95-57-8
[U022	3,4-Benzopyrene]		U049	4-Chloro-o-toluidine, hydro- chloride	3165-93-3
U197	p-Benzoquinone	106-51-4	U032	Chromic acid, calcium salt	13765-19-0
U023	Benzotrichloride (C,R,T)	98-07-7	U050	Chrysene	218-01-9
[U050	1,2-Benzphenanthrene]		U051	Creosote	8021-39-4
U085	2,2'-Bioxirane (I,T)	1464-53-5	U052	Cresols (Cresylic acid)	1319-77-3
U021	(1,1-Biphenyl)-4,4'-diamine	92-87-5	[U052	Cresylic acid]	

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U053	Crotonaldehyde	<u>4170-30-3</u>	U111	Di-n[N]-propyl nitrosamine	<u>621-64-7</u>
U055	Cumene (I)	<u>98-82-8</u>	U001	Ethanal (I)	<u>75-07-0</u>
U246	Cyanogen bromide	<u>506-68-3</u>	U174	Ethanamine, N-ethyl-N-nitroso-	<u>55-18-5</u>
U197	<u>2,5-Cyclohexadiene-1,4-dione</u>	<u>106-51-4</u>	U155	<u>1,2-Ethanediamine, N,N-di-</u>	<u>91-80-5</u>
[U197	<u>1,4-Cyclohexadienedione]</u>			<u>methyl-N'-2-pyridinyl-N'-</u>	
U056	Cyclohexane (I)	<u>110-82-7</u>		<u>(2-thienylmethyl)-</u>	
U057	Cyclohexanone (I)	<u>108-94-1</u>	U067	Ethane, 1,2-dibromo-	<u>106-93-4</u>
U130	1,3-Cyclopentadiene, 1,2,3,4,5,	<u>77-47-4</u>	U076	Ethane, 1,1-dichloro-	<u>75-34-3</u>
	5-hexachloro-		U077	Ethane, 1,2-dichloro-	<u>107-06-2</u>
U058	Cyclophosphamide	<u>50-18-0</u>	[U114	1,2-Ethanedithiolbiscarbamodithioic acid]	
U240	2,4-D, salts and esters	<u>94-75-7</u>	U131	Ethane, [1,1,1,2,2,2-]	<u>67-72-1</u>
U059	Daunomycin	<u>20830-81-3</u>		hexachloro-	
U060	DDD	<u>72-54-8</u>	U024	Ethane, 1,1'-(methylenebis	<u>111-91-1</u>
U061	DDT	<u>50-29-3</u>		(oxy))bis(2-chloro-)	
[U142	Decachlorooctahydro-1,3,4-metheno-2H-		[U003	Ethanenitrile (I,T)]	
	cyclobuta (c,d)-pentalen-2-one]		U117	Ethane, 1,1'-oxybis- (I)	<u>60-29-7</u>
U062	Diallate	<u>2303-16-4</u>	U025	Ethane, 1,1'-oxybis(2-chloro-)	<u>111-44-4</u>
[U133	Diamine (R,T)		U184	Ethane, pentachloro-	<u>76-01-7</u>
U221	Diaminotoluene]		U208	Ethane, 1,1,1,2-tetrachloro-	<u>630-20-6</u>
U063	Dibenz(a,h) anthracene	<u>53-70-3</u>	U209	Ethane, 1,1,2,2-tetrachloro-	<u>79-34-5</u>
[U063	1,2:5,6-Dibenzanthracene		U218	Ethanethioamide	<u>62-55-5</u>
U064	1,2:7,8-Dibenzopyrene]		[U227	Ethane, 1,1,2-trichloro-]	
U064	Dibenzo(a,i) pyrene	<u>189-55-9</u>	[U247	Ethane, 1,1,1,-trichloro-2,2-bis(p-	
U066	1,2-Dibromo-3-chloropropane	<u>96-12-8</u>		methoxyphenyl)]	
U069	Dibutyl phthalate	<u>84-74-2</u>	U227	Ethanol, 2-ethoxy-	<u>110-80-5</u>
[U062	S-(2,3-Dichloroallyl) diisopropyl-		U359	Ethane, 1,1,2-trichloro-	<u>79-00-5</u>
	thiocarbamate]		U173	Ethanol, 2,2'-(nitrosoimino)	<u>1116-54-7</u>
U070	o-Dichlorobenzene	<u>95-50-1</u>		bis-	
U071	m-Dichlorobenzene	<u>541-73-1</u>	U004	Ethanone, 1-phenyl	<u>98-86-2</u>
U072	p-Dichlorobenzene	<u>106-46-7</u>	[U006	Ethanoyl chloride (C,R,T)]	
U073	3,3'-Dichlorobenzidine	<u>91-94-1</u>	U043	Ethene, chloro-	<u>75-01-4</u>
U074	1,4-Dichloro-2-butene (I,T)	<u>764-41-0</u>	U042	Ethene, 2-chlorethoxy-	<u>110-75-8</u>
U075	Dichlorodifluoromethane	<u>75-71-8</u>	U078	Ethene, 1,1-di[s]chloro	<u>75-35-4</u>
[U192	3,5-Dichloro-N-(1,1-dimethyl-2-pro-		U079	Ethene, 1,2-dichloro- (E)	<u>156-60-5</u>
	pynyl) benzamide		[U079	Ethene, trans-1,2-dichloro-	
U060	Dichloro diphenyl dichloroethane		U210	Ethene, 1,1,2,2-tetrachloro-]	
U061	Dichloro diphenyl trichloroethane]		U210	Ethene, tetrachloro	<u>127-18-4</u>
U078	1,1-Dichloroethylene	<u>75-35-4</u>	U228	Ethene, trichloro	<u>79-01-6</u>
U079	1,2-Dichloroethylene	<u>156-60-5</u>	U112	Ethyl acetate (I)	<u>141-78-6</u>
U025	Dichloroethyl ether	<u>111-44-4</u>	U113	Ethyl acrylate (I)	<u>140-88-5</u>
U081	2,4-Dichlorophenol	<u>120-83-2</u>	U238	Ethyl carbamate [(urethane)]	<u>51-79-6</u>
U082	2,6-Dichlorophenol	<u>87-65-0</u>	U038	Ethyl 4,4'-dichlorobenzilate	<u>510-15-6</u>
U240	2,4-Dichlorophenoxyacetic	<u>94-75-7</u>	U114	Ethylenebis (dithiocarbamic	<u>111-54-6</u>
	acid, salts and esters			acid), salts and esters	
U083	1,2-Dichloropropane	<u>78-87-5</u>	U067	Ethylene dibromide	<u>106-93-4</u>
U084	1,3-Dichloropropene	<u>542-75-6</u>	U077	Ethylene dichloride	<u>107-06-2</u>
U085	1,2:3,4-Diepoxybutane (I,T)	<u>1464-53-5</u>	U359	Ethylene glycol monoethyl	<u>110-80-5</u>
[U108	1,4-Diethylene dioxide]			ether	
U108	<u>1,4-Diethyleneoxide</u>	<u>123-91-1</u>	U115	Ethylene oxide [(I,T)]	<u>75-21-8</u>
U086	N, N-Diethylhydrazine	<u>1615-80-1</u>	U116	Ethylene thiourea	<u>96-45-7</u>
U087	O, O-Diethyl-S-methyl-dithio-	<u>3288-58-2</u>	U117	Ethyl ether (I)	<u>60-29-7</u>
	phosphate		U076	Ethylidene dichloride	<u>75-34-3</u>
U088	Diethyl phthalate	<u>84-66-2</u>	U118	Ethylmethacrylate	<u>97-63-2</u>
U089	Diethylstilbestrol	<u>56-53-1</u>	U119	Ethyl methanesulfonate	<u>62-50-0</u>
[U148	1,2-Dihydro-3,6-pyridazinedione]		[U139	Ferric dextran]	
U090	Dihydrosafrole	<u>94-58-6</u>	U120	Fluoranthene	<u>206-44-0</u>
U091	3,3'-Dimethoxybenzidine	<u>119-90-4</u>	U122	Formaldehyde	<u>50-00-0</u>
U092	Dimethylamine (I)	<u>124-40-3</u>	U123	Formic acid (C,T)	<u>64-18-6</u>
U093	Dimethylaminoazobenzene	<u>60-11-7</u>	U124	Furan (I)	<u>110-00-9</u>
U094	7,12-Dimethylbenz(a)anthracene	<u>57-97-6</u>	U125	2-Furancarboxaldehyde (I)	<u>98-01-1</u>
U095	3,3'-Dimethylbenzidine	<u>119-93-7</u>	U147	2,5-Furandione	<u>108-31-6</u>
U096	alpha, alpha-Dimethylbenzyl-	<u>80-15-9</u>	U213	Furan, tetrahydro- (I)	<u>109-99-9</u>
	hydroperoxide (R)		U125	Furfural (I)	<u>98-01-1</u>
U097	Dimethylcarbamoyl chloride	<u>79-44-7</u>	U124	Furfuran (I)	<u>110-00-9</u>
U098	1,1-Dimethylhydrazine	<u>57-14-7</u>	U206	D-Glucopyranose, 2-deoxy-2(3-	<u>18883-66-4</u>
U099	1,2-Dimethylhydrazine	<u>540-73-8</u>		methyl-3-nitrosoureido)-	
U101	2,4-Dimethylphenol	<u>105-67-9</u>	U126	Glycidylaldehyde	<u>765-34-4</u>
U102	Dimethyl phthalate	<u>131-11-3</u>	U163	Guanidine, N-nitroso-N-methyl-	<u>70-25-7</u>
U103	Dimethyl sulfate	<u>77-78-1</u>		N'-nitro-	
U105	2,4-Dinitrotoluene	<u>121-14-2</u>	U127	Hexachlorobenzene	<u>118-74-1</u>
U106	2,6-Dinitrotoluene	<u>606-20-2</u>	U128	Hexachlorobutadiene	<u>87-68-3</u>
U107	Di-n-octyl phthalate	<u>117-84-0</u>	U129	Hexachlorocyclohexane (gamma	<u>58-88-9</u>
U108	1,4-Dioxane	<u>123-91-1</u>		isomer)	
U109	1,2-Diphenylhydrazine	<u>122-66-7</u>	U130	Hexachlorocyclopentadiene	<u>77-47-4</u>
U110	Dipropylamine (I)	<u>142-84-7</u>	U131	Hexachloroethane	<u>67-72-1</u>

U132	Hexachlorophene	70-30-4	U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U243	Hexachloropropene	1888-71-7	U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4
U133	Hydrazine (R,T)	302-01-2	U138	Methyl iodide	74-88-4
U086	Hydrazine, 1,2-diethyl	1615-80-1	U161	Methyl isobutyl ketone (I)	108-10-1
U098	Hydrazine, 1,1-dimethyl-	57-14-7	U162	Methyl methacrylate (I,T)	80-62-6
U099	Hydrazine, 1,2-dimethyl	540-73-8	U163	N-Methyl-N'-nitro-N-nitrosoguanidine	70-25-7
U109	Hydrazine, 1,2-diphenyl	122-66-7	U161	4-Methyl-2-pentanone (I)	108-10-1
U134	Hydrofluoric acid (C,T)	7664-39-3	U164	Methylthiouracil	56-04-2
U134	Hydrogen fluoride (C,T)	7664-39-3	U010	Mitomycin C	50-07-7
U135	Hydrogen sulfide	7783-06-4	U059	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxyl)-7,8,9,10-tetrahydro-6,8,11-tri-hydroxy-1-methoxy-	20830-81-3
U096	Hydroperoxide, 1-methyl-1-phenylethyl (R)	80-15-9	U165	Naphthalene	91-20-3
U136	Hydroxydimethylarsine oxide	75-60-5	U047	Naphthalene, 2-chloro-	91-58-7
U116	2-Imidazolidinethione	96-45-7	U166	1,4-Naphthalenedione	130-15-4
U137	Indeno(1,2,3[-]cd) pyrene	193-39-5	U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl-(1,1'-biphenyl)-4,4'diyl)) bis(azo)bis(5)-amino-4-hydroxy)-, tetrasodium salt	72-57-1
U139	Iron dextran	9004-66-4	U166	1,4-Naphthoquinone	130-15-4
U190	1,3-Isobenzofurandione	85-44-9	U167	alpha-Naphthylamine	134-32-7
U140	Isobutyl alcohol (I,T)	78-83-1	U168	beta-Naphthylamine	91-59-8
U141	Isosafrole	120-58-1	U026	2-Naphthylamine, N,N[']-bis(2-chloro[m]ethyl)-	494-03-1
U142	Kepone	143-50-0	U167	1-Naphthylamine	134-32-7
U143	Lasicarpine	303-34-4	U168	2-Naphthylamine	91-59-8
U144	Lead acetate	301-04-2	U217	Nitric acid, thallium(I+) salt	10102-45-1
U146	Lead, bis(acetato-0-)tetra-hydroxytri-	1335-32-6	U169	Nitrobenzene (I,T)	98-95-3
U145	Lead phosphate	7446-27-7	U170	p-Nitrobenzene	100-02-7
U146	Lead subacetate	1335-32-6	U171	2-Nitropropane (I,T)	79-46-9
U129	Lindane	58-89-9	U172	N-Nitrosodi-n-butylamine	924-16-3
U147	Maleic anhydride	108-31-6	U173	N-Nitrosodiethanolamine	1116-54-7
U148	Maleic hydrazide	123-33-1	U174	N-Nitrosodiethylamine	55-18-5
U149	Malononitrile	109-77-3	U111	N-Nitrosodi-n[N]-propylamine	621-64-7
U150	Melphalan	148-82-3	U176	N-Nitroso-N-ethylurea	759-73-9
U151	Mercury	7439-97-6	U177	N-Nitroso-N-methylurea	684-93-5
U152	Methacrylonitrile (I,T)	126-98-7	U178	N-Nitroso-N-methylurethane	615-53-2
U092	Methanamine, N-methyl- (I)	124-40-3	U179	N-Nitrosopiperidine	100-75-4
U029	Methane, bromo-	74-83-9	U180	N-Nitrosopyrrolidine	930-55-2
U045	Methane, chloro- (I,T)	74-87-3	U181	5-Nitro-o-toluidine	99-55-8
U046	Methane, chloromethoxy-	107-30-2	U193	1,2-Oxathiolane, 2,2-dioxide	1120-71-4
U068	Methane, dibromo-	74-95-3	U058	2H-1,3,2-Oxazaphosphorine-2-amine, N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide	50-18-0
U080	Methane, dichloro-	75-09-2	U058	2H-1,3,2-Oxazaphosphorine, 2-(bis(2-chloroethyl)amino)-tetrahydro-, [oxide] 2-oxide	50-18-0
U075	Methane, dichlorodifluoro-	75-71-8	U115	Oxirane (I,T)	75-21-8
U138	Methane, iodo-	74-88-4	U126	Oxiranecarboxaldehyde	765-34-4
U119	Methanesulfonic acid, ethyl ester	62-50-0	U041	Oxirane, [2-](chloromethyl)-	106-89-8
U211	Methane, tetrachloro-	56-23-5	U182	Paraldehyde	123-63-7
[U121]	Methane, trichlorofluoro-		U183	Pentachlorobenzene	608-93-5
U153	Methanethiol (I,T)	74-93-1	U184	Pentachloroethane	76-01-7
U225	Methane, tribromo-	75-25-2	U185	Pentachloronitrobenzene	82-68-8
U044	Methane, trichloro-	67-66-3	U242	Pentachlorophenol	87-86-5
U121	Methane, trichlorofluoro-	75-69-4	[See F027]		
[U121]	Methane, trichlorofluoro-		U186	1,3-Pentadiene (I)	504-60-9
U123	Methanoic acid (C,T)	64-18-6	U187	Phenacetin	62-44-2
[U036]	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-		U188	Phenol	108-95-2
U154	Methanol (I)	67-56-1	U048	Phenol, 2-chloro-	95-57-8
U155	Methapyrilene	91-80-5	U039	Phenol, 4-chloro-3-methyl-	59-50-7
U142	1,3,4-Metheno-2H,cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloro-octahydro-	143-50-0	U081	Phenol, 2,4-dichloro-	120-83-2
U247	Methoxychlor	72-43-5	U082	Phenol, 2,6-dichloro-	87-65-0
U154	Methyl alcohol (I)	67-56-1	U089	Phenol, 4,4'-((1,2-diethyl-1,2-ethenediyl)bis-, (E)-	56-53-1
U029	Methyl bromide	74-83-9	U101	Phenol, 2,4-dimethyl-	105-67-9
U186	1-Methylbutadiene (I)	504-60-9	U052	Phenol, methyl-	1319-77-3
U045	Methyl chloride (I,T)	74-87-3			
U156	Methyl chlorocarbonate (I,T)	79-22-1			
U226	Methylchloroform	71-55-6			
U157	3-Methylcholanthrene	56-49-5			
U158	4,4'-Methylenebis (2-chloro-aniline)	101-14-4			
[U132]	2,2'-Methylenebis (3,4,6-trichloro-phenol)]				
U068	Methylene bromide	74-95-3			
U080	Methylene chloride	75-09-2			
[U122]	Methylene oxide]				

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U132	Phenol, 2,2'-methylenebis (3,4,6-trichloro-	70-30-4	U204	Selenious acid	7783-00-8
U170	Phenol, 4-nitro-	100-02-7	U204	Selenium dioxide	7783-00-8
U242	Phenol, pentachloro-	87-86-5	[U205	Selenium disulfide (R,T)]	
[See F027]			U205	Selenium sulfide (R,T)	7446-34-6
U212	Phenol, 2,3,4,6-tetrachloro-	58-90-2	U015	L-Serine, diazoacetate (ester)	115-02-6
[See F027]			U223	Silvex	93-72-1
U230	Phenol, 2,4,5-trichloro-	95-94-4	[See F027]		
[See F027]			[U089	4,4'-Stilbenediol, alpha, alpha'-diethyl-]	18883-66-4
U231	Phenol, 2,4,6-trichloro	88-06-2	U206	Streptozotocin	
[See F027]			[U135	Sulfur hydride]	
U150	L-phenylalanine, 4-(bis(2-chloroethyl)amino)-	148-82-3	U103	Sulfuric acid, dimethyl ester	77-78-1
U137	1,10-(1,2-phenylene) pyrene	193-39-5	U189	Sulfur phosphide (R)	1314-80-3
U145	Phosphoric acid, Lead salt	7446-27-7	[U205	Sulfur selenide (R,T)]	
U087	Phosphorodithioic acid, 0,0-diethyl-, S-methylester	3288-58-2	U232	2,4,5-T	93-76-5
U189	Phosphorus sulfide [(R)]	1314-80-3	[See F027]		
U190	Phthalic anhydride	85-44-9	U207	1,2,4,5,-Tetrachlorobenzene	95-94-3
U191	2-Picoline	109-06-8	U208	1,1,1,2-Tetrachloroethane	630-20-6
U179	Piperidine, 1-nitroso-	100-75-4	U209	1,1,2,2-Tetrachloroethane	79-34-5
U192	Pronamide	23950-58-5	U210	Tetrachloroethylene	127-18-4
U194	1-Propanamine, (I,T)	107-10-8	U212	2,3,4,6-Tetrachlorophenol	58-90-2
U111	1-Propanamine, N-nitroso-N-propyl-	621-64-7	[See F027]		
U110	1-Propanamine, N-propyl- (I)	142-84-7	U213	Tetrahydrofuran (I)	109-99-9
U066	Propane, 1,2-dibromo-3-chloro-	96-12-8	U214	Thallium (I) acetate	15843-14-8
U149	Propanedinitrile	109-77-3	U215	Thallium (I) carbonate	6533-73-9
U171	Propane, 2-nitro- (I,T)	79-46-9	U216	Thallium (I) chloride	7791-12-0
U027	Propane, 2,2'-oxybis (2-chloro-)	39638-32-9	U217	Thallium (I) nitrate	10102-45-1
U193	1,3-Propane sulfone	1120-71-4	U218	Thioacetamide	62-55-5
U235	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7	U153	Thiomethanol (I,T)	74-93-1
[U126	1-Propanol, 2,3-epoxy]		U244	Thioperoxydicarbonic diamide, tetramethyl-	137-26-8
U140	1-Propanol, 2-methyl- (I,T)	78-83-1	U219	Thiourea	62-56-6
U002	2-Propanone (I)	67-64-1	U244	Thiuram	137-26-8
U084	1-Propane, 1,3-dichloro-	542-75-6	U220	Toluene	108-88-3
U152	2-Propanenitrile, 2-methyl- (I,T)	126-98-7	U221	Toluenediamine	25376-45-8
U007	2-Propenamide	79-06-1	U223	Toluene diisocyanate (R,T)	26471-62-5
[U084	Propene, 1,3-dichloro-]		U328	o-Toluidine	95-53-4
U243	1-Propene, hexachloro	1888-71-7	U353	p-Toluidine	106-49-0
[U243	1-Propene, 1,1,2,3,3,3-hexachloro-]		U222	o-Toluidine hydrochloride	636-21-5
U009	2-Propenenitrile	107-13-1	U011	1H-1,2,4-Triazol-3-amine	61-82-5
[U152	2-Propenenitrile, 2-methyl- (I,T)]		U232	2,4,5-Trichloroacetic acid, salts and esters	93-76-5
U008	2-Propenoic acid (I)	79-10-7	U226	1,1,1-Trichloroethane	71-55-6
U113	2-Propenoic acid, ethyl ester (I)	140-88-5	U227	1,1,2-Trichloroethane	79-00-5
U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	[U228	Trichloroethene]	
U162	2-Propenoic acid, 2-methyl, methyl ester (I,T)	80-66-2	U228	Trichloroethylene	79-01-6
U233	Propionic acid, 2-(2,4,5,-trichlorophenoxy)-	93-72-1	U121	Trichloromonofluoromethane	75-69-4
[See F027]			U230	2,4,5-Trichlorophenol	95-95-4
U194	n-Propylamine (I,T)	107-10-8	[See F027]		
U083	Propylene dichloride	78-87-5	U231	2,4,6-Trichlorophenol	88-06-2
U148	3,6-Pyridazinedione, 1,2-dihydro-	123-33-1	[See F027]		
U196	Pyridine	110-86-1	U232	2,4,5-Trichlorophenoxyacetic acid	
U155	Pyridine, 2-((2-[[dimethyl-amino]ethyl]-2-p[thienyl-amino])]-	91-80-5	[See F027]		
[U179	Pyridine, hexahydro-N-nitroso-]		U233	2,4,5-Trichlorophenoxypropionic acid, salts and esters	93-72-1
U191	Pyridine, 2-methyl	109-06-8	U234	sym-Trinitrobenzene (R,T)	99-35-4
U237	2,4(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-	66-75-1	U182	1,3,5-Trioxane, 2,4,6[5]-tri-methyl-	123-63-7
U164	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2	U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
[U180	Pyrrole, tetrahydro-N-nitroso]		U236	Trypan blue	72-57-1
U180	Pyrrolidine, 1-nitroso-	930-55-2	U237	Uracil, 5-(bis(2-chloro-[m]ethyl) amino)	66-75-1
U200	Reserpine	50-55-5	U237	Uracil mustard	66-75-1
U201	Resorcinol	108-46-3	U176	Urea, N-ethyl-N-nitroso-	759-73-9
U202	Saccharin and salts	81-07-2	U177	Urea, N-methyl-N-nitroso-	684-93-5
U203	Safrole	94-59-7	U043	Vinyl chloride	75-01-4
			U248	Warfarin, when present at concentrations of 0.3% or less	81-81-2
			U239	Xylene (I)	1330-20-7
			U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester	50-55-5

U249 Zinc phosphide, when present 1314-84-7  
at concentrations of 10% or less

CARL H. BRADLEY, Secretary  
APPROVED BY AGENCY: February 11, 1988  
FILED WITH LRC: February 12, 1988 at 11 a.m.

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

401 KAR 32:030. Pretransport requirements.

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.864

NECESSITY AND FUNCTION: KRS 224.864 requires the cabinet to promulgate regulations to establish standards for the generation of hazardous waste. The chapter establishes standards applicable to generators of hazardous waste. This regulation establishes the requirements for labeling, marking, placarding, and accumulation time.

Section 1. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable U.S. Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179.

Section 2. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable U. S. Department of Transportation regulations on hazardous materials, under 49 CFR 172.

Section 3. Marking. (1) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable U.S. Department of Transportation regulations on hazardous materials under 49 CFR 172.

(2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation in accordance with the requirements of 49 CFR 172.304. The following words and information shall be displayed: "Hazardous Waste - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency. Generator's Name and Address \_\_\_\_\_.  
Manifest Document Number \_\_\_\_\_."

Section 4. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

Section 5. Accumulation Time. (1) Except as provided in subsection (4) of this section

[provides otherwise], a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status provided that:

(a) The waste is placed in containers and the generator complies [which meet the standards of Section 1 of this regulation and are managed in accordance] with 401 KAR 35:180, or the waste is placed in tanks and the [provided the] generator complies with [the requirements of] 401 KAR 35:190, except those provisions in Sections 8(3) and 11 [3] of 401 KAR 35:190. Excluding the requirements in Section 2(1), (2), 4 and 5 of 401 KAR 35:070, a generator is exempt from the requirements in 401 KAR 35:070 through 35:130. [;]

(b) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(c) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and

(d) The generator complies with the requirements specified in 401 KAR 35:030, and 401 KAR 35:040, and Sections 6 and 7 of 401 KAR 35:020.

(2) A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the requirements of 401 KAR Chapter 34, 401 KAR Chapter 35 and the permit requirements of 401 KAR Chapter 38, unless he has been granted an extension to the ninety (90) day period. Such extensions may be granted by the cabinet if hazardous wastes must remain on-site for longer than ninety (90) days due to unforeseen, temporary, and uncontrolled circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) Satellite accumulation. (a) A generator may accumulate as much as fifty-five (55) gallons of hazardous waste or one (1) quart of acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (1) of this section provided that upon commencement of accumulation, he:

1. Complies with Sections 2, 3, and 4(1) of 401 KAR 35:180; and

2. Marks his containers with the words "Hazardous Waste."

(b) A generator who accumulates either hazardous waste or acutely hazardous waste listed in Section 4 of 401 KAR 31:040 in excess of the amounts listed in paragraph (a) of this subsection at or near any point of generation must, with respect to that amount of excess waste, comply with subsection (1) of this section or other applicable provisions of this chapter and continue to comply with paragraph (a)1 and 2 of this subsection. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating. The date must be placed on the container on the day that excess accumulation began.

Section 6. Accumulation Time for Small Quantity Generators. (1) [(4)] A generator generating a total quantity of hazardous waste

greater than 100 kilograms, but less than 1,000 kilograms during a calendar month for every month in a calendar year (i.e., a registered small quantity generator), may accumulate [store] without a permit for up to 180 days. Such on-site accumulation [storage] may occur without a permit for not more than 6,000 kilograms for up to 270 days if such generator must ship or haul such waste over 200 miles.

(2) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 401 KAR Chapters 34 and 35 and the permit requirements of 401 KAR Chapter 38 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the cabinet if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the cabinet on a case-by-case basis.

(3) A small quantity generator may accumulate hazardous waste on site for 180 days (or for 270 days if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or with having interim status provided that he complies with the requirements of Section 5(1)(a) through (d) of this regulation.

(4) A small quantity generator may accumulate hazardous waste in satellite areas provided that he complies with the requirements of section 5(3) of this regulation.

CARL H. BRADLEY, Secretary  
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**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division of Waste Management  
(Amended After Hearing)

**401 KAR 32:050. Special conditions.**

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994  
PURSUANT TO: KRS Chapter 13A, 224.017, 224.033, 224.864

NECESSITY AND FUNCTION: KRS 224.864 requires the cabinet to promulgate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards applicable to generators of hazardous waste. This regulation establishes special conditions for generators who export or import hazardous waste. This regulation exempts farmers from certain requirements.

Section 1. Applicability. This regulation establishes requirements applicable to exports of hazardous waste. Except to the extent that international agreements specified by the Environmental Protection Agency (40 CFR 262.58)

provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this regulation and a transporter transporting hazardous waste for export must comply with applicable requirements of 401 KAR Chapter 33. 40 CFR 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries. [International Shipments. (1) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States must comply with the requirements of this regulation.]

[(2) When shipping hazardous waste outside the United States the generator must:]

[(a) Notify the cabinet and the U.S. Environmental Protection Agency in writing four (4) weeks before the initial shipment of hazardous waste to each country in each calendar year.]

[1. The waste must be identified by its hazardous waste identification number and its U.S. Department of Transportation shipping description;]

[2. The name and address of the foreign consignee must be included in this notice;]

[3. These notices must be sent to: Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A-107), United States Environmental Protection Agency, Washington, D.C. 20460, and the Natural Resources and Environmental Protection Cabinet, Frankfort, Kentucky 40601.]

[(b) Require the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;]

[(c) Meet the requirements under Section 2(1) of 401 KAR 32:020 for the manifest, except that:]

[1. In place of the name, address, and identification number of the designated facility, the name and address of the foreign consignee must be used; and]

[2. The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.]

[(d) The generator may obtain the manifest form from any source.]

[(3) A generator must file an exception report, if:]

[(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter; or]

[(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.]

[(4) Any person exporting hazardous waste identified or listed under 401 KAR Chapter 31 shall file with the cabinet no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.]

[(5) When importing hazardous waste, a person must meet all requirements of Section 2(1) of 401 KAR 32:020 for the manifest except that:]

[(a) In place of the generator's name, address and identification number, the name and address of the foreign generator and the importer's name, address and identification number must be used; and]

[(b) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.]

[(6) A person who imports hazardous waste may obtain the manifest form from any source.]

Section 2. Definitions. In addition to the definitions set forth at Section 1 of 401 KAR 30:010, the following definitions apply to this regulation:

(1) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

(2) "EPA acknowledgment of consent" means the cable set to EPA from the U.S. embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(3) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Section 1 of 401 KAR 32:020 which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(4) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

(5) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

Section 3. General Requirements. Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this regulation and 401 KAR Chapter 33. Exports of hazardous waste are prohibited unless:

(1) Notification in accordance with Section 4 of this regulation has been provided;

(2) The receiving country has consented to accept the hazardous waste;

(3) A copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent.

Section 4. Notification of Intent to Export.

(1) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the

following information:

(a) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(b) By consignee, for each hazardous waste type:

1. A description of the hazardous waste and the EPA hazardous waste number (from 401 KAR 31:030 and 31:040), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171-177;

2. The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

3. The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

4. All points of entry to and departure from each foreign country through which the hazardous waste will pass;

5. A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.) type(s) of container (drums, boxes, tanks, etc.);

6. A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

7. The name and site address of the consignee and any alternate consignee; and

8. The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there.

(2) Notification shall be sent to the Office of International Activities (A-106), EPA, 401 M Street, SW, Washington, DC 20460 with "Attention Notification to Export" prominently displayed on the front of the envelope.

(3) Except for changes to the telephone number in subsection (1)(a) of this section, changes to subsection (1)(b)5 of this section and decreases in the quantity indicated pursuant to subsection (1)(b)3 of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to subsection (1)(b)8 of this section and in the ports of entry to and departure from transit countries pursuant to subsection (1)(b)4 of this section) has been obtained and the primary exporter receives an EPA acknowledgment of consent reflecting the receiving country's consent to the changes.

(4) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(5) In conjunction with the department of state, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of subsection (1) of this section. Where a claim of confidentiality



is asserted with respect to any notification information required by subsection (1) of this section. EPA may find the notification not complete until any such claim is resolved in accordance with Section 8 of 401 KAR 30:020.

(6) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA acknowledgment of consent to the primary exporter for purposes of Section 5(8) of this regulation. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

Section 5. Special Manifest Requirements. A primary exporter must comply with the manifest requirements of Sections 1 through 4 of 401 KAR 32:020 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(2) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(3) In special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;

(4) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA acknowledgment of consent:"

(5) In lieu of the requirements of Section 2 of 401 KAR 32:020, the primary exporter must obtain the manifest form from the primary exporter's state if that state supplies the manifest form and requires its use. If the primary exporter's state does not supply the manifest form, the primary exporter may obtain a manifest form from any source;

(6) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in Section 3(1) of 401 KAR 34:050) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;

(7) In lieu of the requirements of Section 1(4) of 401 KAR 32:020, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(a) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Section 4(3) of this regulation and obtain an EPA acknowledgment of consent prior to delivery; or

(b) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(c) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(8) The primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary

exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper.

(9) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with Section 1(7)(d) of 401 KAR 33:020.

Section 6. Exception Reports. In lieu of the requirements of Section 3 of 401 KAR 32:040, a primary exporter must file an exception report with the secretary if:

(1) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(3) The waste is returned to the United States.

Section 7. Annual Reports. (1) Primary exporters of hazardous waste shall file with the secretary no later than March 1 of each year a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(a) The EPA identification number, name, and mailing and site address of the exporter;

(b) The calendar year covered by the report;

(c) The name and site address of each consignee;

(d) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 401 KAR 31:030 and 31:040), DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(e) Except for hazardous waste produced by exporters of greater than 100 kilograms but less than 1000 kilograms in a calendar month, unless provided pursuant to Section 2 of 401 KAR 32:040, in even numbered years:

1. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

2. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(f) A certification signed by the primary exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this 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."

(2) Reports shall be sent to the cabinet and the Office of International Activities (A-106), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Section 8. Recordkeeping. (1) For all exports a primary exporter must:

(a) Keep a copy of each notification of intent to export for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(b) Keep a copy of each EPA acknowledgment of consent for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(c) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(d) Keep a copy of each annual report for a period of at least three (3) years from the due date of the report.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

Section 9. Imports of Hazardous Waste. (1) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this chapter and the special requirements of this section [regulation].

(2) When importing hazardous waste, a person must meet all the requirements of Section 1(1) of 401 KAR 32:020 for the manifest except that:

(a) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(b) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(3) A person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

Section 10. [2.] Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter or other standards in 401 KAR Chapters 34, 35 or [and] 38 for those wastes provided he triple rinses each emptied pesticide container in accordance with 401 KAR 31:010, Section 7(2)(c), and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

CARL H. BRADLEY, Secretary

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

401 KAR 33:010. General provisions for transporters.

RELATES TO: KRS 224.071, 224.835, 224.873, 224.874

PURSUANT TO: KRS 13A.210, [224.017,] 224.033, 224.873

NECESSITY AND FUNCTION: KRS 224.873 requires the cabinet to promulgate regulations establishing standards applicable to transporters of hazardous waste regarding recordkeeping and compliance with the manifest system. This chapter establishes standards for transporters of hazardous waste. This regulation sets forth the general provisions applicable to these transporters.

Section 1. Scope. (1) This chapter establishes standards which apply to persons transporting hazardous waste within the Commonwealth of Kentucky if the transportation requires a manifest under 401 KAR Chapter 32.

(2) This chapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(3) A transporter of hazardous waste must also comply with the manifest requirements in 401 KAR Chapter 32 if he:

(a) Transports hazardous waste into Kentucky from a foreign country; or

(b) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

Section 2. EPA Identification Number. (1) A transporter must not transport hazardous wastes within the Commonwealth of Kentucky without having received an EPA identification number from the cabinet.

(2) A transporter who has not received an EPA identification number may obtain one (1) by applying to the cabinet using [EPA Form 8700-12 or] a notification form approved by the cabinet [Form DWM-1].

(3) A transporter who transports or intends to transport hazardous waste within the Commonwealth of Kentucky must register with the cabinet. The application for registration shall include but not be limited to:

(a) The name, legal structure and permanent address of the organization;

(b) The EPA identification number.

Section 3. Transfer Facility Requirements. A transporter who stores 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 is not subject to regulation under 401 KAR Chapters 34, 35, 37, and 38 with respect to storage of those wastes.

CARL H. BRADLEY, Secretary

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**401 KAR 34:020. General facility standards.**

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 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, to establish minimum standards for closure for all facilities and the postclosure 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 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 postclosure 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 [401 KAR Chapters 34] and 401 KAR Chapter 37 [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 one (1) of the sampling methods described in 401 KAR 31:100.

(d) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the 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 8 of this regulation, Section 9 of 401 KAR 34:230, in Section 2 of 401 KAR 34:240 and Section 7 of 401 KAR 37:010 [in Section 8 of this regulation].

(g) For surface impoundments exempted from land disposal restrictions under Section 4 of 401 KAR 37:010, the procedures and schedules for:

1. The sampling of impoundment contents;
2. The analysis of test data; and
3. The annual removal of residue which does not meet the standards of 401 KAR 37:040.

(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 identified, 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 chapter.

(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, Sections 4 and 6 of 401 KAR 34:190, Section 4 of 401 KAR 34:200, [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 cutoff 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 accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(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 within 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 Quaternary period, extending from the end of the Pleistocene to the present.

(2) Flood plains. (a) Except as paragraph (c) of this subsection applies, a facility located in a 100-year flood plain 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 flood plain throughout the active life of the facility, closure and for disposal facilities, postclosure. Facilities that have closed and removed all hazardous waste, waste constituents, contaminated soil, debris or other material contaminated with hazardous constituents, are not required to protect the closed portion of the facility from washout of waste or inundation by waters of the 100-year flood. Prevention of washout and protection from inundation shall be accomplished by one (1) of the following:

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 flood plain or a seasonal high-water 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 flood plain so as to pose a hazard to human life, wildlife or land or water resources.

(e) As used in paragraphs (a) through (c) of this subsection:

1. "100-year flood plain" 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 or closed 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 equaled or exceeded to any given year.

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

(3) Salt dome formations, salt bed formations, underground mines and caves. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

CARL H. BRADLEY, Secretary

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

401 KAR 34:050. Manifest system, recordkeeping and reporting.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 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, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes manifest system, recordkeeping and reporting requirements for facilities.

Section 1. Applicability. This regulation applies to owners and operators of both on-site and off-site hazardous waste sites or

facilities except as Section 1 of 401 KAR 34:010 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 after 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 that 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. Significant discrepancies in quantity are:

(a) For bulk waste, variations greater than ten (10) percent in weight; and

(b) For batch waste, any variation in piece count, such as a discrepancy of one (1) drum in a truckload. Significant discrepancies in type

are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone 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 described in 401 KAR 34:290;

(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;

(c) Records and results of waste analyses performed as specified in Sections 4 and 8 of 401 KAR 34:020, Section 9 of 401 KAR 34:230, [and] Section 2 of 401 KAR 34:240, and Sections 4(1) and 7 of 401 KAR 37:010;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Section 7(10) of 401 KAR 34:040;

(e) Records and results of inspections as required by Section 6(4) of 401 KAR 34:020 (except these data need be kept only three (3) years);

(f) Monitoring, testing, or analytical data where required by 401 KAR 34:060, Sections 2, 4 and 6 of 401 KAR 34:190, Section 4 [5] of 401 KAR 34:200, Sections 4 and 5 of 401 KAR 34:210, Sections 5, 6 and 8 of 401 KAR 34:220, Sections 4 and 5 of 401 KAR 34:230, and Section 7 of 401 KAR 34:240;

(g) For off-site facilities, notices to generators as specified in Section 3(2) of 401 KAR 34:020;

(h) All closure cost estimates under Section 1 of 401 KAR 34:090 and, for disposal facilities, postclosure cost estimates under Section 1 of 401 KAR 34:100; [and]

(i) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and environment;

(j) Records of the quantities (and date of

placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010 or a petition pursuant to Section 6 of 401 KAR 37:010 and the notice required by a generator under Section 7(1)(c) of 401 KAR 37:010;

(k) For an off-site treatment facility, a copy of the notice required by a generator under Section 7(1)(a) of 401 KAR 37:010;

(l) For an on-site treatment facility, the information contained in the notice required by a generator under Section 7(1)(a) of 401 KAR 37:010, except for the manifest number;

(m) For an off-site land disposal facility, a copy of the notice and certification required by the owner or operator of a treatment facility under Section 7(2)(a) and (b) of 401 KAR 37:010, or a copy of the notice and certification required by the generator under Section 7(1)(b) of 401 KAR 37:010, whichever is applicable;

(n) For an on-site land disposal facility, the information contained in the notice required under Section 7(1)(b) of 401 KAR 37:010, except for the manifest number, or the information contained in the notice required by a treater under Section 7(2)(a) of 401 KAR 37:010 except for the manifest number, whichever is applicable; and

(o) [(j)] For surface impoundments, water balance calculations as required in 401 KAR 34:200, Section 4.

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 of the cabinet.

(2) The retention period for all records required under this chapter is extended automatically during the course of any unresolved enforcement action regarding the 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.

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 designated by the secretary [cabinet] must be used for this report. The annual report must cover facility activities during the previous calendar year and must include at a minimum 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 name and EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and 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) Information on transportation, the use of the manifest, and other information from the manifest, as applicable; [and].

(7) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(8) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(9) [(7)] 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 an accompanying manifest, or without an accompanying shipping paper as described in 401 KAR 33:020, Section 1(b)(b), 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 secretary [cabinet] within fifteen (15) days after receiving the waste. The unmanifested waste report must be submitted on a form approved by the cabinet [EPA form 8700-138]. Such report must be designated "Unmanifested Waste Report" and include the following information: [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 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 secretary [cabinet]:

(1) Releases, fires, and explosions as specified in Section 7(10) of 401 KAR 34:040;

(2) Facility closure as specified in Section 6 of 401 KAR 34:070; and

(3) As otherwise required by 401 KAR 34:060, 34:200, 34:210, 34:220 and 34:230.

CARL H. BRADLEY, Secretary

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

401 KAR 34:070. Closure and postclosure.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 224, 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, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes standards for closure and postclosure of facilities.

Section 1. Applicability. Except as Section 1 of 401 KAR 34:010 provides otherwise:

(1) Sections 2 through 6 of this regulation (which concern closure) apply to the owners and operators of all hazardous waste management sites or facilities; and

(2) Sections 7 through 11 [10] of this regulation (which concern postclosure care) apply to the owners and operators of:

(a) All hazardous waste disposal facilities; [and]

(b) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Section 6 of 401 KAR 34:200 or [and] Section 8 of 401 KAR 34:210; and [.]

(c) Tank systems that are required under Section 8 of 401 KAR 34:190 to meet the requirements for landfills.

Section 2. Closure Performance Standards. The owner or operator must close the facility in a manner that:

(1) Minimizes the need for further maintenance; and

(2) Controls, minimizes or eliminates, to the extent necessary to protect [prevent threats to] human health and the environment, postclosure escape of hazardous waste, hazardous [waste] constituents, leachate, contaminated run-off [rainfall], or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(3) Complies with the closure requirements of this regulation including but not limited to, the requirements of 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 34:220, Section 6 of 401 KAR 34:230, and Section 8 of 401 KAR 34:240.

Section 3. Closure Plan; Amendment of Plan.

(1) Written plan.

(a) The owner or operator of a hazardous waste site or facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required

by Section 6(3)(a)1 of 401 KAR 34:200 and Section 8(3)(a)1 of 401 KAR 34:210 [34:200] to have contingent closure plans. The plan must be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the cabinet as part of the permit issuance procedures under 401 KAR [Chapter] 38:050. In accordance with Section 3 of 401 KAR 38:030, the approved closure plan will become a condition of any hazardous waste site or facility permit.

(b) The director's approval of the plan [cabinet's decision] must ensure [assure] that the approved closure plan is consistent with Sections 2, 3, 4, 5 and 6 of this regulation and the applicable requirements of [Section 1 of] 401 KAR 34:060, Section 9 of 401 KAR 34:180, Section 8 [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 34:220, Section 6 of 401 KAR 34:230, and Section 8 of 401 KAR 34:240. Until final closure is completed and certified in accordance with Section 6 of this regulation, a copy of the approved plan and all approved revisions [to the plan] must be furnished to the director upon request, including request by mail. [kept at the facility until closure is completed and certified in accordance with Section 6 of this regulation.]

(2) Content of plan. The plan must identify steps necessary to perform partial and/or final closure of [completely or partially close] the facility at any point during its active [intended operating] life [and to completely close the facility at the end of its intended operating life]. The closure plan must include at least:

(a) A description of how each hazardous waste management unit at [and when] the facility will be [partially] closed in accordance with Section 2 of this regulation;

(b) A description of how final closure of the facility will be conducted in accordance with Section 2 of this regulation. [, if applicable, and finally closed.] The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and [how the requirements of Sections 2, 4, 5 and 6 of this regulation and the applicable closure requirements of 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, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230, and Section 8 of 401 KAR 34:240 will be met;]

(c) [(b)] An estimate of the maximum inventory of hazardous wastes ever on-site over [in storage and in treatment at any time during] the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable [(any change in this estimate is a minor modification under 401 KAR Chapter 38)]; and

(d) [(c)] A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated

soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard [facility equipment during closure]; and

(e) [(d)] A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. [An estimate of the expected year of closure and a schedule for final closure.] The schedule must include, at a minimum, the total time required to close each hazardous waste management unit [the facility] and the time required for intervening [intermediate] closure activities which will allow tracking of the progress of partial and final closure (for example, in the case of a landfill unit, estimates of the time required to treat or [and] dispose of all hazardous waste inventory and of the time required to place a final cover must be included); and

(g) For facilities that use trust funds to establish financial assurance under [Section 2 of] 401 KAR 34:090 or [Section 2 of] 401 KAR 34:100 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(3) [(2)] Amendment of plan. The owner or operator must submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in 401 KAR Chapter 38. The written request must include a copy of the amended closure plan for approval by the director. [may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.)]

(a) The owner or operator may submit a written request to the director for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility. [must amend the plan]

(b) The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

1. Changes in operating plans or facility design affect the closure plan; or

2. [whenever] There is a change in the expected year of closure, if applicable; or

3. In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan. [When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, he must request a modification of the closure plan at the same time (see Section 2(1) of 401 KAR 38:050. If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within sixty (60) days after the change in plan or design occurs.]

(c) The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for

approval at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than thirty (30) days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under Section 6(3)(a) of 401 KAR 34:200 or Section 8(3)(a) of 401 KAR 34:210, must submit an amended closure plan to the director no later than sixty (60) days from the date that the owner or operator or director determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230, or no later than thirty (30) days from that date if the determination is made during partial or final closure. The director will approve, disapprove, or modify this amended plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved closure plan will become a condition of any hazardous waste site or facility permit issued.

(d) The director may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator must submit the modified plan within sixty (60) days of the director's request or within thirty (30) days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the director will be approved in accordance with the procedures in 401 KAR Chapter 38.

(4) [(3)] Notification of partial closure and final closure.

(a) The owner or operator must notify the director in writing [cabinet] at least sixty (60) [180] days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the director in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

(b) The date when he "expects to begin closure" must be either no later than thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the director that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the director may approve an extension to this one (1) year limit.

(c) If the facility's permit is terminated, or if the facility is otherwise ordered, by

judicial decree or final order under KRS 224.033[(18) and (19)], 224.081 and 224.867 to cease receiving hazardous wastes or to close, then the requirements of this subsection do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in Section 4 of this regulation.

(5) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(6) [(4)] For existing disposal facilities within the 100-year flood plain, the closure plan and cost estimates must reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of the 100-year flood.

(7) [(5)] For new hazardous waste sites or facilities located or to be located in the 100-year flood plain, the closure plan and cost estimates must reflect that all hazardous waste and hazardous waste residues shall be removed from the site at closure, in accordance with Section 9(2) of 401 KAR 34:020.

#### Section 4. Closure: Time Allowed for Closure.

(1) Within ninety (90) days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility [site], or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The director [cabinet] may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(a)1. The activities required to comply with this subsection will, of necessity, take longer than ninety (90) days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

b. There is a reasonable likelihood that he or another [a] person [other than the owner or operator] will recommence operation of the hazardous waste management unit or the facility within one (1) year [site]; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(2) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The director [cabinet] may approve an extension to the [a longer] closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

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

2.a. The hazardous waste management unit or

facility has the capacity to receive additional hazardous wastes; and

b. There is [a] reasonable likelihood that he or another [a] person [other than the owner or operator] will recommence operation of the hazardous waste management unit or the facility within one (1) year [site]; and

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or [inactive] facility, including compliance with all applicable permit requirements.

(3) The demonstrations referred to in subsections (1) and (2) of this section must be made as follows:

(a) The demonstrations in subsection (1) of this section must be made at least thirty (30) days prior to the expiration of the ninety (90) day period in subsection (1) of this section; and

(b) The demonstration in subsection (2) of this section must be made at least thirty (30) days prior to the expiration of the 180 day period in subsection (2) of this section.

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final [When] closure periods [is completed], all contaminated [facility] equipment, [and] structures and soils must be [have been] properly disposed of or decontaminated unless otherwise specified in Section 6 of 401 KAR 34:200, Section 8 of 401 KAR 34:210, Section 8 of 401 KAR 34:220, or Section 6 of 401 KAR 34:230. By removing any [all] hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of 401 KAR Chapter 32 [and residues].

Section 6. Certificate of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of the completion of final closure [When closure is completed], the owner or operator must submit to the director, by registered mail, a [cabinet] certification [both by the owner or operator and by an independent professional engineer registered in Kentucky] that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent professional engineer registered in Kentucky. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until he releases the owner or operator from the financial assurance requirements for closure under Section 12 of 401 KAR 34:090.

Section 7. [11.] Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the

director, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently displayed benchmarks. This plat must be prepared and certified by a professional land surveyor registered in the Commonwealth of Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this regulation.

Section 8. [7.] Postclosure Care and Use of Property. (1)(a) Postclosure care for each hazardous waste management unit subject to the requirements of Sections 7 through 10 of this regulation must begin after completion of closure of the unit and continue for thirty (30) years after that [the] date [of completing closure] and must consist of at least the following:

1. Monitoring and reporting in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220 and 401 KAR 34:230; and

2. Maintenance and monitoring of waste containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, and 401 KAR 34:230.

(b) Any time preceding partial closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular unit, the director may, in accordance with the permit modification procedures in 401 KAR Chapter 38:

1. Shorten the postclosure care period applicable to the hazardous waste management unit, or facility, to not less than thirty (30) years as specified in KRS 224.866 if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or [Prior to the time that the postclosure care period is due to expire, the cabinet may extend the postclosure care period if the cabinet finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health or the environment).]

2. Extend the postclosure care period applicable to the hazardous waste management unit or facility [During the 180 day period preceding closure or any time thereafter (see Section 3(3) of this regulation), the secretary may reduce an extended postclosure care period to not less than thirty (30) years] if he finds that the extended [reduced] period is necessary [sufficient] to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment). [ , characteristics of the waste,

application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the facility is secure). The secretary shall not reduce the postclosure period to be less than thirty (30) years.]

(2) The director [cabinet] may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 34:020 during part or all of the postclosure period [after the date of completing closure] when:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health.

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

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

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities must be in accordance with the provisions of the approved postclosure plan as specified in Section (8) of this regulation.

Section 9. [8.] Postclosure Plan; [and] Amendment of [Postclosure] Plan. (1) Written plan. The owner or operator of a hazardous waste disposal unit [facility] must have a written postclosure plan. In addition, certain waste piles and certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Section 6(3)(a)2 of 401 KAR 34:200, and Section 8(3)(a)2 of 401 KAR 34:210 to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210 must submit a postclosure plan to the director within ninety (90) days from the date that the owner or operator or director determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Sections 7 through 10 of this regulation. The plan must be submitted with the permit application, in accordance with Section 2(13) of 401 KAR 38:090, and approved by the director [cabinet] as part of the permit issuance procedures under 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan will become a condition of any hazardous waste site or facility permit issued. [A copy of the approved plan and all revisions to the plan must be kept at the facility until the postclosure care period begins. This]

(2) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan must identify the activities that [which] will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned monitoring activities and frequencies at which they will be

performed to comply with 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, and 401 KAR 34:230 during the postclosure care period; and

(b) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, and 401 KAR 34:230; and

2. The function of the [facility] monitoring equipment in accordance with the requirements of 401 KAR 34:060, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, and 401 KAR 34:230; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

(3) Until final closure of the facility, a copy of the approved postclosure plan must be furnished to the director upon request, including request by mail. After final closure has been certified, the [This] person or office specified in subsection (2)(c) of this section must keep the approved [an updated] postclosure plan during the remainder of the postclosure period.

(4) [(2)] Amendment of plan. The owner or operator must request a permit modification to authorize a change in the approved postclosure plan in accordance with the applicable requirements of 401 KAR Chapter 38. The written request must include a copy of the amended postclosure plan for approval by the director.

(a) The owner or operator may submit a written request to the director for a permit modification to amend the [his] postclosure plan at any time during the active life of the [disposal] facility or during the postclosure care period.

(b) The owner or operator must submit a written request for a permit modification to authorize a change in the approved postclosure [amend his] plan whenever:

1. Changes in operating plans or facility design[, or events which occur during the active life of the facility or during the postclosure period,] affect the approved [his] postclosure plan; or [He must also amend his plan whenever]

2. There is a change in the expected year of final closure, if applicable; or

3. Events which occur during the active life of the facility, including partial and final closures, affect the approved postclosure plan.

(c) The owner or operator must submit a written request for a permit modification at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent postclosure plan under Section 6(3)(a)2 of 401 KAR 34:200 and Section 8(3)(a)2 of 401 KAR 34:210, must submit a postclosure plan to the director no later than ninety (90) days after the date that the owner or operator or director determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 6 of 401 KAR 34:230. The director will approve, disapprove, or modify

this plan in accordance with the procedures in 401 KAR Chapter 38. In accordance with Section 3 of 401 KAR 38:030, the approved postclosure plan will become a permit condition.

(d) The director may request modifications to the plan under the conditions described in paragraph (b) of this subsection. The owner or operator must submit the modified plan no later than sixty (60) days after the director's request, or no later than ninety (90) days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent postclosure plan. Any modifications requested by the director will be approved, disapproved, or modified in accordance with the procedures in 401 KAR Chapter 38.

[(3) When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the postclosure plan must be requested at the same time (see Section 2(1) of 401 KAR 38:050. In all other cases, the request for modification of the postclosure plan must be made within sixty (60) days after the change in operating plans or facility design or the events which affect the postclosure plan occur.]

(5) [(4)] For existing disposal facilities within the 100-year flood plain, the postclosure plan and cost estimates must reflect compliance with the requirements in Section 9(2) of 401 KAR 34:020 to prevent washout of waste and protect the facility from inundation by waters of the 100-year flood.

Section 10. [9.] Postclosure Notices [to Local Land Authority]. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit [Within ninety (90) days after closure is completed], the owner or operator [of a disposal facility] must submit to the local zoning authority or the authority with jurisdiction over local land use and to the director [cabinet] a [survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 7(3) of this regulation. In addition, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the cabinet a] record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit [area] of the facility. For hazardous wastes disposed of before January 12, 1981 [these regulations were promulgated], the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator must: [Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat

and record of wastes have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the cabinet.]

(a) [Section 10. Notice in Deed to Property. (1) The owner of the property on which a disposal facility is located must] Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that:

1. [(a)] The land has been used to manage hazardous wastes; and

2. [(b)] Its use is restricted under [Section 7(3) of] this regulation; and

3. [(c)] The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit [area] of the facility required by [in] Section 11 [9] of this regulation and subsection (1) of this section [of 401 KAR 35:070] have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the the director; and [cabinet].

(b) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, including a copy of the document in which the notation has been placed, to the secretary.

(3) [(2)] If [at any time] the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is [site or facility was] located wishes to remove the] hazardous wastes, hazardous [and] waste residues, the liner, if any, or [and all] contaminated [underlying and surrounding] soils, he must request a modification to the postclosure permit in accordance with the applicable requirements in 401 KAR Chapter 38. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 7(3) of this regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the director approve either: [may]

(a) The removal of [remove] the notation on the deed to the facility property or other instrument normally examined during title search; or

(b) The addition of [he may add] a notation to the deed or other instrument indicating the removal of the hazardous waste.

Section 11. [10.] Certification of Completion of Postclosure Care. No later than sixty (60) days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator must submit to the director by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and an independent professional engineer registered in the Commonwealth of Kentucky. Documentation



supporting the independent registered professional engineer's certification must be furnished to the director upon request until he releases the owner or operator from the financial assurance requirements for postclosure care under Section 12 of 401 KAR 34:100.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

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**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

PURSUANT TO: KRS Chapter 13A, 224.033, 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 postclosure 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 have a detailed [prepare a] written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements [closure plan as specified] in Sections 2 through 6 [3] of 401 KAR 34:070 and applicable closure requirements in [Section 9 of 401 KAR 34:180,] Section 8 [5] of 401 KAR 34:190, Section 6 [7] of 401 KAR 34:200, Section 8 [9] of 401 KAR 34:210, Section 8 of 401 KAR 34:220, Section 6 of 401 KAR 34:230 and Section 8 of 401 KAR 34:240.

(a) The [closure cost] estimate must equal the cost of final closure at the point in the facility's active [operating] life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 3(2) of 401 KAR 34:070); and

(b) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 3(1)(e) of 401 KAR 34:080.) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(c) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time

of partial or final closure.

(d) The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

(2) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty (60) [thirty (30)] days prior to the [after each] anniversary [of the] date of the establishment of the financial instrument(s) used to comply with Section 2 of this regulation. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the director as specified in Section 8(3) of this regulation [on which the first closure cost estimate was prepared]. The adjustment shall [must] be made by recalculating the maximum costs of closure in current dollars, or by [as specified in paragraphs (a) and (b) of this subsection,] using an inflation factor derived from the most recent [annual] Implicit Price Deflator for Gross National Product [as] published by the U.S. Department of Commerce in its Survey of Current Business as specified in paragraphs (a) and (b) of this subsection. 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) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than thirty (30) days after the director has approved the request to modify the closure plan, if the [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 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 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 acknowledgment (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:

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

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 of 401 KAR 35:090, 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. 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:

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

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 or in 401 KAR 35:090, 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 of 401 KAR 35:090, 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 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 partial or final closure, an owner or operator or another [any other] person authorized to conduct partial or final [perform] closure may request reimbursements for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for partial or final closure activities, the director will instruct the trustee to make reimbursements in those amounts as the director specifies in writing, if the director determines that [whether] the partial or final closure expenditures are in accordance with the approved 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 maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements 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 final closure of the facility. If the director does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written

statement of reasons.

(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 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 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 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) 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 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 final closure [is] issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued [or] by a 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 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 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. Surety Bond Guaranteeing Performance of Closure. (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 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 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 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 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 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 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 final administrative determination pursuant to KRS 224.866 that the owner or operator has failed to perform final closure in accordance with the approved 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 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 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.

(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 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 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 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 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 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 final administrative determination pursuant to KRS 224.866 that the owner or operator has failed to perform final closure in accordance with the approved 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 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 the 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 12 of this regulation.

Section 7. 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. 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. Except as KRS 304.11-030 provides otherwise. 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. 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 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 partial or final closure, an owner or operator or any other person authorized to conduct [perform] closure may request reimbursements for closure expenditures by submitting itemized bills to the director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the director will instruct the insurer to make reimbursements in such amounts as the director specifies in writing, if the director determines that [whether] the partial or final closure expenditures are in accordance with the approved 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 maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursements 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 final closure of the facility. If the director does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

(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) The permit is terminated or revoked or a new permit is denied; or

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

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

(e) The premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days of the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the director, or obtain other financial assurance as specified in this 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 12 of this regulation.

Section 8. 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 postclosure cost estimates

and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least \$10 million; and

4. Assets located in the United States 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 postclosure cost estimates and the current plugging and abandonment 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 postclosure cost estimates and the current plugging and abandonment cost estimates; and

3. Tangible net worth of at least \$10 million; and

4. Assets located in the United States 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 postclosure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and postclosure 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). The phrase "current plugging and abandonment 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 for the owner's or operator's chief financial officer (see 40 CFR 144.70(f)).

(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 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 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 12 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 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 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 this regulation by submitting 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) 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 postclosure 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 10 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 valuation of the cash accounts or the certificate(s) of deposit. If the value of the cash accounts or 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 accounts 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 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) 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 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 closure expenditures are in accordance with the closure plan or otherwise justified.

Section 10. 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 guaranteeing payment into a trust fund, letters of credit, insurance, certificates 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 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 12. 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 final closure has been completed [accomplished] in accordance with the approved 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 this regulation to maintain financial assurance for final closure of the [particular] facility, unless the director has reason to believe that final closure has not been in accordance with the approved closure plan. The director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

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

**401 KAR 34:190. Tanks.**

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 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, to establish minimum standards for closure for all facilities and the postclosure monitoring and maintenance of hazardous waste disposal facilities. This chapter establishes minimum standards for new hazardous waste sites or facilities. This regulation establishes minimum standards for tanks.

Section 1. Applicability. [(1)] The requirements of This regulation apply[ies] to owners and operators of hazardous waste sites or facilities that use tank systems for storing or treating [to treat or store] hazardous waste, except as otherwise provided in subsections (1) and (2) of this section or in Section 1 of 401 KAR 34:010 [and subsection (2) of this regulation provide otherwise].

(1) Tanks that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in Section 4 of this regulation. To demonstrate the absence or presence of free liquids in the stored or treated waste, EPA



Method 2095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes: Physical Chemical Methods" (EPA Publication No. SW-846) incorporated by reference in Section 3 of 401 KAR 30:010 must be used.

(2) Tanks, including sumps, as defined in Section 1 of 401 KAR 30:010, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 4 of this regulation. [This regulation does not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection.]

Section 2. Assessment of Existing Tank System's Integrity. (1) For each existing tank system that does not have secondary containment meeting the requirements of Section 4 of this regulation, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in subsection (3) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified professional engineer registered in the Commonwealth of Kentucky, in accordance with Section 7(4) of 401 KAR 38:070, that attests to the tank system's integrity no later than 180 days from the date of promulgation of this regulation.

(2) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(a) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(b) Hazardous characteristics of the waste(s) that have been and will be handled;

(c) Existing corrosion protection measures;

(d) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(e) Results of a leak test, internal inspection, or other tank integrity examination such that:

1. For nonenterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

2. For other than nonenterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070, that addresses cracks, leaks, corrosion, and erosion.

(3) Tank systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this regulation, must conduct the assessment within twelve (12) months after the date that the waste becomes a hazardous waste.

(4) If, as a result of the assessment conducted in accordance with subsection (1) of this section, a tank system is found to be leaking or unfit for use, the owner or operator

must comply with the requirements of Section 7 of this regulation. [Design of Tanks. Tanks must have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The cabinet will review the design of the tanks, including the foundation, structural support, seams and pressure controls. The cabinet shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Factors to be considered in establishing minimum thickness include the width, height, and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and establishing a minimum thickness, the cabinet shall rely upon appropriate industrial design standards and other available information.]

Section 3. Design and Installation of New Tank Systems or Components. (1) Owners or operators of new tank systems or components must obtain and submit to the director, at the time of submittal of Part B information, a written assessment, reviewed and certified by an independent, qualified professional engineer registered in the Commonwealth of Kentucky, in accordance with Section 7(4) of 401 KAR 38:070, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the director to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

(a) Design standard(s) according to which tank(s) and/or the ancillary equipment are constructed;

(b) Hazardous characteristics of the waste(s) to be handled;

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

1. Factors affecting the potential for corrosion, including but not limited to:

a. Soil moisture content;

b. Soil pH;

c. Soil sulfides level;

d. Soil resistivity;

e. Structure to soil potential;

f. Influence of nearby underground metal structures (e.g., piping);

g. Existence of stray electric current;

h. Existing corrosion-protection measures (e.g., coating, cathodic protection); and

2. The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one (1) or more of the following:

a. Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

b. Corrosion-resistant coating (such as epoxy,

fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and

c. Electrical isolation devices such as insulating joints, flanges, etc.

(d) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(e) Design considerations to ensure that:

1. Tank foundations will maintain the load of a full tank;

2. Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Section 9(1) of 401 KAR 34:020; and

3. Tank systems will withstand the effects of frost heave.

(2) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified professional engineer registered in the Commonwealth of Kentucky, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

(a) Weld breaks;

(b) Punctures;

(c) Scrapes of protective coatings;

(d) Cracks;

(e) Corrosion; or

(f) Other structural damage or inadequate construction/installation.

All discrepancies (e.g., structural damage or inadequate construction/installation) must be remedied before the tank system is covered, enclosed, or placed in use.

(3) New tank systems or components, that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(4) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed into use.

(5) Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(6) The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under subsection (1)(c) of this section, or other corrosion protection if the director believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(7) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (2) through (6) of this section, that attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (2) and (4) of this section, were performed. These written statements must also include the certification statement as required in Section 7(4) of 401 KAR 38:070. [General Operating Requirements. (1) Wastes and other materials (e.g., treatment reagents) which are incompatible with the material of construction of the tank must not be placed in the tank unless the tank is protected from accelerated corrosion, erosion or abrasion through the use of:]

[(a) An inner liner or coating which is compatible with the waste or material and which is free of leaks, cracks, holes or other deterioration; or]

[(b) Alternative means of protection (e.g., cathodic protection or corrosion inhibitors).]

[(2) The owner or operator must use appropriate controls and practices to prevent overfilling. These must include:]

[(a) Controls to prevent overfilling (e.g., waste feed cutoff system or bypass system to a standby tank); and]

[(b) For uncovered tanks, maintenance of sufficient freeboard to prevent overtopping by wave or wind action or by precipitation.]

Section 4. Containment and Detection of Releases. (1) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided (except as provided in subsections (6) and (7) of this section):

(a) For all new tank systems or components, prior to their being put into service;

(b) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, by January 12, 1991 [within two (2) years after January 12, 1987];

(c) For those existing tank systems of known and documented age, by January 12, 1991 [within two (2) years after January 12, 1987] or when the tank system has reached fifteen (15) years of age, whichever comes later;

(d) For those existing tank systems for which the age cannot be documented, within eight (8) years of January 12, 1987, but if the age of the facility is greater than seven (7) years, secondary containment must be provided by the time the facility reaches fifteen (15) years of age, or within two (2) years of January 12, 1987, whichever comes later; and

(e) For tank systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this regulation within the time intervals required in paragraphs (a) through (d) of this subsection, except that the date that a material becomes a hazardous waste must be used in place of the date of promulgation of this regulation.

(2) Secondary containment systems must be:

(a) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during

the use of the tank system; and

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(3) To meet the requirements of subsection (2) of this section, secondary containment systems must be at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic):

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift:

(c) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four (24) hours, or at the earliest practicable time if the owner or operator can demonstrate to the director that existing detection technologies or site conditions will not allow detection of a release within twenty-four (24) hours; and

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the director that removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four (24) hours.

(e) If the collected material is a hazardous waste under 401 KAR Chapter 31 it is subject to management as a hazardous waste in accordance with all applicable requirements of 401 KAR Chapters 32 through 35. If the collected material is discharged through a point source to waters of the Commonwealth, it is subject to the requirements of KRS Chapter 224 and 401 KAR Chapter 5. If discharged to a publicly owned treatment works (POTW), it is subject to the requirements of KRS Chapter 224 and 401 KAR Chapter 5. If the collected material is released to the environment it may be subject to the reporting requirements of 40 CFR Part 302 and KRS 224.877.

(4) Secondary containment for tanks must include one (1) or more of the following devices:

(a) A liner (external to the tank);

(b) A vault;

(c) A double-walled tank; or

(d) An equivalent device as approved by the director.

(5) In addition to the requirements of subsections (2), (3), and (4) of this section, secondary containment systems must satisfy the following requirements:

(a) External liner systems must be:

1. Designed and operated to contain 100

percent of the capacity of the largest tank within its boundary;

2. Designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Free of cracks or gaps; and

4. Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(b) Vault systems must be:

1. Designed and operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Constructed with chemical-resistant water stops in place at all joints (if any);

4. Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

5. Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

a. Meets the definition of ignitable waste under Section 2 of 401 KAR 31:030; or

b. Meets the definition of reactive waste under Section 4 of 401 KAR 31:030 and may form an ignitable or explosive vapor.

6. Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(c) Double-walled tanks must be:

1. Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

2. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

3. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours, or at the earliest practicable time, if the owner or operator can demonstrate to the director, and the director concludes, that the existing detection technology or site conditions would not allow detection of a release within twenty-four (24) hours.

(6) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of subsections (2) and (3) of this section except for:

(a) Above-ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above-ground piping systems with automatic shutoff devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(7) The owner or operator may obtain a variance from the requirements of this section if the director finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (b) of this subsection, be exempted from the secondary containment requirements of this section.

(a) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water, the director will consider:

1. The nature and quantity of the wastes;
2. The proposed alternate design and operation;
3. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and
4. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

(b) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the director will consider:

1. The potential adverse effects on groundwater, surface water and land quality taking into account:

a. The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

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

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

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

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

2. The potential adverse effects of a release on groundwater quality, taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The proximity and withdrawal rates of groundwater in the area;

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

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

3. The potential adverse effects of a release on surface water quality taking into account:

a. The quantity and quality of groundwater and

the direction of groundwater flow;

b. The patterns of rainfall in the region;

c. The proximity of the tank system to surface waters;

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

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

4. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

a. The patterns of rainfall in the region; and

b. The current and future uses of the surrounding land;

(c) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

1. Comply with the requirements of Section 7 of this regulation except subsection (4) of that section; and

2. Decontaminate or remove contaminated soil to the extent necessary to:

a. Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

3. If contaminated soil cannot be removed or decontaminated in accordance with subparagraph 2 of this paragraph, comply with the requirement of Section 8(2) of this regulation.

(d) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

1. Comply with the requirements of Sections 7(1), (2), (3), and (4) of this regulation; and

2. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of Section 8(2) of this regulation; and

3. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (1) through (6) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 3 of this regulation if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(8) The following procedures must be followed in order to request a variance from secondary

containment:

(a) The director must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in subsection (7) according to the following schedule:

1. For existing tank systems, at least twenty-four (24) months prior to the date that secondary containment must be provided in accordance with subsection (1) of this section.

2. For new tank systems, at least thirty (30) days prior to entering into a contract for installation.

(b) As part of the notification, the owner or operator must also submit to the director a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in subsection (7)(a) or subsection (7)(b) of this section.

(c) The demonstration for a variance must be completed within 180 days after notifying the director of an intent to conduct the demonstration; and

(d) If a variance is granted under this subsection, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(9) All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:

(a) For nonenterable underground tanks, a leak test that meets the requirements of Section 2(1) of this regulation or other tank integrity method, as approved or required by the director must be conducted at least annually.

(b) For other than nonenterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (a) of this subsection or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified professional engineer registered in the Commonwealth of Kentucky. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(c) For ancillary equipment, a leak test or other integrity assessment as approved by the secretary must be conducted at least annually.

(d) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with subsection (1)(a) through (c) of this section.

(e) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in paragraphs (a) through (c) of this subsection, the owner or operator must comply with the requirements of Section 7 of this regulation.

Section 5. General Operating Requirements. (1)

Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(2) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(a) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(b) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(c) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) The owner or operator must comply with the requirements of Section 7 of this regulation if a leak or spill occurs in the tank system. [Closure. At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge containment structures.]

Section 6. [4.] Inspections. (1) The owner or operator must develop and follow a schedule and procedure for inspecting overfill controls.

(2) The owner or operator must inspect at least once each operating day:

(a) Above-ground portions of the tank system, if any, to detect corrosion or releases of waste [Overfilling control equipment (e.g., waste feed cutoff systems and bypass systems) at least once each operating day to ensure that it is in good working order];

(b) Data gathered from monitoring and leak detection equipment (e.g., pressure or [and] temperature gauges, and monitoring wells) [where present, at least once each operating day] to ensure that the tank system is being operated according to its design; and

(c) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(3) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) The proper operation of the cathodic protection system must be confirmed within six (6) months after initial installation and annually thereafter; and

(b) All sources of impressed current must be inspected and/or tested as appropriate, at least bimonthly (i.e., every other month).

(4) The owner or operator must document in the operating record of the facility an inspection of those items in subsections (1) through (3) of this section.

[(c) For uncovered tanks, the level of waste in the tank, at least once each operating day to ensure compliance with Section 3(2) of this regulation.]

[(d) The construction materials of the above-ground portions of the tank, at least weekly to detect corrosion or erosion and leaking of fixtures and seams; and]

[(e) The area immediately surrounding the tank, at least weekly to detect obvious signs of



leakage (e.g., wet spots or dead vegetation).]

[(2) As part of the inspection schedule required in Section 6(2) of 401 KAR 34:020 and in addition to the specific requirements of subsection (1) of this section, the owner or operator must develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure must be adequate to detect cracks, leaks, corrosion or erosion which may lead to cracks or leaks, or wall thinning to less than the thickness required under Section 2 of this regulation. Procedures for emptying a tank to allow entry and inspection of the interior must be established when necessary to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments must be based on the material of construction of the tank, type of corrosion or erosion protection used, rate of corrosion or erosion observed during previous inspections, and the characteristics of the waste being treated or stored.]

[(3)(a) As part of the contingency plan required under 401 KAR 34:040, the owner or operator must specify the procedures he intends to use to respond to tank spills or leakage, including procedures and time for expeditious removal of leaked or spilled waste and repair of the tank.]

[(b) For EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, the contingency plan must also include the procedures for responding to a spill or leak of these wastes from tanks into the containment system. These procedures shall include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.]

Section 7. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(1) Cessation of use; prevent flow or addition of wastes. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Removal of waste from tank system or secondary containment system.

(a) If the release was from the tank system, the owner/operator must, within twenty-four (24) hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system all released materials must be removed within twenty-four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(3) Containment of visible releases to the environment. The owner/operator must immediately conduct a visual inspection of the release and based upon that inspection:

(a) Prevent further migration of the leak or spill to soils or surface water; and

(b) Remove, and properly dispose of, any

visible contamination of the soil or surface water.

(4) Notifications and reports.

(a) Any release to the environment except as provided in paragraph (b) of this subsection, must be reported to the director within twenty-four (24) hours of its detection. If the release has been reported pursuant to 40 CFR Part 302 that report will satisfy this requirement.

(b) A leak or spill of hazardous waste is exempted from the requirements of this subsection if it is:

1. Less than or equal to a quantity of one (1) pound; and

2. Immediately contained and cleaned up.

(c) Within thirty (30) days of detection of a release to the environment, a report containing the following information must be submitted to the director:

1. Likely route of migration of the release;

2. Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data must be submitted to the director as soon as they become available;

4. Proximity to down-gradient drinking water, surface water, and populated areas; and

5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair or closure.

(a) Unless the owner/operator satisfies the requirements of paragraphs (b) through (d) of this subsection, the tank system must be closed in accordance with Section 8 of this regulation.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 4 of this regulation before it can be returned to service, unless the source of the leak is an above-ground portion of a tank system that can be inspected visually. If the source is an above-ground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of subsection (6) of this section are satisfied. If a component is replaced to comply with the requirements of this paragraph that component must satisfy the requirements for new tank systems or components in Sections 3 and 4 of this regulation. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an in-ground or on-ground tank), the entire component must be provided with secondary containment in accordance with Section 4 of this

regulation prior to being returned to use.

(6) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with subsection (5) of this section, and the repair has been extensive (e.g., installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the director within seven (7) days after returning the tank system to use.

Section 8. Closure and Postclosure Care. (1) At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in 401 KAR 34:070 through 34:176.

(2) If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection (1) of this section, then the owner or operator must close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills (Section 6 of 401 KAR 34:230). In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in 401 KAR 34:070 through 34:176.

(3) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Section 4(2) through (6) of this regulation and is not exempt from the secondary containment requirements in accordance with Section 4(7) of this regulation then:

(a) The closure plan for the tank system must include both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section.

(b) A contingent postclosure plan for complying with subsection (2) of this section must be prepared and submitted as part of the permit application.

(c) The cost estimates calculated for closure and postclosure care must reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (1) of this section.

(d) Financial assurance must be based on the cost estimates in paragraph (c) of this subsection.

(e) For the purposes of the contingent closure and postclosure plans, such a tank system is

considered to be a landfill, and the contingent plans must meet all of the closure, postclosure, and financial responsibility requirements for landfills under 401 KAR 34:070 through 34:176.

(f) For new tank systems that will close in accordance with subsection (2) of this section, the owner or operator shall demonstrate compliance with 401 KAR 38:500. [Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027. In addition to the other requirements of this regulation, the following requirements apply to tanks storing or treating hazardous wastes F020, F021, F022, F023, F026, and F027.]

[(1) Tanks must have systems designed and operated to detect an adequately contained spills or leaks. The design and operation of any containment system must reflect consideration of all relevant factors, including:]

[(a) Capacity of the tank;]

[(b) Volumes and characteristics of wastes stored or treated in the tank;]

[(c) Method of collection of spills or leaks;]

[(d) The design and construction materials of the tank and containment system; and]

[(e) The need to prevent precipitation and run-on from entering into the system.]

[(2) As part of the contingency plan required by 401 KAR 34:040, the owner or operator must specify such procedures for responding to a spill or leak from the tank into the containment system as may be necessary to protect human health and the environment. These procedures shall include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.]

Section 9. [6.] Special Requirements for Ignitable or Reactive Wastes. (1) Ignitable or reactive waste must not be placed in a tank unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the tank so that:

1. The resulting waste, mixture or dissolved [dissolution of] material no longer meets the definition of ignitable or reactive waste under Section 2 or 4 of 401 KAR 31:030; [Chapter 31,] and

2. Section 8(2) of 401 KAR 34:020 is complied with; or

(b) The waste is stored or treated in such a way that it is protected from any material or conditions that [which] may cause the waste to ignite or react; or

(c) The tank system is used solely for emergencies.

(2) The owner or operator of a facility where [which treats or stores] ignitable or reactive waste is stored or treated in a tank must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required [in covered tanks must comply with the buffer zone requirements for tanks contained] in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference in Section 3 of 401 KAR 30:010.

Section 10. [7.] Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials, must not be



placed in the same tank system unless Section 8(2) of 401 KAR 34:020 is complied with.

(2) Hazardous waste must not be placed in a[n unwashed] tank system that has not been decontaminated and that [which] previously held an incompatible waste or material, unless Section 8(2) of 401 KAR 34:020 is complied with.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

FILED WITH LRC: February 12, 1988 at 11 a.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 Chapter 13A, 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 postclosure 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 discrepancy 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 analyses and trial tests performed as specified in[.];

- [1.] Section 4 of 401 KAR 35:020,
- [2.] Section 4 [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 7 of 401 KAR 35:230,
- [7.] Section 2 of 401 KAR 35:240,
- [8.] Section 3 of 401 KAR 35:250, [and]
- [9.] Section 3 of 401 KAR 35:260, and Sections 4(1) and 7 of 401 KAR 37:010; [.]

(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 when [where] required by[.];

- [1.] Section 1 of 401 KAR 35:060,
- [2.] Section 5 [4] of 401 KAR 35:060 (requires monitoring data at disposal facilities must be kept throughout the postclosure period), Sections 2, 4 and 6 of 401 KAR 35:190,
- [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; and [.]

(g) All closure cost estimates under Section 1 of 401 KAR 35:090 and for disposal facilities, all postclosure cost estimates under Section 1 of 401 KAR 35:100.

(h) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section 5 of 401 KAR 37:010, or a petition pursuant to Section 6 of 401 KAR 37:010 and the notice required by a generator under Section 7(1)(c) of 401 KAR 37:010;

(i) For an off-site treatment facility, the notice required by a generator under Section 7(1)(a) of 401 KAR 37:010;

(j) For an on-site treatment facility, the information contained in the notice required by a generator under Section 7(1)(a) of 401 KAR 37:010, except for the manifest number;

(k) For an off-site land disposal facility, the notice and certification required by the owner or operator of a treatment facility under Section 7(2) of 401 KAR 37:010 or the certification required by the generator under Section 7(1)(b) of 401 KAR 37:010, whichever is applicable; and

(l) For an on-site land disposal facility, the information contained in the notice required by a generator under Section 7(1)(b) of 401 KAR 37:010, except for the manifest number, or the information contained in the notice required by the treatment facility under Section 7(2)(b) of 401 KAR 37:010, except for the manifest number, whichever is applicable.

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 must be used for this report. The annual report must cover site or facility activities during the previous calendar year and must include at a minimum 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 name and 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) Information on transportation, the use of the manifest, and other information from the manifest, as applicable; [and]

(8) For generators who treat, store, or dispose of hazardous waste on site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(9) For generators who treat, store, or dispose of hazardous waste on site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(10) [(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 an 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 unmanifested waste report [form and instructions designated by the cabinet] must be submitted on a form approved by the cabinet [EPA form 8700-13B]. Such report must be designated "Unmanifested Waste Report" and [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.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

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

**401 KAR 35:070. Closure and postclosure (IS).**

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.866, 224.867

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 postclosure 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 standards for closure and postclosure of facilities.

Section 1. Applicability. Except as Section 1 of 401 KAR 35:010 provides otherwise:

- (1) Sections 2 through 6 of this regulation (which concern closure) apply to the owners and

operators of all hazardous waste sites or facilities; and

- (2) Sections 7 through 11 [10] of this regulation (which concern postclosure care) apply to the owners and operators of:

(a) All hazardous waste disposal facilities; and

(b) Tank systems that are required under Section 8 of 401 KAR 35:190 to meet requirements for landfills.

Section 2. Closure Performance Standards. The owner or operator must close the [his] facility in a manner that:

- (1) Minimizes the need for further maintenance; and

(2) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous [waste] constituents, leachate, contaminated run-off [rainfall], or hazardous waste decomposition products to the ground[waters] or surface waters or to the atmosphere; and

(3) Complies with the closure requirements of this chapter including, but not limited to, the requirements of Section 8 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260.

(4) Includes any corrective action necessary to bringing the facility into compliance with the applicable facility standards contained in Section 12 of 401 KAR 34:060.

Section 3. Closure Plan; Amendment of Plan.

(1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste site or facility must have a written closure plan. [He must keep a copy of the closure plan and all revisions to the plan at the facility] Until final closure is completed and certified in accordance with Section 6 of this regulation, a copy of the most current plan must be furnished to the secretary upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the cabinet who is duly designated by the secretary.

(2) Content of plan. The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(a) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 2 of this regulation; and

(b) A description of how final closure of the facility will be conducted in accordance with Section 2 of this regulation. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and [This plan must identify the steps necessary to completely or partially close the facility at any point during its intended operating life. The closure plan must include, at least:]

[[a) A description of how and when the facility will be partially closed (if applicable) and finally closed. The description must identify the maximum extent of the

operation which will be unclosed during the life of the facility, and how the requirements of Sections 2, 4, 5 and 6 of this regulation and the applicable closure requirements of Section 5 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260 will be met;]

(c) [(b)] An estimate of the maximum inventory of hazardous wastes ever on site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, recycling, treating, storing, or disposing of all hazardous wastes, identification of and the type(s) of the off-site hazardous waste management unit(s) to be used, if applicable; and [in storage and in treatment at any time during the life of the facility;]

(d) [(c)] A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard in Section 2 of this regulation; and

(e) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards in Section 2 of this regulation, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

(f) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included) [facility equipment during closure]; and

(g) [(d)] An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Sections 2 through 11 of 401 KAR 35:090 or Sections 2 through 11 of 401 KAR 35:100 and whose remaining operating life is less than twenty (20) years, and for facilities without approved closure plans, [and a schedule for final closure. The schedule must include, at a minimum, the total time required to close the facility and the time required for intervening closure activities which will allow tracking of the progress of closure (for example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory and of the time required to place a final cover must be included).]

(3) [(2)] Amendment of plan. The owner or operator may amend the [his] closure plan at any time prior to the notification of partial or

final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the secretary to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the secretary.

(a) The owner or operator must amend the closure plan whenever:

1. Changes in operating plans or facility design affect the closure plan; or

2. There is a change in the expected year of closure, if applicable; or

3. In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(b) The owner or operator must amend the closure plan at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than thirty (30) days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with Section 4 of 401 KAR 35:230.

(c) An owner or operator with an approved closure plan must submit the modified plan to the secretary at least sixty (60) days prior to the proposed change in facility design or operation, or no more than sixty (60) days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than thirty (30) days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with Section 4 of 401 KAR 35:230. If the amendment to the plan is a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan will be approved according to the procedures in subsection (4)(d) of this section.

(d) The secretary may request modifications to the plan under the conditions described in paragraph (a) of this subsection. An owner or operator with an approved closure plan must submit the modified plan within sixty (60) days of the request from the director or within thirty (30) days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan will be approved in accordance with the procedures in subsection (4)(d) of this section. [during the active life of the facility (the active life of the facility is that period during which wastes are periodically received). The owner or operator must amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure of the facility. The plan must be amended within sixty (60) days of the changes.]

(4) [(3)] Notification of partial closure and final closure.

(a) The owner or operator must submit the [his] closure plan to the director at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must submit the closure plan to the director at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the director in writing at least sixty (60) days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners and operators with approved closure plans must notify the secretary in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(b) The date when he "expects to begin closure" must be either within thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the secretary that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the director may approve an extension to this one (1) year limit. [before the date he expects to begin closure.

(c) The owner or operator must submit his closure plan to the director no later than fifteen (15) days after:

1. [(a)] Termination of interim status except when a permit is issued [to the facility] simultaneously with termination of interim status; or

2. [(b)] Issuance of a judicial decree or final [compliance] order under KRS 224.033[(18) and (19)], 224.081, and 224.867 to cease receiving hazardous wastes or close.

(d) [(4)] The director will provide the owner or operator and the public, [(through a newspaper notice, [] the opportunity to submit written comments on the plan and request modifications to [of] the plan no later than [within] thirty (30) days from [of] the date of the notice. He will also, [(in response to a request or at his own discretion, [] hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning a closure plan. The director will give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined.) The director will approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the director does not approve

the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The director will approve or modify this plan in writing within sixty (60) days. If the director modifies the plan, this modified plan becomes the approved closure plan. The director[']s decision] must assure that the approved [closure] plan is consistent with Sections 2, through [4, 5 and] 6 of this regulation and the applicable requirements of Section 1 of 401 KAR 35:060 et seq., Section 5 of 401 KAR 35:190, Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, Section 4 of 401 KAR 35:230, Section 5 of 401 KAR 35:240, Section 5 of 401 KAR 35:250, and Section 5 of 401 KAR 35:260. A copy of the [this] modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(5) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure. If the owner or operator planned [plans] to begin closure before November 19, 1981, he was required to [must] submit the closure plan by May 19, 1981.

Section 4. Closure; Time Allowed for Closure. (1) Within ninety (90) days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, or within ninety (90) days after approval of the closure plan, whichever [if that] is later, the owner or operator must treat, remove from the unit or facility [site], or dispose of on site, all hazardous wastes in accordance with the approved closure plan. The director may approve a longer period [using the procedures under Section 3(4) of this regulation] if the owner or operator demonstrates that:

(a)1. The activities required to comply with this subsection will, of necessity, take [him] longer than ninety (90) days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

b. There is a reasonable likelihood that he or another person [a person other than the owner or operator] will recommence operation of the hazardous waste management unit or the facility within one (1) year; and [site];

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(2) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The director may approve an extension to the [a

longer] closure period [using the procedures under Section 3(3) of this regulation] if the owner or operator demonstrates that:

(a)1. The partial or final closure activities will, of necessity, take [him] longer than 180 days to complete; or

2.a. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

b. There is [a] reasonable likelihood that he or another [a] person [other than the owner or operator] will recommence operation of the hazardous waste management unit or the facility within one (1) year; and [site]

c. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(b) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(3) The demonstrations referred to in subsections (1) and (2) of this section must be made as follows:

(a) The demonstrations in subsection (1) of this section must be made at least thirty (30) days prior to the expiration of the ninety (90) day period in subsection (1) of this section; and

(b) The demonstrations in subsection (2) of this section must be made at least thirty (30) days prior to the expiration of the 180 day period in subsection (2) of this section. [inactive facility.]

Section 5. Disposal or Decontamination of Equipment, Structures and Soils. During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of or decontaminated unless specified otherwise in Section 6 of 401 KAR 35:200, Section 7 of 401 KAR 35:210, Section 7 of 401 KAR 35:220, or Section 4 of 401 KAR 35:230. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of 401 KAR Chapter 32. [When closure is completed, all facility equipment and structures must have been properly disposed of or decontaminated by removing all hazardous waste and residues.]

Section 6. Certification of Closure. Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty (60) days of completion of final closure [When closure is completed], the owner or operator must submit to the director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed [both] by the owner or operator and by an independent professional engineer who is registered in the Commonwealth of Kentucky. Documentation supporting the independent registered professional engineer's certification must be furnished to the secretary upon request until he releases the owner or operator from the financial assurance requirements for closure

under Section 11 of 401 KAR 35:090 [that the facility has been closed in accordance with the specifications in the approved closure plan].

Section 7. [11.] Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the director a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor registered in the Commonwealth of Kentucky. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with this regulation.

Section 8. [7.] Postclosure Care and Use of Property. (1)(a) Postclosure care for each hazardous waste management unit subject to the requirements of Sections 7 through 10 of this regulation must begin after completion of closure of the unit and continue for thirty (30) years after that [the] date [of completing closure]. It must consist of at least the following:

1. [(a) Groundwater] Monitoring and reporting in accordance with the requirements of 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220 and 401 KAR 35:230; and

2. [(b)] Maintenance and monitoring of waste containment systems in accordance with the requirements of [as specified in Section 2 of] 401 KAR 35:060, [Section 3 and 6 of] 401 KAR 35:200, 401 KAR 35:210, [Section 7 of] 401 KAR 35:220, and [Section 4 of] 401 KAR 35:230 [where applicable].

(b) Any time preceding closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or any time during the postclosure period for a particular hazardous waste disposal unit, the director may extend the postclosure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(2) The director [cabinet] may require, at partial and final closure, continuation of any of the security requirements of Section 5 of 401 KAR 35:020 during part or all of the postclosure period when [for thirty (30) years after the date closure has been completed when]:

(a) Hazardous wastes may remain exposed after completion of partial or final closure; or

(b) Access by the public or domestic livestock may pose a hazard to human health. [In extending any of these requirements the cabinet will use the procedures of Section 8(3) of this regulation.]

(3) Postclosure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any



other components of the [any] containment system, or the function of the facility's monitoring systems, unless the [owner or operator can demonstrate to the] director finds [, either in the postclosure plan or by petition, through the procedures in Section 8(3) or (6) of this regulation (as appropriate),] that the disturbance:

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

(b) Is necessary to reduce a threat to human health or the environment.

(4) All postclosure care activities must be [performed] in accordance with the provisions of the approved postclosure plan as specified in Section (8) of this regulation. (Note: KRS 224.866(4) establishes that the postclosure care period is a minimum of thirty (30) years after closure of the disposal facility.)

Section 9. [8.] Postclosure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit [disposal facility] must have a written postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a postclosure plan and submit it to the director within ninety (90) days of the date that the owner or operator or director determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of Sections 7 through 10 of this regulation. [He must keep a copy of the postclosure plan and all revisions to the plan at the facility until the postclosure care period begins.]

[a] A description of the planned groundwater monitoring activities and frequencies at which they will be performed to comply with 401 KAR 35:060 during the postclosure period;]

[b] A description of the planned maintenance activities and frequencies at which they will be performed to ensure:]

(2) Until final closure of the facility, a copy of the most current postclosure plan must be furnished to the director upon request, including request by mail. In addition, for facilities without approved postclosure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the cabinet who is duly designated by the secretary. After final closure has been certified, the person or office specified in subsection (3)(c) of this section must keep the approved postclosure plan during the postclosure period.

(3) For each hazardous waste management unit subject to the requirements of this section, the postclosure plan must identify the activities that [which] will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(a) A description of the planned [groundwater] monitoring activities and frequencies at which they will be performed to comply with 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230 during the postclosure care period; and

(b) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

1. The integrity of the cap and final cover or other containment systems in accordance with the

requirements of [structures as specified in Section 3 and 6 of] 401 KAR 35:200, 401 KAR 35:210, [Section 7 of] 401 KAR 35:220, and [Section 4 of] 401 KAR 35:230 [where applicable]; and

2. The function of the [facility] monitoring equipment in accordance with the requirements of [as specified in Section 2 of] 401 KAR 35:060, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

(c) The name, address and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the postclosure care period. [This person or office must keep an updated postclosure plan during the postclosure care period.]

(4) Amendment of plan. The owner or operator may amend the postclosure plan [at] any time during the active life of the [disposal] facility or during the postclosure care period. An owner or operator with an approved postclosure plan must submit a written request to the secretary to authorize a change to the approved plan. The written request must include a copy of the amended postclosure plan for approval by the secretary.

(a) The owner or operator must amend the postclosure plan whenever:

1. Changes in operating plans or facility design affect the postclosure plan; or

2. Events which occur during the active life of the facility, including partial and final closures, affect the postclosure plan.

(b) The owner or operator must amend the postclosure plan at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan.

(c) An owner or operator with an approved postclosure plan must submit the modified plan to the director at least sixty (60) days prior to the proposed change in facility design or operation, or no more than sixty (60) days after an unexpected event has occurred which has affected the postclosure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with Section 6(2) of 401 KAR 35:200 or Section 7(1) of 401 KAR 35:210 is required to close as a landfill in accordance with Section 4 of 401 KAR 35:230, the owner or operator must submit a postclosure plan within ninety (90) days of the determination by the owner or operator or director that the unit must be closed as a landfill. If the amendment to the postclosure plan is a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modification to the plan will be approved according to the procedures in subsection (6) of this section.

(d) The secretary may request modifications to the plan under the conditions described in paragraph (a) of this subsection. An owner or operator with an approved postclosure plan must submit the modified plan no later than sixty (60) days of the request from the secretary. If the amendment to the plan is considered a major modification according to the criteria in Sections 2 and 3 of 401 KAR 38:040, the modifications to the postclosure plan will be approved in accordance with the procedures in subsection (6) of this section. If the secretary determines that an owner or operator of a surface impoundment or waste pile who intended



to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a postclosure plan for approval to the secretary within ninety (90) days of the determination. [The owner or operator must amend his plan any time changes in operating plans or facility design, or events which occur during the active life of the facility, affect his postclosure plan. The plan must be amended within sixty (60) days after the changes or events occur.]

(5) [(3)] The owner or operator of a [disposal] facility with hazardous waste management units subject to these requirements must submit his postclosure plan to the director at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he "expects to begin closure" of the first hazardous waste disposal unit must be either within thirty (30) days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. [should be immediately after the date on which he expects to receive the final volume of wastes.] The owner or operator must submit the [his] postclosure plan to the director no later than fifteen (15) days after:

(a) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(b) Issuance of a judicial decree or final orders [compliance order] under KRS Chapter 224 to cease receiving wastes or close.

(6) [(4)] The director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the postclosure plan and request modifications to [of] the plan no later than thirty (30) days from the date of the notice. [including modification of the thirty (30) year postclosure period required in Section 7 of this regulation within thirty (30) days of the date of the notice.] He will [may] also, [(in response to a request or at his own discretion)] hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning a [the] postclosure plan. The director will give [the] public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written [public] comments, and the two (2) notices may be combined). The director will approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the director does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The director will approve or modify this plan in writing within sixty (60) days. If the director modifies the plan, this modified plan becomes the approved postclosure plan. The director must ensure that the approved postclosure plan is consistent with Sections 7 through 10 of this regulation. [base

his decision upon the criteria required of petitions under subsection (6)(a) of this section.] A copy of the [this] modified plan must be mailed to the owner or operator. If an owner or operator planned [plans] to begin closure before November 19, 1981, he was required to [must] submit the postclosure plan by May 19, 1981.

[(5)] The owner or operator may amend his postclosure plan during the postclosure care period. The owner or operator must amend his plan any time changes in monitoring or maintenance plans or events which occur during the postclosure care period affect the postclosure plan. The owner or operator must petition the director within sixty (60) days of the changes or events under the procedures of subsection (6) of this section to allow the plan to be modified.]

(7) [(6)] The postclosure plan and length of the postclosure care period [(or period)] may be modified any time prior to the end of [during] the postclosure care period [or at the end of the postclosure care period] in either of the following two (2) ways:

(a) The owner or operator or any member of the public may petition the director to extend or reduce the postclosure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the postclosure care period based on cause.

1. The petition must include evidence demonstrating that:

a. The secure nature of the hazardous waste management unit or facility makes the postclosure care requirement(s) unnecessary or supports reduction of the postclosure care period specified in the current postclosure plan (e.g., leachate or groundwater monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the facility is secure) and the site has been closed for thirty (30) years; or

b. The requested extension in the postclosure care period or alteration of postclosure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

2. These petitions will be considered by the director only when they present new and relevant information not previously considered by the director. Whenever the director is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within thirty (30) days of the date of the notice. He will also [(in response to a request or at his own discretion)] hold a public hearing whenever a hearing might clarify one (1) or more issues concerning the postclosure plan. The director will give the public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two (2) notices may be combined). After considering the comments, he will issue a final determination, based upon the criteria set forth in this paragraph.

3. If the director denies the petition, he

will send the petitioner a brief written response giving a reason for the denial.

(b) The director may tentatively decide to modify the postclosure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce (except that the postclosure period shall not be less than thirty (30) years) the postclosure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the postclosure care period based on cause.

1. The director will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within thirty (30) days of the date of the notice and the opportunity for a public hearing as in paragraph (a)2 of this subsection [subsection (1)(a)2 of this section]. After considering the comments, he will issue a final determination.

2. The director will base his final determination upon the same criteria as required for petitions under paragraph (a)1 of this subsection.

Section 10. [9.] Postclosure Notices [Notice to Local Land Authority]. (1) No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, [within ninety (90) days after closure is completed], the owner or operator [of a disposal facility] must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the director [a survey plan], a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(2) Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

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

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

2. Its use is restricted under this regulation; and

3. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 11 of this regulation and subsection (1) of this section have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the director; and

(b) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (a) of this subsection, and a copy of the document in which the notation has been placed, to the director.

(3) If the owner or operator or any subsequent owner of the land upon which a hazardous waste

disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved postclosure plan in accordance with the requirements of Section 8(7) of this regulation. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 7(3) of this regulation. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this chapter and 401 KAR Chapter 32. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the director approve either:

(a) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(b) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

Section 11. [10.] Certification of Completion of Postclosure Care [Notice in Deed to Property]. No later than sixty (60) days after the completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator must submit to the director by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and an independent professional engineer registered in the Commonwealth of Kentucky. Documentation supporting the independent registered professional engineer's certification must be furnished to the director upon request until he releases the owner or operator from the financial assurance requirements for postclosure care under Section 11 of 401 KAR 35:100. [The owner of the property on which a disposal facility is located must record, in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:]

[(1) The land has been used to manage hazardous waste; and]

[(2) Its use is restricted under Section 7(3) of this regulation.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

FILED WITH LRC: February 12, 1988 at 11 a.m.

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

401 KAR 35:080. General financial requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS 13A.210, 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 postclosure 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 general financial requirements.

Section 1. General. (1) This regulation and 401 KAR 35:090 through 35:130 inclusively contain the financial requirements to establish adequate financial responsibility as required by KRS 224.866(3) for hazardous waste sites or facilities. A reference to this section is a citation of this regulation and 401 KAR 35:090 through 35:130.

(2) Except as specifically provided in this regulation and 401 KAR 35:090 through 35:130, no variance (Section 2 of 401 KAR 30:020) or other waivers of these financial requirements shall be granted by the secretary or the director.

Section 2. Applicability. (1) The requirements of 401 KAR 35:090, 401 KAR 35:120 and 401 KAR 35:130 [through 401 KAR 35:148] apply to owners or [and] operators of all hazardous waste sites or facilities, except as provided otherwise in this section or in Section 1 of 401 KAR 35:010.

(2) The requirements of 401 KAR 35:100 and 35:110 apply only to owners and operators of disposal facilities and tank systems that are required under Section 5 of 401 KAR 35:190 to meet the requirements for landfills.

(3) States and the federal government are exempt from the requirements of Section 1 of this regulation.

### Section 3. Financial Requirement Definitions.

(1) When used in Section 1 of this regulation the following terms shall have the meanings given below:

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 3 of 401 KAR 35:070.

(b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 35:090.

(c) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b) and (c).

(d) [(c)] "Current postclosure cost estimate" means the most recent of the estimates prepared in accordance with Section 1(1), (2) and (3) of 401 KAR 35:100.

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

(f) [(e)] "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of Sections 7 through 10 of 401 KAR 35:070.

(2) The following terms are used in the specifications for the financial test for

closure, postclosure care and liability self-insurance. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

(a) "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(d) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(e) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

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

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

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

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

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

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

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

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

CARL H. BRADLEY, Secretary

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

## 401 KAR 35:190. Tanks (IS).

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 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 postclosure 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 tanks.

Section 1. Applicability. The regulations of this chapter [requirements in this regulation] apply to owners or [and] operators of sites or facilities that use tank systems for storing or treating [to treat or store] hazardous waste except as otherwise provided in subsections (1) and (2) of this section or in Section 1 of 401 KAR 35:010 [provides otherwise].

(1) Tanks that are used to store or treat hazardous waste containing no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of Section 4 of this regulation. To demonstrate the absence or presence of free liquids in the stored/treated waste, EPA Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication No. SW-846) incorporated by reference in Section 3 of 401 KAR 30:010, must be used.

(2) Tanks, including sumps, as defined in Section 1 of 401 KAR 30:010, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Section 4 of this regulation.

Section 2. Assessment of Existing Tank System's Integrity. (1) For each existing tank system that does not have secondary containment meeting the requirements of Section 4 of this regulation, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in subsection (3) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky, in accordance with Section 7(4) of 401 KAR 38:070, that attests to the tank system's integrity no later than 180 days from the date of promulgation of this regulation.

(2) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(a) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(b) Hazardous characteristics of the waste(s) that have been or will be handled;

(c) Existing corrosion protection measures;

(d) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(e) Results of a leak test, internal inspection, or other tank integrity examination such that:

1. For nonenterable underground tanks, this assessment must consist of a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

2. For other than nonenterable underground tanks and for ancillary equipment, this assessment must be either a leak test, or as described above, or an internal inspection and/or other tank integrity examination certified by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070, that addresses cracks, leaks, corrosion, and erosion.

(3) Tank systems that store or treat materials that become hazardous wastes subsequent to date of promulgation of this regulation must conduct this assessment within twelve (12) months after the date that the waste becomes a hazardous waste.

(4) If, as a result of the assessment conducted in accordance with subsection (1) of this section, a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of Section 7 of this regulation.

Section 3. Design and Installation of New Tank Systems or Components. (1) Owners or operators of new tanks systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified professional engineer registered in the Commonwealth of Kentucky in accordance with Section 7(4) of 401 KAR 38:070, attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

(a) Design standard(s) according to which the tank(s) and the ancillary equipment is or will be constructed;

(b) Hazardous characteristics of the waste(s) to be handled;

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system is or will be in contact with the soil or with water, a determination by a corrosion expert of:

1. Factors affecting the potential for corrosion, including but not limited to:

a. Soil moisture content;

b. Soil pH;

c. Soil sulfides level;

d. Soil resistivity;

- e. Structure to soil potential;
- f. Influence of nearby underground metal structures (e.g., piping);
- g. Stray electric current;
- h. Existing corrosion-protection measures (e.g., coating, cathodic protection); and

2. The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one (1) or more of the following:

- a. Corrosion-resistant materials of construction such as special alloys, fiberglass-reinforced plastic, etc.;
- b. Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (e.g., impressed current or sacrificial anodes); and
- c. Electrical isolation devices such as insulating joints, flanges, etc.

(d) For underground tank system components that are likely to be affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(e) Design considerations to ensure that:

- 1. Tank foundations will maintain the load of a full tank;
- 2. Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone; and
- 3. Tank systems will withstand the effects of frost heave.

(2) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified professional engineer registered in the Commonwealth of Kentucky, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

- (a) Weld breaks;
- (b) Punctures;
- (c) Scrapes of protective coatings;
- (d) Cracks;
- (e) Corrosion; or
- (f) Other structural damage or inadequate construction or installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

(3) New tank systems or components and piping that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is carefully installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(4) All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system must be performed prior to the tank system being covered, enclosed, or placed in use.

(5) Ancillary equipment must be supported and protected against physical damage and excessive

stress due to settlement, vibration, expansion, or contraction.

(6) The owner or operator must provide the type and degree of corrosion protection necessary based on the information provided under subsection (1)(c) of this section to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.

(7) The owner or operator must obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections (2) through (6) of this section to attest that the tank system was properly designed and installed and that repairs, pursuant to subsections (2) and (4) of this section were performed. These written statements must also include the certification statement as required in Section 7(4) of 401 KAR 38:070.

Section 4. Containment and Detection of Releases. (1) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided (except as provided in subsections (6) and (7) of this section):

(a) For all new tank systems or components, prior to their being put into service;

(b) For all existing tank used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, by January 12, 1991 [within two (2) years after January 12, 1987];

(c) For those existing tank systems of known and documentable age, by January 12, 1991 [within two (2) years after January 12, 1987] or when the tank systems have reached fifteen (15) years of age, whichever comes later;

(d) For those existing tank systems for which the age cannot be documented within eight (8) years of January 12, 1987, but if the age of the facility is greater than seven (7) years, secondary containment must be provided by the time the facility reaches fifteen (15) years of age, or within two (2) years of January 12, 1987, whichever comes later; and

(e) For tanks systems that store or treat materials that become hazardous wastes subsequent to the date of promulgation of this regulation within the time intervals required in subsections (1)(a) through (d) of this section, except that the date that a material becomes a hazardous waste must be used in place of the date of promulgation of this regulation.

(2) Secondary containment systems must be:

(a) Designed, installed, and operated, to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(b) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(3) To meet the requirements of subsection (2) of this section, secondary containment systems must be at a minimum:

(a) Constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent

failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(b) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(c) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four (24) hours, or at the earliest practicable time if the existing detection technology or sites conditions will not allow detection of a release within twenty-four (24) hours; and

(d) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health or the environment, if removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four (24) hours.

(4) Secondary containment for tanks must include one (1) or more of the following devices:

(a) A liner (external to the tank);

(b) A vault;

(c) A double-walled tank; or

(d) An equivalent device as approved by the director.

(5) In addition to the requirements of subsections (2), (3), and (4) of this section, secondary containment systems must satisfy the following requirements:

(a) External liner systems must be:

1. Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour rainfall event;

3. Free of cracks or gaps; and

4. Designed and installed to completely surround the tank and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the waste).

(b) Vault systems must be:

1. Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

2. Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five (25) year, twenty-four (24) hour

rainfall event;

3. Constructed with chemical-resistant water stops in place at all joints (if any);

4. Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;

5. Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

a. Meets the definition of ignitable waste under Section 2 of 401 KAR 31:030; or

b. Meets the definition of reactive waste under Section 4 of 401 KAR 31:030 and which may form an ignitable or explosive vapor.

6. Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(c) Double-walled tanks must be:

1. Designed as an integral structure (i.e., an inner tank within an outer shell) so that any release from the inner tank is contained by the outer shell;

2. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

3. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours or at the earliest practicable time, if the owner or operator can demonstrate to the director, and the director concurs, that the existing leak detection technology or site conditions will not allow detection of a release within twenty-four (24) hours.

(6) Ancillary equipment must be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of subsections (2) and (3) of this section except for:

(a) Above-ground piping (exclusive of flanges, joints, valves, and connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above-ground piping systems with automatic shutoff devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

(7) The owner or operator may obtain a variance from the requirements of this section if the director finds, as a result of a demonstration by the owner or operator, either: that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water at least as effectively as secondary containment during the active life of the tank system; or that in the event of a release that does migrate to groundwater or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with paragraph (b) of this subsection, be exempted from the secondary containment requirements of this section. Application for a variance as



allowed in this subsection does not waive compliance with the requirements of this regulation for new tank systems.

(a) In deciding whether to grant a variance based on a demonstration of equivalent protection of groundwater and surface water the director will consider:

1. The nature and quantity of the waste;
2. The proposed alternate design and operation;
3. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and
4. All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to groundwater or surface water.

(b) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the director will consider:

1. The potential adverse effects on groundwater, surface water, and land quality taking into account:

a. The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

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

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

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

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

2. The potential adverse effects of a release on groundwater quality, taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The proximity and withdrawal rates of groundwater in the area;

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

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

3. The potential adverse effects of a release on surface water quality taking into account:

a. The quantity and quality of groundwater and the direction of groundwater flow;

b. The patterns of rainfall in the region;

c. The proximity of the tank system to surface waters;

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

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

4. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

a. The patterns of rainfall in the region; and

b. The current and future uses of the surrounding land.

(c) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the

variance), must:

1. Comply with the requirements of Section 3 of this regulation except subsection (4) of that section; and

2. Decontaminate or remove contaminated soil to the extent necessary to:

a. Enable the tank system for which the variance was granted to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

b. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; and

3. If contaminated soil cannot be removed or decontaminated in accordance with subparagraph 2 of this paragraph, comply with the requirements in Section 8(2) of 401 KAR 34:190.

(d) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of paragraph (a) of this subsection, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

1. Comply with the requirements of Sections 7(1), (2), (3), and (4) of this regulation;

2. Prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with the requirements of Section 8(2) of this regulation; and

3. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of subsections (1) through (6) of this section or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section 3 of this regulation if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

(8) The following procedures must be followed in order to request a variance from secondary containment:

(a) The director must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from a secondary containment as allowed in subsection (7) of this section according to the following schedule:

1. For existing tank systems, at least twenty-four (24) months prior to the date that secondary containment must be provided in accordance with subsection (1) of this section.

2. For new tank systems, at least thirty (30) days prior to entering into a contract for installation of the tank system.

(b) As part of the notification, the owner or operator must also submit to the director a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in subsection (7)(a) or (b) of this section.

(c) The demonstration for a variance must be completed and submitted to the director within 180 days after notifying the director of an intent to conduct the demonstration; and



(d) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notification shall be placed in a daily or weekly major local newspaper of general circulation, and shall provide at least thirty (30) days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one (1) or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least thirty (30) days prior to the date of the hearing and may be given the same time as notice of the opportunity for the public to review and comment on the demonstration. These two (2) notices may be combined.

(e) The director will approve or disapprove the request for a variance within ninety (90) days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the ninety (90) day time period will begin when the director receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in paragraph (d) of this subsection is extended, the ninety (90) day time period will be similarly extended.

(9) All tank systems, until such time as secondary containment meeting the requirements of this section is provided, must comply with the following:

(a) For nonenterable underground tanks, a leak test that meets the requirements of Section 2(1)(e) of this regulation must be conducted at least annually.

(b) For other than nonenterable underground tanks and for all ancillary equipment, an annual leak test, as described in subsection (1)(a) of this section or an internal inspection or other tank integrity examination by an independent, qualified, professional engineer registered in the Commonwealth of Kentucky that addresses cracks, leaks, corrosion and erosion must be conducted at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

(c) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with subsections (1)(a) through (c) of this section.

(d) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subsections (1)(a) through (c) of this section, the owner or operator must comply with the requirements of Section 7 of this regulation.

Section 5. General Operating Requirements.  
[(1) Treatment or storage of hazardous waste in tanks must comply with Section 8(2) of 401 KAR 35:020.]

[(1) [(2)] Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, [or] its ancillary equipment, or the secondary containment system [inner liner] to rupture, leak, corrode or

otherwise fail [before the end of its intended life].

(2) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(a) Spill prevention controls (e.g., check valves, dry discount couplings);

(b) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(c) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(3) The owner or operator must comply with the requirements of Section 7 of this regulation if a leak or spill occurs in the tank system.

(4) Tanks holding hazardous waste shall be labeled "hazardous waste" upon the date that hazardous waste is first added to the tank.

[(3) Uncovered tanks must be operated to ensure at least sixty (60) centimeters (approximately two (2) feet) of freeboard unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top sixty (60) centimeters (2 feet) of the tank.]

[(4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., a waste feed cutoff system or bypass system to a standby tank).]

[(5) Tanks holding hazardous waste shall be labeled "Hazardous Waste" upon the date that hazardous waste is first added to the tank.]

Section 6. [4.] Inspections. (1) The owner or operator [of a tank] must inspect, where present, at least once each operating day:

(a) Overfilling/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(b) The above-ground portions of the tank system, if any, to detect corrosion or releases of waste;

(c) Data gathered from monitoring equipment and leak-detection equipment (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

(d) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including the secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(2) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(a) The proper operation of the cathodic protection system must be confirmed within six (6) months after initial installation and annually thereafter; and

(b) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

(3) The owner or operator must document in the operating record of the facility an inspection of those items in subsections (1) and (2) of

this section.

[(1) Discharge control equipment (e.g., waste feed cutoff systems, bypass systems and drainage systems) at least once each operating day to ensure that it is in good working order;]

[(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;]

[(3) The level of waste in the tank, at least once each operating day, to ensure compliance with Section 2(3) of this regulation;]

[(4) The construction materials of the tank, at least weekly, to detect corrosion or leaking of fixtures or seams; and]

[(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes), at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).]

[Section 5. Closure. At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment and discharge confinement structures.]

Section 7. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-use Tank Systems. A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(1) Cessation of use: prevent flow or addition of wastes. The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(2) Removal of waste from tank system or secondary containment system.

(a) If the release was from the tank system, the owner/operator must, within twenty-four (24) hours after detection of the leak or, if the owner/operator demonstrates that that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(b) If the material released was to a secondary containment system, all released materials must be removed within twenty-four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(3) Containment of visible releases to the environment. The owner/operator must immediately conduct a visual inspection of the release and based upon that inspection:

(a) Prevent further migration of the leak or spill to soils or surface water; and

(b) Remove and properly dispose of any visible contamination of the soil or surface water.

(4) Notifications and reports.

(a) Any release to the environment except as provided in paragraph (b) of this subsection, must be reported to the director within twenty-four (24) hours of detection. If the release has been reported pursuant to 40 CFR Part 302 that report will satisfy this requirement.

(b) A leak or spill of hazardous waste is exempted from the requirements of this

subsection if it is:

1. Less than or equal to a quantity of one (1) pound; and

2. Immediately contained and cleaned up.

(c) Within thirty (30) days of detection of a release to the environment, a report containing the following information must be submitted to the director:

1. Likely route of migration of the release;

2. Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data must be submitted to the director as soon as they become available;

4. Proximity to down-gradient drinking water, surface water, and population areas; and

5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair or closure.

(a) Unless the owner/operator satisfied the requirements of paragraphs (b) through (d) of this subsection, the tank system must be closed in accordance with Section 9 of this regulation.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section 4 of this regulation before it can be returned to service, unless the source of the leak is an above-ground portion of a tank system. If the source is an above-ground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of subsection (6) of this section are satisfied. If a component is replaced to comply with the requirements of this paragraph that component must satisfy the requirements for new tank systems or components in Sections 3 and 4 of this regulation. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an in-ground or on-ground tank), the entire component must be provided with secondary containment in accordance with Section 4 of this regulation prior to being returned to use.

(6) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with subsection (5) of this section, and the repair has been extensive (e.g., installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent qualified, professional engineer registered in the Commonwealth of Kentucky in accordance with

Section 7(4) of 401 KAR 38:070 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the director within seven (7) days after returning the tank system to use.

Section 8. Closure and Postclosure Care. (1) At closure of a tank system, the owner/operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Section 3(4) of 401 KAR 31:010 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in 401 KAR 35:070 through 35:130.

(2) If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection (1) of this section, then the owner or operator must close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills in Section 4 of 401 KAR 35:230. In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner/operator must meet all of the requirements for landfills specified in 401 KAR 35:070 through 35:130.

(3) If an owner or operator has a tank system which does not have secondary containment that meets the requirements in Section 4(2) through (6) of this regulation and which is not exempt from the secondary containment requirements in accordance with Section 4(7) of this regulation then:

(a) The closure plan for the tank system must include both a plan for complying with subsection (1) of this section and a contingent plan for complying with subsection (2) of this section;

(b) A contingent postclosure plan for complying with subsection (2) of this section must be prepared and submitted as part of the permit application;

(c) The cost estimates calculated for closure and postclosure care must reflect the costs of complying with the contingent closure plan and the contingent postclosure plan, if these costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection (1) of this section.

(d) Financial assurance must be based on the cost estimates in paragraph (c) of this subsection.

(e) For the purposes of the contingent closure and postclosure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, postclosure and financial responsibility requirements for landfills under 401 KAR 35:070 through 35:130.

(f) For new tank systems that will close in accordance with subsection (2) of this section, the owner or operator shall demonstrate compliance with 401 KAR 38:500.

Section 2. [6.] Special Requirements for Ignitable or Reactive Waste. (1) Ignitable or reactive waste must not be placed in a tank

unless:

(a) The waste is treated, rendered or mixed before or immediately after placement in the tank system so that:

1. The resulting waste, mixture, or dissolved [dissolution of] material no longer meets the definition of ignitable or reactive waste under Sections 2 or 4 [and 3] of 401 KAR 31:030; and

2. Section 8(2) of 401 KAR 35:020 is complied with; or

(b) The waste is stored or treated in such a way that it is protected from any material or conditions that [which] may cause the waste to ignite or react; or

(c) The tank system is used solely for emergencies.

(2) The owner or operator of a facility where [which treats or stores] ignitable or reactive waste is stored or treated in [covered] tanks must comply with the [buffer zone] requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required [tanks contained] in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981), incorporated by reference in Section 3 of 401 KAR 30:010.

Section 10. [7.] Special Requirements for Incompatible Wastes. (1) Incompatible wastes, or incompatible wastes and materials [(see 401 KAR 35:330 for examples)] must not be placed in the same tank system, unless Section 8(2) of 401 KAR 35:020 is complied with.

(2) Hazardous waste must not be placed in a tank system that has not been decontaminated and that [an unwashed tank which] previously held an incompatible waste or material, unless Section 9 [8](2) of 401 KAR 35:020 is complied with.

Section 11. [3.] Waste Analysis and Trial Tests. (1) In addition to performing the waste analysis required by Section 4 of 401 KAR 35:020, the owner/operator must whenever a tank system is to be used to treat chemically [treat] or to store a hazardous waste that [which] is substantially different from waste previously treated or stored in that tank system; or

[(2)] treat chemically [treat] hazardous waste with a substantially different process than any previously used in that tank system; [the owner or operator must before treating or storing the different waste or using the different process:]

(2) [(a)] Conduct waste analyses and trial treatment or storage tests (e.g., bench scale or pilot plant scale tests); or

(3) [(b)] Obtain written, documented information on [of] similar [storage or treatment of similar] waste under similar operating conditions, to show that the [this] proposed treatment or storage will meet the [all applicable] requirements of Section 5[2](1) and (2) of this regulation.

Section 12. Special Requirements for Generators of Between 100 and 1,000 kg/mo that Accumulate Hazardous Waste in Tanks. (1) The requirements of this section apply to small quantity generators of more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200

miles), and do not accumulate over 6,000 kg on-site at any time.

(2) Generators of between 100 and 1,000 kg/mo hazardous waste must comply with the following general operating requirements:

(a) Treatment or storage of hazardous waste in tanks must comply with Section 8 of 401 KAR 35:020.

(b) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Uncovered tanks must be operated to ensure at least sixty (60) centimeters (two (2) feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., stand-by tank) with a capacity that equals or exceeds the volume of the top sixty (60) centimeters (two (2) feet) of the tank.

(d) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or bypass system to a stand-by tank).

(3) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect, where present:

(a) Discharge control equipment (e.g., waste feed cutoff systems, bypass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(b) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(c) The level of waste in the tank at least once each operating day to ensure compliance with Section 3 of this regulation;

(d) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(e) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

(4) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

(5) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

(a) Ignitable or reactive waste must not be placed in a tank, unless:

1. The waste is treated, rendered, or mixed before or immediately after placement in a tank so that:

a. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Sections 2 and 4 of 401 KAR Chapter 31:030; and

b. Section 9(2) of 401 KAR 35:020 is complied with; or

2. The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

3. The tank is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in

covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code." (1977 or 1981) (incorporated by reference, see Section 3 of 401 KAR 30:010).

(6) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

(a) Incompatible wastes, or incompatible wastes and materials: (see Appendix V for examples) must not be placed in the same tank, unless Section 9 of 401 KAR 35:020 is complied with.

(b) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material unless Section 9(2) of 401 KAR 35:020 is complied with.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

FILED WITH LRC: February 12, 1988 at 11 a.m.

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

401 KAR 37:010. General provisions for land disposal restrictions.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.862, 224.866

NECESSITY AND FUNCTION: KRS 224.866 enables the cabinet to prohibit the land disposal of any hazardous wastes. KRS 224.866 requires that the cabinet allow land disposal of hazardous waste when the disposal methods have been determined by the cabinet to be protective of human health and the environment for as long as the waste remains hazardous. 401 KAR Chapter 37 establishes land disposal restrictions and treatment standards for hazardous wastes. This regulation establishes waste specific prohibitions on land disposal.

Section 1. Purpose, Scope and Applicability.  
(1) This chapter [part] identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(2) Except as specifically provided otherwise in 401 KAR Chapter 31 or 37, the requirements of 401 KAR Chapter 37 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(3) Prohibited wastes may continue to be land disposed as follows:

(a) Where persons have been granted an extension to the effective date of a prohibition under 401 KAR 37:030 or pursuant to Section 5 of this regulation, with respect to those wastes covered by the extension;

(b) Where persons have been granted an exemption from a prohibition pursuant to a petition under Section 6 of this regulation, with respect to those wastes and units covered by the petition;

(c) Until November 8, 1988, where the wastes

are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under KRS Chapter 224; or

(d) Where the waste is generated by limited quantity generators [of less than 100 kilograms of nonacute hazardous waste per month, or less than one (1) kilogram acute hazardous waste per month] as defined in Section 5 of 401 KAR 31:010.

Section 2. Definitions Applicable to 401 KAR Chapter 37. (1) When used in 401 KAR Chapter 37 the following terms have the meanings given below:

(a) "Hazardous constituent or constituents" means those constituents listed in 401 KAR 31:170;

(b) "Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, concrete vault or bunker intended for disposal purposes.

(2) All other terms have the meanings given under Section 1 of 401 KAR 30:010, Sections 2 and 3 of 401 KAR 31:010 or Section 2 of 401 KAR 38:010.

Section 3. Dilution Prohibited as a Substitute for Treatment. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with 401 KAR 37:040.

Section 4. Treatment Surface Impoundment Exemption. (1) Wastes which are otherwise prohibited from land disposal under 401 KAR Chapter 37 may be treated in a surface impoundment or series of impoundments provided that:

(a) Treatment of such wastes occurs in the impoundments;

(b) The residues of the treatment are analyzed, as specified in Section 7 of this regulation, to determine if they meet the applicable treatment standards in Section 2 of 401 KAR 37:040. The sampling method, specified in the waste analysis plan under Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. The treatment residues (including any liquid waste) that do not meet the treatment standards promulgated under 401 KAR 37:040, or are not delisted under Section 2 of 401 KAR 31:060, must be removed at least annually. These residues may not be placed in any other surface impoundment for subsequent management. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residue which does not

meet the 401 KAR 37:040 treatment standards must be specified in the facility's waste analysis plan as required under Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020.

(c) The impoundment meets the design requirements of Section 2(3) of 401 KAR 34:200 or Section 10(1) of 401 KAR 35:200, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable groundwater monitoring requirements of 401 KAR 34:060 or 401 KAR Chapter 35 unless:

1. Exempted pursuant to Section 2(4) or (5) of 401 KAR 34:200, or to Section 10(3) or (4) of 401 KAR 35:200; or

2. Upon application by the owner or operator, the secretary after notice and an opportunity to comment has granted a waiver of the requirements on the basis that the surface impoundment:

a. Has at least one (1) liner, for which there is no evidence that such liner is leaking;

b. Is located more than one-quarter (1/4) mile from an underground source of drinking water; and

c. Is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or

3. Upon application by the owner or operator, the secretary, after notice and an opportunity to comment, has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(d) The owner or operator submits to the secretary a written certification that the requirements of paragraph (c) of this subsection have been met and submits a copy of the waste analysis plan required under paragraph (b) of this subsection. The following certification is required:

I certify under penalty of law that the requirements of Section 4(1)(c) of 401 KAR 37:010 have been met for all surface impoundments being used to treat restricted wastes. 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.

Section 5. Procedures for Case-by-case Extensions to an Effective Date. (1) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the secretary for an extension to the effective date of any applicable restriction established under 401 KAR 37:030. The applicant must demonstrate the following:

(a) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under 401 KAR 37:030;

(b) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in 401 KAR 37:040;

(c) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and

practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date;

(d) The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application;

(e) He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available;

(f) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed; and

(g) Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of subsection (8)(b) of this section.

(2) An authorized representative signing an application described under subsection (1) of this section shall make the following certification:

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

(3) After receiving an application for an extension, the secretary may request any additional information which he deems as necessary to evaluate the application.

(4) An extension will apply only to the waste generated at the individual facility covered by the application and will not apply to restricted waste from any other facility.

(5) On the basis of the information referred to in subsection (1) of this section, after notice and opportunity for comment, and after consultation with appropriate state agencies in all affected states, the secretary may grant an extension of up to one (1) year from the effective date. The secretary may renew this extension for up to one (1) additional year upon the request of the applicant if the demonstration required in subsection (1) of this section can still be made. In no event will an extension extend beyond twenty-four (24) months from the applicable effective date specified in 401 KAR 37:030. The length of any extension authorized will be determined by the secretary based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in subsection (1)(e) of this section. The secretary will give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the Kentucky Administrative Register.

(6) Any person granted an extension under this section must immediately notify the secretary as soon as he has knowledge of any change in the conditions certified to in the application.

(7) Any person granted an extension under this section shall submit written progress reports at intervals designated by the secretary. Such reports must describe the overall progress made toward constructing or otherwise providing

alternative treatment, recovery or disposal capacity; must identify any event which may cause or has caused a delay in the development of the capacity; and must summarize the steps taken to mitigate the delay. The secretary can revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the cabinet denies or revokes any required permit, if conditions certified in the application change, or for any violation of this chapter.

(8) Whenever the secretary establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(a) The storage restrictions under Section 1(a) of 401 KAR 37:050 do not apply; and

(b) Such hazardous waste may be disposed of at a facility only if each new landfill or surface impoundment unit, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit at the facility is in compliance with the following requirements:

1. The landfill, if in interim status, is in compliance with the requirements of 401 KAR 35:060 and Section 10(1), (3) and (4) of 401 KAR 35:230;

2. The landfill, if permitted, is in compliance with the requirements of 401 KAR 34:060 and Section 10(3), (4), and (5) of 401 KAR 34:230;

3. The surface impoundment, if in interim status, is in compliance with the requirements of 401 KAR 35:060 and Section 10(1), (3) and (4) of 401 KAR 35:200; or

4. The surface impoundment, if permitted, is in compliance with the requirements of 401 KAR 34:060 and Section 10(3), (4), and (5) of 401 KAR 34:200.

(9) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under 401 KAR Chapter 37 once the effective date for the waste has been reached.

Section 6. Petitions to Allow Land Disposal of a Waste Prohibited Under 401 KAR 37:030. (1) Any person seeking an exemption from a prohibition under 401 KAR 37:030 for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the secretary demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration must include the following components:

(a) An identification of the specific waste and the specific unit for which the demonstration will be made;

(b) A waste analysis to describe fully the chemical and physical characteristics of the subject waste;

(c) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality.

(2) The demonstration referred to in subsection (1) of this section must meet the following criteria:

(a) All waste and environmental sampling, test, and analysis data must be accurate and reproducible to the extent that state-of-the-art



techniques allow;

(b) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters must have been approved by the secretary;

(c) Simulation models must be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;

(d) A quality assurance and quality control plan that addresses all aspects of the demonstration must be approved by the secretary; and

(e) An analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.

(3) Each petition must be submitted to the secretary.

(4) Each petition must include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition 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.

(5) After receiving a petition, the secretary may request any additional information that reasonably may be required to evaluate the demonstration.

(6) If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

(7) The secretary will give public notice in the Kentucky Administrative Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the Kentucky Administrative Register.

(8) The term of a petition granted under this section shall be no longer than the term of the hazardous waste site or facility permit if the disposal unit is operating under a hazardous waste site or facility permit, or up to a maximum of ten (10) years from the date of approval provided under subsection (7) of this section if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a hazardous waste site or facility permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

(9) Prior to the secretary's decision, the applicant is required to comply with all restrictions on land disposal under 401 KAR Chapter 37 once the effective date for the waste has been reached.

(10) The petition granted by the secretary

does not relieve the petitioner of his responsibilities in the management of hazardous waste under the hazardous waste management regulations.

Section 7. Waste Analysis. (1) The generator must test his waste or an extract developed using the test method described in 401 KAR 37:100, or use knowledge of the waste to determine if the waste is restricted from land disposal under 401 KAR Chapter 37.

(a) If a generator determines that he is managing a restricted waste under 401 KAR Chapter 37 and the waste exceeds the applicable treatment standards, with each shipment of waste the generator must notify the treatment facility in writing of the appropriate treatment standard set forth in 401 KAR 37:040. The notice must include the following information:

1. EPA Hazardous Waste Number;
2. The corresponding treatment standards;
3. The manifest number associated with the shipment of waste; and
4. Waste analysis data, where available.

(b) If a generator determines that he is managing a restricted waste under 401 KAR Chapter 37, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the land disposal facility, a notice and a certification stating that the waste meets applicable treatment standards.

1. The notice must include the following information:

- a. EPA Hazardous Waste Number;
- b. The corresponding treatment standard;
- c. The manifest number associated with the shipment of waste;
- d. Waste analysis data, where available.

2. The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I have personally examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with treatment standards specified in 401 KAR 37:040. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(c) If a generator's waste is subject to a case-by-case extension under Section 5 of this regulation, an exemption under Section 6 of this regulation, an extension under Section 1(3)(c) of this regulation, or a nationwide variance under 401 KAR 37:030, he must forward a notice with the waste to the land disposal facility receiving his waste, stating that the waste is exempt from the land disposal restrictions.

(d) If the generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be maintained on-site in the generator's files.

(2) For wastes with treatment standards expressed as concentrations in the waste extract (Section 2 of 401 KAR 37:040), the owner or operator of the treatment facility must test the treatment residues or an extract of such residues developed using the test method described in 401 KAR 37:100 to assure that the treatment residues or extract meet the



applicable treatment standards. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020. Where the treatment residues do not meet the treatment standards, the treatment facility must comply with the notice requirements applicable to generators in subsection (1)(a) of this section if the treatment residues will be further managed at a different treatment facility.

(a) A notice must be sent with each waste shipment to the land disposal facility which includes the following information:

1. EPA Hazardous Waste Number;
2. The corresponding treatment standard;
3. The manifest number associated with the shipment of waste; and
4. Waste analysis data, where available.

(b) The treatment facility must submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the treatment standards specified in 401 KAR 37:040.

1. For wastes with treatment standards expressed as concentrations in the waste extract or in the waste (Section 2 or 4 of 401 KAR 37:040), the certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to achieve the performance levels specified in 401 KAR 37:040 without dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

2. For wastes with treatment standards expressed as technologies (Section 3 of 401 KAR 37:040), the certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of Section 3 of 401 KAR 37:040. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(3) The owner or operator of any land disposal facility disposing any waste subject to restrictions under 401 KAR Chapter 37 must have records of the notice and certification specified in either subsections (1) or (2) of this section. The owner or operator of the land disposal facility must test the waste or an extract of the waste developed using the test method described in 401 KAR 37:100 to assure that the wastes or treatment residues are in compliance with the applicable treatment standards. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by Section 4 of 401 KAR 34:020 or Section 4 of 401 KAR 35:020.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

FILED WITH LRC: February 12, 1988 at 11 a.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.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 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 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 regulation) 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. Major 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 of 401 KAR 38:030, receives a request for modification or revocation and reissuance under Section 2 of 401 KAR 38:050, 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. If cause does not exist under this section or Section 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 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 followed.

(1) Causes for modification. Paragraphs (a) through (d) of this subsection 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 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 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 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 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 postclosure 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 postclosure 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.

(f) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the cabinet under Section 5(4) of this regulation, the cabinet shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in 401 KAR Chapters 30 through 39.

(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 of a proposed transfer of the permit.

(c) Cause exists for termination under Section 2(1)(e) and (f) of this regulation, and the cabinet determines that modification or revocation and reissuance is appropriate.

(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 3. Minor Modifications of Permits. Upon 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. Changes in the ownership or operational control of a site or facility may be made if the new owner or operator submits a revised permit application no later than ninety (90) days prior to the scheduled change. When a transfer of ownership or operational control of a site or facility occurs, the old owner or operator shall comply with the requirements of 401 KAR 34:080 through 401 KAR 34:176 (financial requirements), until the new owner or operator has demonstrated to the cabinet that he is complying with the requirements in 401 KAR 34:080 through 401 KAR 34:176. The new owner or operator must demonstrate compliance with the requirements in 401 KAR 34:080 through 401 KAR 34:176 within six (6) months of the date of the change in the ownership or operational control of the site or facility. Upon demonstration to the cabinet by the new owner or operator of compliance with the requirements in 401 KAR 34:080 through 401 KAR 34:176, the cabinet will notify the old owner or operator in writing that he no longer needs to comply with the requirements in 401 KAR 34:080 through 401 KAR 34:176 as of the date of demonstration.
- (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.

(15) Allow treatment of hazardous wastes not previously specified in the permit if:

(a) The hazardous waste has been prohibited from one (1) or more methods of land disposal under 401 KAR 37:030 and treatment standards have been established under 401 KAR 37:040;

(b) Treatment is in accordance with the standards established under Section 2 of 401 KAR 37:040, or a variance established under Section 5 of 401 KAR 37:040;

(c) Handling and treatment of the restricted waste will not present risks substantially different from those of wastes listed in the permit; and

(d) Cabinet approval of a minor permit modification request is granted. No permit changes can occur except for the addition of new waste codes and administrative or technical changes necessary to handle new wastes. Changes in treatment processes or physical equipment may not be made under this subsection.

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;

(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 and 401 KAR Chapter 40 in terminating any permit under this section.

Section 5. 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 of 401 KAR 38:060, Interim permits for UIC wells.)

(2) Modification of term of permit. Except as provided in Section 6 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.

(4) Each permit for a land disposal facility

shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in Section 2 of this regulation.

#### 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 401 KAR 38:100 and the applicable requirements in 401 KAR 38:150 through 401 KAR 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.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

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

**401 KAR 38:160. Specific Part B information requirements for tanks.**

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.866, 224.867

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 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 specific Part B requirements for facilities that treat or store hazardous waste in tanks.

Section 1. Applicability. The requirements in this regulation apply to all owners or operators of hazardous waste sites or facilities that treat or store or will treat or store hazardous waste in tanks.

Section 2. Specific [Additional] Part B Information Requirements for Tank Systems. Except as otherwise provided in Section 1 of 401 KAR 34:010 and Section 1 of 401 KAR 34:190, [In addition to the information required by 401 KAR 38:080, and 401 KAR 38:090, and 401 KAR 38:100,] owners and operators of facilities that use or will use tanks to store or treat hazardous waste[, except as otherwise provided in Section 1 of 401 KAR 34:010 and Section 1 of 401 KAR 34:190,] must provide the following information in addition to the information required by 401 KAR 38:080, 401 KAR 38:090, and 401 KAR 38:100: [a description of design and operation procedures which demonstrate compliance with the requirements of Sections 2, 3, 6, and 7, of 401 KAR 34:190, including:]

(1) A written assessment that is reviewed and certified by an independent, qualified, professional engineer registered in the state of Kentucky as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under Sections 2 and 3 of 401 KAR 34:190: [References to design standards or other available information used (or to be used) in design and construction of the tank;]

(2) Dimensions and capacity of each tank: [A description of design specifications including identification of construction materials and lining materials (include pertinent characteristics such as corrosion or erosion resistance);]

[(3) Tank dimensions, capacity, and shell thickness;]

(3) [(5) A] description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents); [and]

(4) A diagram of piping, instrumentation, and process flow for each tank system;

(5) A description of materials and equipment used to provide external corrosion protection, as required under Section 3(1)(c)2 of 401 KAR 34:190:

(6) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with Section 3(2) through (5) of 401 KAR 34:190: [A description of procedures for handling incompatible, ignitable, or reactive wastes, including the use of buffer zones.]

(7) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of Section 4(1) through (6) of 401 KAR 34:190: [Where applicable, a description of the containment and detection systems to demonstrate compliance with Section 8 of 401 KAR 34:190 (Management of chlorinated dioxins, dibenzofurans, and phenols) must include at least the following:]

(8) For tank systems for which a variance from the requirements of Section 4 of 401 KAR 34:190 is sought (as provided by Section 4(7) of 401 KAR 34:190):

(a) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the groundwater or surface water during the life of the facility; or

(b) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment;

(9) Description of controls and practices to prevent spills and overflows, as required under Section 5(2) of 401 KAR 34:190; and

(10) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of Sections 10 and 11 of 401 KAR 34:190.

[(a) Drawings and a description of the basic design parameters, dimensions, and materials of construction of the containment system.]

[(b) Capacity of the containment system relative to the design capacity of the tank(s) within the system.]

[(c) Description of the system to detect leaks and spills, and how precipitation and run-on will be prevented from entering into the detection system.]

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: February 11, 1988

FILED WITH LRC: February 12, 1988 at 11 a.m.

**CABINET FOR HUMAN RESOURCES**  
Department for Social Insurance  
Division of Management & Development  
(Amended After Hearing)

904 KAR 3:030. Application process.

RELATES TO: KRS 194.050

PURSUANT TO: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR Part 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Application Process. The application process consists of filing and completing an application, an interview and required verification and documentation. The cabinet shall make the application process [applications] readily accessible to

households, [as well as] Groups and organizations involved in program information activities and [shall provide an application form to anyone upon request].

Section 2. Prompt Action on Applications. The cabinet shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible but not later than thirty (30) days after the application is filed. The department shall notify the household of any action it must take to complete the application process. If verification is lacking, the household will have up to thirty (30) days from the date the missing verification was requested to provide such verification.

Section 3. Expedited Service. The cabinet shall identify households eligible for expedited service at the time the household requests assistance and shall comply with 7 CFR 273.2(i)(3) and 273.2(i)(4) when expediting certification and issuance procedures.

[(1) Prior to February 1, 1983 the following households, if otherwise eligible, are entitled to expedited service:]

[(a) Households with zero net monthly income as computed in 7 CFR Part 273.10.]

[(b) Households who are destitute as defined in 7 CFR Part 273.10(e)(3).]

[(2) Effective February 1, 1983, the following households, if otherwise eligible and provided their liquid resources do not exceed \$100, are entitled to expedited service:]

[(a) Households with less than \$150 in monthly gross income computed in accordance with 7 CFR Part 273.10; or]

[(b) Migrant or seasonable farmworker households who are destitute as defined in 7 CFR Part 273.10(e)(3).]

Section 4. Public Assistance Application Process. Households in which all members are applying for public assistance (PA) and state administered general assistance shall be allowed to simultaneously apply for food stamp benefits. The cabinet shall comply with procedures specified in 7 CFR 273.2(j) in handling PA households.

Section 5. Joint SSI/FS Application Process. Households in which all members are applicants/recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office. The cabinet will comply with procedures specified in 7 CFR 273.2(k) in processing these households.

MIKE ROBINSON, Commissioner

E. AUSTIN, JR., Secretary

APPROVED BY AGENCY: February 5, 1988

FILED WITH LRC: February 5, 1988 at 11 a.m.

## PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET  
Board of Occupational Therapy  
(Proposed Amendment)

## 201 KAR 28:010. Definitions and Abbreviations.

RELATES TO: KRS 319A.010 through 319A.210  
PURSUANT TO: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A and pertinent parts of KRS 319A.070(3) require the Kentucky Occupational Therapy Board, hereinafter referred to as the board, to promulgate regulations pertaining to the practice and licensure of occupational therapists and occupational therapy assistants. This regulation sets forth the definition of terms and phrases which will be used by the board in enforcing and interpreting the provisions of Chapter 319A and the regulations promulgated pursuant thereto.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in Title 201, Chapter 28, shall have the meanings given in this regulation.

(1) "Accessory joint mobilization" means the production of accessory movements by active or passive means. Accessory movements are joint play movements and component motions. [specific therapeutic movement of variable amplitude as applied to a joint which causes the joint to exceed its anatomical limit of motion, but does not include other generic forms of movement of a joint through its pathological range.]

(2) "Act" means the Kentucky Occupational Therapy Practice Act and the provisions of KRS Chapter 319A.

(3) "Assessment of integrity" means the use of active and/or passive procedures or tests to identify and delineate structural deviations of the tested tissue/structure from normalcy. [, within the context of assessment of integrity and pathology of muscle, soft tissue, and joint capsule, an evaluation of muscle, soft tissue or joint capsule through invasive procedures including minor surgery, biopsy or EMG.]

(4) "Board" means the Kentucky Occupational Therapy Board and its staff, if any.

(5) "Certified occupational therapy assistant" means a person who is certified by the A.O.T.A. as having met the educational requirements, supervised field work, and examination standards required for certification as a C.O.T.A.

(6) "Electromodalities" means the physical agents which supply or induce an electric current through the body, which make the body a part of the circuit. [an electric device attached to a plug or socket and is used as a treatment method for the facilitation of improved functioning, but does not mean or include those devices which are battery operated or other devices which are used as adjuncts to occupational therapy treatment and which require no specialized training in their use.]

(7) "Gait training" means the instruction of proper walking patterns but does not include instruction as to transfer functions or any instruction which is considered to be a part of occupational therapy as otherwise defined in these regulations or in KRS 319A.010(2).

(8) "Occupational therapist" means a person licensed in accordance with the provisions of the Act and regulations to practice occupational

therapy under this chapter.

(9) "Occupational therapist registered" means a person who is certified by the A.O.T.A. as having met the educational requirements, supervised field work, and examination standards required for certification as an O.T.R.

(10) "Occupational therapy" means the use of goal directed activities with individuals who are limited by physical limitations due to injury or illness, psychiatric and emotional disorders, developmental or learning disabilities, poverty and cultural differences or the aging process, in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services include: teaching daily living skills; developing perceptual-motor skills and sensory integrative functioning; developing play skills and prevocational and leisure capacities; designing, fabricating or applying selective orthotic and prosthetic devices or selective adaptive equipment; using specifically designed crafts and therapeutic activities to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and consulting in the adaptation of the environment for the handicapped. These services shall be provided individually, in groups or through medical, health, educational, and social systems. The practice of occupational therapy shall not include gait training; the use or application of thermal or electromodalities; accessory joint mobilizations; assessment of integrity and pathology of muscle, soft tissue and joint capsule; and postural or biomechanical analysis.

(11) "Occupational Therapy Aide" means a person not licensed who assists in the practice of occupational therapy under the direct supervision of a licensed occupational therapist or occupational therapy assistant and who is required to have an understanding of occupational therapy but is not required to have professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(12) "Occupational therapy assessment" means, within the scope of occupational therapy and the practice thereof, the process of determining the need for, nature of, and estimated time of treatment; determining the needed coordination with other persons involved; and the documentation of such activities with all assessments, including screening, patient-related consultation, evaluation, and reassessment.

(13) "Occupational therapy assistant" means a person licensed in accordance with the provisions of the Act and regulations to assist in the practice of occupational therapy under this chapter, and who works under the supervision of an occupational therapist.

(14)(a) "Occupational therapy treatment" means in its broadest sense the use of specific activities, methods or exercises which are intended to develop, improve, restore the skills in performance areas of function, compensate for dysfunction or minimize debilitation, and also means the planning and documentation of treatment performances.

(b) Within the context of occupational therapy

treatment, the following definitions shall apply:

1. "Independent and daily living skills" means the skill and performance of functions which are treated, including but not limited to: physical daily living skills (grooming and hygiene, feeding and eating, dressing, functional mobility, functional communication, object manipulation), psychological or emotional daily living skills (self-concept and self-identity, situational coping, community involvement), work (homemaking, child care/parenting, dependent care, and employment preparation), and play or leisure.

2. "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including but not limited to: neuromuscular activity (reflex integration range emotion, gross and fine coordination, strength and endurance), and sensory integration (sensory awareness, visual-spatial awareness, body integration).

3. "Cognitive components" means the skill and performance of the mental processes necessary to know or comprehend by understanding with such skills including but not limited to: orientation, conceptualization, and comprehension (concentration, attention span, memory), and cognitive integration (generalization, problem-solving).

4. "Psychosocial component" means the skill and performance in self-management, interaction skills with such skills including but not limited to: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

5. "Therapeutic adaptation" means the selecting, obtaining, fitting, and fabricating of equipment by a L.O.T.R. or a L.O.T.A.; the instruction of the person undergoing treatment, family or staff in the proper use and care of such equipment; and minor repair of such equipment; and minor modification to correct fit, position or use. This term encompasses orthotics, prosthetics, and assistive equipment, their application, instruction, and use.

6. "Prevention" means the skill and the performance of the person to minimize debilitation with such treatment focusing on energy conservation (activity restriction, work simplification, time management), joint protection and body mechanics (proper posture and body mechanics, avoidance of excessive weight bearing), positioning and coordination of daily living activities.

(15) "Person(s)" means any individual, partnership, unincorporated organization or corporation.

(16) "Postural or biomechanical analysis" means the evaluation of posture with respect to spinal alignment, and gait pattern for the purpose of observing or determining:

(a) Malalignment of body segments;  
(b) Distorted weight bearing line;  
(c) Identification of presence of lordosis, kyphosis or scoliosis; and

(d) Identification of structural back disorders, but such analysis as defined herein does not include the treatment of postural and biomechanical deficiencies by splinting, positioning, use or fitting of adaptive equipment or determinations of a person's strength or endurance.

(17) "Rules" as used in Chapter 319A means those regulations as promulgated in accordance with the provisions of Chapter 13A of the

Kentucky Revised Statutes.

(18) "States" means any states of the United States of America, its territories, treaty mandates or the District of Columbia.

(19) "Substantially equal" or "At least as stringent as," within the context of KRS 319A.090 and KRS 319A.140, both mean, whichever is applicable, those states which have a licensure law requiring for licensure the following:

(a) An attestation as to good moral character.

(b) Evidence of satisfactorily completing the academic requirements of an educational program in occupational therapy with such program being accredited by the Committee on Allied Health, Education, and Accreditation of the American Medical Association or approved by the American Occupational Therapy Association.

(c) A minimum of six (6) months of supervised field work for an occupational therapist or a minimum of four (4) months of supervised field work for an occupational therapy assistant.

(d) Evidence that the applicant has successfully completed or passed the National Certification Exam for occupational therapist registered or certified occupational therapy assistants as prepared and administered by a duly authorized agent of the board.

(20) "Supervised field work" means the clinical training and direct contact with patients under the direct supervision of an occupational therapist registered or in an approved educational program.

(21) "Therapeutic activities" means those activities which encompass a variety of exercises or other practices, training or regimes which are used in the normal course of occupational therapy treatment and which for the purposes of compensation by any state or federal agency or by a private health services organization or insurance company are its functional or compensatory equivalent.

[(22)] "Thermalmodalities" means any cold or hot (heat) applications used for the purpose of deep penetration of the muscle or skin tissue including the use of ultraviolet light, ultrasound, and diathermy treatment but the application of thermalmodalities does not include the application or use of superficial agents or adjuncts to occupational therapy treatments.]

[(22)] [(23)] "Written examination approved by a board" means the National Certification Exam for occupational therapist registered and certified occupational therapy assistants as prepared by an authorized agent of the board or as certified and approved by the board.

Section 2. Abbreviations. As used in Title 201, Chapter 28, the following abbreviations shall have the meanings given below:

(1) "A.O.T.A." - American Occupational Therapy Association.

(2) "L.O.T.R." - licensed occupational therapist registered.

(3) "L.O.T.A." - licensed occupational therapy assistant.

(4) "O.T." - occupational therapy.

(5) "O.T.R." - occupational therapist registered.

(6) "C.O.T.A." - certified occupational therapy assistant.

THOMAS FISHER, Chairman

APPROVED BY AGENCY: January 18, 1988



FILED WITH LRC: January 25, 1988 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 10 a.m., Eastern Time, at the Office of the Attorney General Library, Room 141, Capitol, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1988 of their desire to appear and testify at the hearing: Patricia Todd Thomas, Office of the Attorney General, Capitol, Frankfort, Kentucky 40601-3494.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas Fisher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. N/A

#### GENERAL GOVERNMENT CABINET

Board of Occupational Therapy  
(Proposed Amendment)

201 KAR 28:120. Applications by foreign trained O.T.R.s and O.T.A.s.

RELATES TO: KRS 319A.180

PURSUANT TO: KRS 319A.070(3)

NECESSITY AND FUNCTION: KRS Chapter 319A, in pertinent part, provides for the licensure of occupational therapist registered and occupational therapy assistants who are either licensed in a country other than the United States or who have completed their education requirements and training at an educational institution located in a country other than the United States. This regulation provides for licensure of such applicants.

Section 1. Scope. The provisions of this regulation shall apply to all applicants for licensure as a L.O.T.R. or as a L.O.T.A. who are:

(a) Of foreign nationality; or

(b) Educated or trained at an educational facility in a country or nation other than the United States. This regulation also applies to

any citizen of the United States who received training in occupational therapy at an educational facility in a country or nation other than the United States.

Section 2. Requirements for Licensure. (1) All applicants applying for a license under this section shall:

(a) Complete an application on a form approved by the board.

(b) Present proof of a good moral character as set forth in 201 KAR 28:060.

(c) Present proof of having completed an educational program substantially similar to the requirements of 201 KAR 28:060.

[(d) Pay the application fee of seventy-five (75) dollars as required under 201 KAR 28:110.]

(d) [(e)] If English is not the native language of the applicant, submit the results of a Test of English as a Foreign Language (TOEFL) with a score of at least 550 or the Test of Spoken English (TSE) with a total score of at least 220.

(e) [(f)] Provide evidence of legal permission as furnished by the U.S. Department of Immigration for employment in the United States or submit evidence, such as a birth certificate or certificate of naturalization, that the applicant is a United States citizen.

(f) [(g)] Successfully pass an examination approved by the board as required under 201 KAR 28:070.

(2) Any applicant who files for a license under the provisions of this regulation may satisfy the educational requirement of subsection 1(c) of this section by:

(a) Submitting with the application a certified copy of the applicant's degree in an education program approved by the World Federation of Occupational Therapists; or

(b) Submitting a certified copy of a transcript and a certified copy of a degree in an educational program having the minimum educational requirements required for certification as an O.T.R. or a C.O.T.A. by the A.O.T.A. Applications filed under this provision shall be reviewed by the board for comparison to the educational program approved by the A.O.T.A.

(3) Issuance of licenses and temporary permits shall be in accordance with the provisions of 201 KAR 28:080 and 201 KAR 28:060, Section 3. Once licensed, licenses issued pursuant to this regulation shall be subject to all provisions of Chapter 28 and KRS Chapter 319A.

Section 3. Exemptions. Any applicant who satisfies the criteria of KRS 319A.140 may, in lieu of applying for a license under this regulation, apply for a license under the provisions of 201 KAR 28:050.

THOMAS FISHER, Chairman

APPROVED BY AGENCY: January 18, 1988

FILED WITH LRC: January 25, 1988 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 10 a.m., Eastern Time, at the Office of the Attorney General Library, Room 141, Capitol, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1988 of their desire to appear and testify at the hearing: Patricia Todd Thomas, Office of the Attorney General, Capitol, Frankfort, Kentucky 40601-3494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thomas Fisher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: Decrease in initial application fee of \$75.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: N/A

TIERING: Was tiering applied? No. N/A

CORRECTIONS CABINET  
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: February 8, 1988

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12, 1988 [December 4, 1987] and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer (Amended 2/12/88)
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
- 2.1 Inmate Canteen
- 2.10 Surplus Property
- 3.1 Code of Ethics

- 3.2 Inclement Weather and Emergency Conditions Policy
- 3.3 Holding of Second Jobs by Bureau Employees
- 3.7 Employment of Relatives
- 3.10 Staff Clothing and Personal Appearance
- 3.12 Institutional Staff Housing
- 3.14 Corrections Cabinet Payroll Deduction Policy and Procedure
- 4.1 Attendance at Professional Meetings
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.4 Educational Assistance Program
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.4 Emergency Preparedness
- 9.1 Use of Force
- 9.3 Transportation of Convicted Offenders
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Return of Escapees by Automobile
- 9.6 Contraband
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents
- 9.8 Search Policy
- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control
- 9.15 Institutional Entry and Exit Policy and Procedures
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures (Amended 2/12/88)
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 14.2 Personal Hygiene Items (Amended 2/12/88)
- 14.3 Marriage of Inmates (Amended 2/12/88)
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties (Amended 2/12/88)
- 15.3 Meritorious Good Time
- 15.4 Governor's Meritorious Good Time Award (Deleted 2/12/88)
- 15.5 Restoration of Forfeited Good Time (Amended 2/12/88)
- 15.6 Adjustment Procedures and Programs
- 16.1 General Inmate Visiting Procedure
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property (Amended 2/12/88)
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates
- 18.4 Classification of the Inmate
- 18.5 Custody/Security Guidelines
- 18.6 Classification Document
- 18.7 Transfers
- 18.8 Guidelines for Transfers Between Institutions
- 18.9 Out-of-State Transfers
- 18.10 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures (Amended 2/12/88)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
- 18.13 Population Categories
- 18.15 Protective Custody

# ADMINISTRATIVE REGISTER - 1851

19.1	Government Services Projects	27-20-01	<u>Division of Probation and Parole</u>
19.2	Community Services Projects		<u>Controlled Intake Program (Added</u>
20.1	Study Release		<u>2/12/88)</u>
20.6	Vocational Study Release	27-20-02	<u>Prisoner Intake Notification (Added</u>
22.1	Privilege Trips		<u>2/12/88)</u>
25.1	Gratuities	27-20-03	<u>Prisoner Status Change (Added</u>
25.2	Public Official Notification of Release		<u>2/12/88)</u>
	of an Inmate	27-21-01	Apprehension and Transportation of
25.3	Prerelease		Probation and Parole Violators
25.4	Inmate Furloughs		[(Added 12/4/87)]
25.6	Community Center Program <u>(Amended 2/12/88)</u>	27-22-01	Fugitive Unit - Apprehensions
25.7	Expedient Release		[(Added 12/4/87)]
25.8	Extended Furloughs	27-22-02	Fugitive Unit - Transportation of
27.2	Risk/Needs Administration		Fugitives [(Added 12/4/87)]
27.10	Preliminary Revocation Procedures	27-23-01	In-state Transfer [(Added 12/4/87)]
27-01-01	<u>Probation and Parole Procedures</u>	27-24-01	Closing Supervision Report [(Added
	<u>(Added 2/12/88)</u>		<u>12/4/87)]</u>
27-02-01	Duties of Probation and Parole	27-24-02	Reinstatement of Clients to Active
	Officers [(Added 12/4/87)]		Supervision [(Added 12/4/87)]
27-03-01	Workload Formula Supervisor/Staff	27-25-01	Application for Final Discharge from
	Ratio [(Added 12/4/87)]		Parole [(Added 12/4/87)]
27-05-01	Testimony, Court Demeanor and	27-26-01	Assistance to Former Clients and
	Availability of Legal Services		Dischargees [(Added 12/4/87)]
	[(Added 12/4/87)]	27-27-01	Restoration of Civil Rights [(Added
27-06-01	Availability of Supervision Services		<u>12/4/87)]</u>
	[(Added 12/4/87)]	27-28-01	<u>Firearms/Explosives: Application for</u>
27-06-02	Equal Access to Services [(Added		<u>Relief from Disability (Added</u>
	<u>12/4/87)]</u>		<u>2/12/88)</u>
27-07-01	Cooperation with Law Enforcement	28-01-01	Probation and Parole Investigation
	Agencies [(Added 12/4/87)]		Reports (Introduction, Definitions,
27-09-01	Kentucky Community Resources		Confidentiality, Timing, and General
	Directory [(Added 12/4/87)]		Comments) [(Added 12/4/87)]
27-11-01	Intensive Supervision [(Added	28-01-02	Probation and Parole Investigation
	<u>12/4/87)]</u>		Reports (Administrative
27-12-01	Supervision: Case Classification		Responsibilities) [(Added 12/4/87)]
	[(Added 12/4/87)]	28-01-03	Probation and Parole Investigation
27-12-04	Conditions of Regular		Reports (Presentence/Postsentence
	Supervision/Request for Modification		Investigation Interview Procedure)
	[(Added 12/4/87)]		[(Added 12/4/87)]
27-12-05	Releasee's Report [(Added 12/4/87)]	28-01-04	Probation and Parole Investigation
27-12-06	Grievance Procedures for Offenders		Reports (Presentence/Postsentence
	[(Added 12/4/87)]		Verification, Composition, Case
27-12-07	Employment, Education/Vocational		Material and Submission Schedules)
	Referral [(Added 12/4/87)]		<u>(Amended 2/12/88)</u> [(Added 12/4/87)]
27-12-08	Supervision Plan [(Added 12/4/87)]	28-01-05	Probation and Parole Investigation
27-12-09	Casebook [(Added 12/4/87)]		Reports (Computation of Jail Custody
27-12-10	Guidelines for Monitoring		Credit) [(Added 12/4/87)]
	Supervision Fee [(Added 12/4/87)]	28-01-06	Probation and Parole Investigation
27-12-11	Guidelines for Monitoring Financial		Reports (Misdemeanant Presentence
	Obligations Ordered by the Releasing		Investigation Reports for the
	Authority [(Added 12/4/87)]		Circuit and District Courts) [(Added
27-12-12	Other Financial Obligations (Not		<u>12/4/87)]</u>
	Ordered by Releasing Authority)	28-01-07	Probation and Parole Investigation
	[(Added 12/4/87)]		Reports (Supplemental Postsentence
27-12-13	Community Service Work [(Added		Investigation Report, Case Material,
	<u>12/4/87)]</u>		and Submission Schedule) [(Added
27-12-14	Client Travel Restrictions [(Added		<u>12/4/87)]</u>
	<u>12/4/87)]</u>	28-01-08	Probation Parole Investigation
27-12-15	Advanced Supervision [(Added		Reports (Partial Investigation
	<u>12/4/87)]</u>		Reports and Submission Schedule)
27-13-02	Alcohol Detection [(Added 12/4/87)]		[(Added 12/4/87)]
27-14-01	Interstate Compact Transfers [(Added	28-02-01	Expedient Release Program <u>(Amended</u>
	<u>12/4/87)]</u>		<u>2/12/88)</u> [(Added 12/4/87)]
27-14-02	Interstate Compact Out-of-state	28-03-01	<u>Parole Plans/ Halfway Houses/</u>
	Probation and Parole Violation		<u>Extended Furlough/ Sponsorship/</u>
	[(Added 12/4/87)]		<u>Gradual Release (Added 2/12/88)</u>
27-15-01	Supervision Report; Violations,	28-04-01	<u>Furlough Verifications (Added</u>
	Unusual Incidents [(Added 12/4/87)]		<u>2/12/88)</u>
27-17-01	Absconder Procedures [(Added	28-05-01	<u>Out-of-state Investigations (Added</u>
	<u>12/4/87)]</u>		<u>2/12/88)</u>
27-18-01	Probation and Parole Issuance of		
	Detainer/Warrant [(Added 12/4/87)]		
27-19-01	Preliminary Revocation Hearing		
	<u>(Added 2/12/88)</u>		

JOHN T. WIGGINTON, Secretary  
APPROVED BY AGENCY: February 12, 1988  
FILED WITH LRC: February 12, 1988 at noon  
PUBLIC HEARING SCHEDULED: A public hearing on

this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 2184 employees of the Corrections Cabinet, 6834 inmates, 10,529 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

## CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12 [January 15], 1988 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet,

State Office Building, Frankfort, Kentucky 40601.

KSR 01-00-09 Public Information and News Media Relations

KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution

KSR 01-00-14 Extraordinary Occurrence Report

KSR 01-00-15 Cooperation and Coordination with Oldham County Court

KSR 01-00-19 Personal Service Contract Personnel

KSR 01-00-20 Consent Decree Notification to Inmates

KSR 02-00-01 Inmate Canteen

KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts

KSR 02-00-11 Inmate Personal Accounts

KSR 02-00-12 Institutional Funds and Issuance of Checks

KSR 03-00-01 Shift Assignment/Reassignment

KSR 03-00-02 Employee Dress and Personal Appearance

KSR 03-00-05 Intra-Agency Promotional Opportunity Announcements

KSR 03-00-06 Employee Time and Attendance

KSR 03-00-07 Travel Expense Reimbursement

KSR 03-00-08 Employee Tuition Assistance Reimbursement

KSR 03-00-10 Workers' Compensation

KSR 03-00-14 Prohibited Employee Conduct, Disciplinary Actions, and Appeal Process

KSR 03-00-15 Affirmative Action Program

KSR 03-00-16 Confidentiality of Personnel Records

KSR 03-00-19 Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein

KSR 03-00-20 Personnel Selection, Retention and Promotion

KSR 03-00-21 Equal Employment Opportunities for Institutional Job Assignments and Job Classification Promotions

KSR 03-00-24 Inclement Weather and Employee Work Attendance

KSR 03-00-25 Medical Examination Requirements for New Employees

KSR 04-00-02 Staff Training and Development

KSR 05-00-02 Research Activities

KSR 05-00-03 Management Information Systems

KSR 06-00-01 Inmate Master File

KSR 06-00-02 Records Audit

KSR 06-00-03 Kentucky Open Records Law

KSR 07-00-02 Institutional Tower Room Regulations

KSR 07-00-04 Handling of PCB Articles and Containers

KSR 07-00-05 Proper Removal of Transformers

KSR 07-00-06 Asbestos Abatement

KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family

KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery

KSR 08-00-09 Emergency Preparedness Training

KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure

KSR 09-00-05 Gate I Entrance and Exit Procedure

KSR 09-00-09 Search Policy

KSR 09-00-14 Use of Force (Amended 2/12/88)

KSR 09-00-21 Crime Scene Camera

KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence

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KSR 09-00-23 Drug Abuse Testing  
 KSR 09-00-25 Inmate Motor Vehicle Operator's License  
 KSR 09-00-26 Contraband Outside Institutional Perimeter  
 KSR 09-00-27 Construction Crew Entry/Exit  
 KSR 09-00-28 Restricted Areas  
 KSR 10-00-02 Special Management Inmates Operations, Rules and Regulations for Unit D  
 KSR 10-00-03 Special Needs Unit  
 KRS 10-00-04 Unit D Admission/Release Ticket  
 KSR 11-00-01 Meal Planning for the General Population  
 KSR 11-00-02 Special Diets  
 KSR 11-00-03 Food Service Inspections  
 KSR 11-00-04 Dining Room Dress Code for Inmates  
 KSR 11-00-06 Health Standards/Regulations for Food Service Employees  
 KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates  
 KSR 12-00-01 Inmate Summer Dress Regulations  
 KSR 12-00-02 Sanitation and General Living Conditions  
 KSR 12-00-03 State Items Issued to Inmates  
 KSR 12-00-07 Regulations for Inmate Barbershop  
 KSR 13-00-01 Identification of Mentally Retarded Inmates  
 KSR 13-00-02 Hospital Operations, Rules and Regulations  
 KSR 13-00-03 Medication for Inmates Leaving Institution Grounds  
 KSR 13-00-04 Dental Care for Inmates  
 KSR 13-00-05 Medical and Dental Sick Call  
 KSR 13-00-06 Infection Control  
 KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances  
 KSR 13-00-08 Institutional Laboratory Procedures  
 KSR 13-00-09 Institutional Pharmacy Procedures  
 KSR 13-00-10 Requirements for Medical Personnel  
 KSR 13-00-11 Preliminary Health Evaluation and Establishment of Inmate Medical Record  
 KSR 13-00-12 Vision Care/Optomety Services  
 KSR 13-00-14 Periodic Health Examinations for Inmates  
 KSR 13-00-15 Medical Alert System  
 KSR 13-00-16 Suicide Prevention and Intervention Program  
 KSR 14-00-01 Inmate Rights  
 KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services  
 KSR 14-00-04 Inmate Grievance Procedure  
 KSR 14-00-05 Inmate Marriages  
 KSR 14-00-06 Inmate Legal Aides  
 KSR 15-00-01 Operational Procedures and Rules and Regulations for Unit A, B, and C [(Amended 1/15/88)]  
 KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)  
 KSR 15-00-03 Governor's Meritorious Good Time Award  
 KSR 15-00-04 Restoration of Forfeited Good Time  
 KSR 15-00-05 Differential Status for SU (QUIT) Inmates  
 KSR 15-00-06 Inmate I.D. Cards  
 KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures  
 KSR 15-00-08 Firehouse Living Area  
 KSR 16-00-01 Visiting Regulations  
 KSR 16-00-02 Inmate Correspondence and Mailroom Operations  
 KSR 16-00-03 Inmate Access to Telephones  
 KSR 17-00-01 Housing Unit Assignment

KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting  
 KSR 17-00-04 Assessment/Classification Center Operations, Rules and Regulations  
 KSR 17-00-05 Dormitory 10 Operations  
 KSR 17-00-06 Identification Department Admission and Discharge Procedures  
 KSR 17-00-07 Inmate Personal Property  
 KSR 18-00-01 Special Management Inmates - Unit D Classification  
 KSR 18-00-04 Returns from Other Institutions  
 KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center  
 KSR 18-00-06 Classification  
 KSR 18-00-07 Special Notice Form  
 KSR 19-00-01 Inmate Work Incentives  
 KSR 19-00-02 On-the-job Training Program  
 KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations  
 KSR 20-00-01 Vocational School Referral and Release Process  
 KSR 20-00-03 Academic School Programs  
 KSR 20-00-04 Criteria for Participation in Jefferson Community College Program  
 KSR 20-00-08 Integration of Vocational and Academic Education Programs  
 KSR 21-00-01 Legal Aide Office and Law Library Services and Supervision  
 KSR 21-00-02 Inmate Library Services  
 KSR 21-00-03 Library Services for Unit D  
 KSR 22-00-03 Inmate Organizations  
 KSR 22-00-07 Inmate News Magazine  
 KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives  
 KSR 23-00-03 Religious Programming  
 KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home  
 KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole  
 KSR 25-00-03 Furlough  
 KSR 25-00-03 Preparole Progress Report

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 560 employees of the Kentucky State Reformatory, 1447 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational

budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

**CORRECTIONS CABINET  
(Proposed Amendment)**

**501 KAR 6:040. Kentucky State Penitentiary.**

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12 [January 15], 1988 and hereinafter should be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSP 000000-06 Administrative Regulations  
KSP 010000-04 Public Information and Media Communication  
KSP 020000-01 General Guidelines for KSP Employees  
KSP 020000-02 Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave  
KSP 020000-03 Work Planning and Performance Review (WPPR)  
KSP 020000-04 Employee Disciplinary Procedure  
KSP 020000-05 Proper Dress for Uniformed and NonUniformed Personnel  
KSP 020000-06 Employee Grievance Procedure  
KSP 020000-07 Personnel Registers and Advertisements  
KSP 020000-09 Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files  
KSP 020000-10 Overtime Policy  
KSP 020000-15 Legal Assistance  
KSP 020000-20 Equal Employment Opportunity Complaints

KSP 020000-23 Recruitment and Employment of Ex-Offenders  
KSP 020000-24 Educational Assistance Program  
KSP 020000-29 Promotional Opportunity Announcement Program  
KSP 030000-01 Inventory Records and Control  
KSP 030000-04 Requisition and Purchase of Supplies and Equipment  
KSP 030000-05 Inmate Personal Funds  
KSP 030000-06 Inmate Commissary Program  
KSP 040000-01 Management Information System  
KSP 040000-02 Inmate Records  
KSP 040000-08 Inmate Equal Opportunity Policy  
KSP 050000-14 Searches and Preservation of Evidence  
KSP 060000-01 Special Security Unit (Amended 2/12/88)  
KSP 060000-02 Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units  
KSP 060000-04 Protective Custody Unit [(Amended 1/15/88)]  
KSP 060000-11 Criteria for Disciplinary Segregation and Incentive Time Reduction Program  
KSP 070000-01 Hospital Services  
KSP 070000-02 Sick Call  
KSP 070000-03 Health Evaluations  
KSP 070000-04 Consultations  
KSP 070000-05 Emergency Medical Procedure  
KSP 070000-13 Pharmacy Procedures  
KSP 070000-14 Medical Records (Amended 2/12/88)  
KSP 070000-16 Psychiatric and Psychological Services  
KSP 070000-17 Dental Services for Special Management Units  
KSP 070000-19 Optometric Services  
KSP 070000-20 Menu Preparation and Planning  
KSP 070000-24 Food Service, General Sanitation, Safety, and Protection Standards and Requirements  
KSP 070000-25 Food Service Inspections  
KSP 070000-30 Therapeutic Diets  
KSP 090000-01 Inmate Work Programs  
KSP 090000-03 Correctional Industries  
KSP 100000-02 Visiting Program (Amended 2/12/88)  
KSP 100000-03 Disposition of Unauthorized Property  
KSP 100000-04 Inmate Grooming and Dress Code  
KSP 100000-05 Procedures for Providing Clothing, Linens and Other Personal Items  
KSP 100000-06 Inmate Mail and Packages  
KSP 100000-07 Inmate Telephone Access  
KSP 100000-08 Behavioral Counseling Record  
KSP 100000-09 Due Process/Disciplinary Procedures [(Amended 1/15/88)]  
KSP 100000-11 Authorized and Unauthorized Inmate Property (Amended 2/12/88)  
KSP 100000-14 Property Room: Clothing Storage and Inventory  
KSP 100000-15 Uniform Cell Standards for Fire Safety, Sanitation and Security  
KSP 100000-18 Inmate Grievance Committee Hearings  
KSP 100000-20 Legal Services Program  
KSP 100000-21 Photocopies for NonIndigent Inmates with Special Court Deadlines  
[KSP 110000-03 Governor's Meritorious Good Time Award Committee (Deleted 2/12/88)]  
KSP 110000-04 Parole Progress Report

KSP 110000-06 General Guidelines of the Classification Committee  
 KSP 110000-07 Statutory Good Time Restoration  
 KSP 110000-08 Award of Meritorious Good Time (Amended 2/12/88)  
 KSP 110000-10 Special Needs Inmates (Amended 2/12/88)  
 KSP 110000-11 Classification Committee - Transfer Requests  
 KSP 110000-12 Classification Committee - Inmate Work Assignments  
 KSP 110000-13 Classification Document  
 KSP 110000-14 Vocational School Placement  
 KSP 110000-15 Transfers to Kentucky Correctional Psychiatric Center (KCPC)  
 KSP 110000-16 Consideration of Further Treatment Requirements for Inmates Prior to Release  
 KSP 110000-19 Custody/Security Guidelines  
 KSP 120000-04 Academic Education (Amended 2/12/88)  
 KSP 120000-07 Community Center Program  
 KSP 120000-08 Inmate Furloughs  
 KSP 120000-11 Religious Services - Staffing (Amended 2/12/88)  
 KSP 120000-18 Religious Services - Religious Programming (Amended 2/12/88)  
 KSP 120000-20 Marriage of Inmates (Amended 2/12/88)  
 KSP 120000-24 Muslim Services  
 KSP 120000-31 Extended Furloughs  
 KSP 120000-32 Discharge of Inmates by Shock Probation  
 KSP 130000-10 Execution Plan

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 309 employees of the Kentucky State Penitentiary, 809 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

#### CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12, 1988 [December 15, 1987] and hereinafter should be referred to as Luther Luckett Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

LLCC 01-08-01	Institutional Legal Assistance
LLCC 01-09-01	Public Information and News Media Access
LLCC 01-12-01	Duty Officer Responsibilities
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 02-06-01	Property Inventory
LLCC 02-07-01	Screening Disbursements from Inmate Personal Accounting
LLCC 03-01-01	General Guidelines for LLCC Employees
LLCC 03-01-02	Service Regulations, Attendance Accumulation and use of Leave
LLCC 03-02-01	Proper Dress for Uniformed Personnel
LLCC 03-02-02	Replacement of Damaged or Destroyed Personal Property
LLCC 03-03-01	Employee Grievance Mechanism
LLCC 03-04-01	Employee Records
LLCC 03-05-01	Personnel Registers
LLCC 03-06-01	Work Planning: Employee Evaluations and Evaluation Control
LLCC 03-08-01	Shift Transfers
LLCC 03-08-02	Rotation of Correctional Officers Between Central Security and Unit Management Staff
LLCC 03-09-01	Promotion Board
LLCC 03-10-01	Affirmative Action: EEO



# ADMINISTRATIVE REGISTER - 1856

LLCC 03-12-01 Confidentiality of Information  
Roles and Services of  
Consultants, Contract Personnel  
and Volunteers

LLCC 08-01-01 Offender Records

LLCC 08-04-01 Storage of Expunged Records

LLCC 08-05-01 Psychological and Psychiatric  
Reports [(Added 12/15/87)]

LLCC 10-03-09 Duties and Responsibilities of  
Building 1 and 2 Officer

LLCC 11-03-01 LLCC Population Categories

LLCC 11-07-01 Adjustment Procedures for Minor  
Rule Violations

LLCC 11-09-01 Rules and Regulations of the Unit

LLCC 11-13-01 Inmate Dress and Use of Access  
Areas

LLCC 11-15-01 Postparole Furloughs

LLCC 11-16-01 Restoration of Forfeited Good Time

LLCC 11-18-02 Use of Monitor Telephone

LLCC 11-19-01 Unit Shakedowns/Control of Excess  
Property

LLCC 11-20-01 Program Services for "Special  
Needs"/Mentally Ill Inmates

LLCC 12-01-01 Special Management Inmates

LLCC 12-01-02 Disciplinary Segregation Time  
Calculation (WTR)

LLCC 12-04-01 Guidelines for (7E) PC  
Unit/General Living Conditions

LLCC 13-01-01 Dining Room Guidelines (Amended  
2/12/88)

LLCC 13-04-01 Food Service: Meals

LLCC 13-04-02 Food Service: Menu, Nutrition and  
Special Diets

LLCC 13-05-02 Medical Screening of Food Handlers

LLCC 13-06-01 Food Service: Inspections and  
Sanitation

LLCC 13-07-01 Food Service: Purchasing, Storage  
and Farm Products

LLCC 13-08-01 OJT Food Service Training  
Placement

LLCC 14-01-01 Sanitation, Living Condition  
Standards, and Clothing Issue

LLCC 14-05-01 Institutional Inspections

LLCC 15-01-01 Health Maintenance Services; Sick  
Call and Pill Call

LLCC 15-02-01 Mental Health/Psychological  
Services

LLCC 15-03-01 Pharmacy

LLCC 15-03-02 Use of Psychotropic Medications

LLCC 15-04-01 Dental Services

LLCC 15-05-02 Licensure and Training Standards

LLCC 15-06-02 Specialized Health Services

LLCC 15-06-03 Emergency Medical/Dental Care  
Services

LLCC 15-06-04 First Aid/CPR Training Program

LLCC 15-06-05 Suicide Prevention and  
Intervention Program

LLCC 15-07-01 Health Records

LLCC 15-08-01 Special Diets

LLCC 15-12-01 Special Needs Unit

LLCC 15-14-01 Informed Consent

LLCC 15-15-01 Medical Restraints

LLCC 15-16-01 Health Education/Special Health  
Programs

LLCC 15-17-01 Serious and Infectious Diseases

LLCC 16-01-01 Inmate Rights and Responsibilities

LLCC 16-02-01 Inmate Grievance Procedure

LLCC 16-03-01 Inmate Legal Services

LLCC 17-01-01 Due Process/Disciplinary Procedure

LLCC 18-01-01 Inmate Correspondence (Amended  
2/12/88) [(Amended 12/15/87)]

LLCC 18-01-02 Issuance of Legal Mail to Inmate  
Population

LLCC 18-02-01 Inmate Visiting

LLCC 18-02-03 Extended Visit and Furloughs

LLCC 18-02-04 Meritorious Visits

LLCC 18-03-01 Entry and Identification of  
Visitors for Inmate Visitation  
(Added 2/12/88)

LLCC 18-03-03 Inmate Visiting (DSU/ASU)

LLCC 20-01-01 Personal Property Control

LLCC 20-02-01 Authorized Inmate Personal  
Property

LLCC 20-03-01 Unauthorized Items

LLCC 20-04-02 Inmate Canteen

LLCC 20-05-01 Inmate Control of Personal Funds

LLCC 20-05-02 Storage and Disposition of Monies  
Received on Weekends, Holidays,  
and Between 4 p.m. and 8 a.m.  
Weekdays

LLCC 20-06-01 Procedure for Sending Appliances  
to Outside Dealers for Repair

LLCC 21-02-01 Classification/Security Levels

LLCC 21-03-01 Classification Process

LLCC 22-01-01 OJT/Job Assignments

LLCC 23-01-01 Academic School

LLCC 26-01-01 Religious Services

LLCC 28-01-01 Privileged Trips

LLCC 28-03-01 Temporary Release/Community  
Center Release

LLCC 28-04-01 Parole Progress Report

LLCC 28-04-02 Parole Eligibility Dates

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on  
this regulation has been scheduled for March 21,  
1988 at 9 a.m., in the State Office Building  
Auditorium. Those interested in attending this  
hearing shall notify in writing: Barbara Jones,  
Office of General Counsel, 5th Floor, State  
Office Building, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 212  
employees of the Luther Luckett Correctional  
Complex, 623 inmates, and all visitors to state  
correctional institutions.

(a) Direct and indirect costs or savings to  
those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing  
costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative  
body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs  
involved with the implementation of the  
regulations are included in the operational  
budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing  
costs: Same as 2(a)1.

(b) Reporting and paperwork requirements:  
Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state  
and local revenues: None

(4) Assessment of alternative methods; reasons  
why alternatives were rejected: None

(5) Identify any statute, administrative  
regulation or government policy which may be in  
conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in  
conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:  
None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

**CORRECTIONS CABINET  
(Proposed Amendment)**

**501 KAR 6:060. Northpoint Training Center.**

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12 [January 15], 1988 and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

NTC 01-03-01	Organization and Assignment of Responsibilities	NTC 03-14-02	Procedures for Promotional Opportunities
NTC 01-05-01	Extraordinary Occurrence Reports	NTC 03-15-01	Time and Attendance; Accumulation and Use of Accrued Time
NTC 01-10-01	Legal Assistance for Staff	NTC 03-15-02	Procedures for Control of Excessive Leave Use
NTC 01-11-01	Political Activities of Merit Employees	NTC 03-15-03	Inclement Weather and Emergency Conditions
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer	NTC 03-16-01	Affirmative Action and EEO
NTC 01-17-01	Relationships with Public, Media and Other Agencies	NTC 03-17-01	Employee Grievance Procedure
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process	NTC 03-18-01	Educational Assistance Program
NTC 02-03-01	Fiscal Management: Audits	NTC 03-18-02	Educational Achievement Award
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures	NTC 03-19-01	Holding of Second Jobs by Employees
NTC 02-08-01	Inmate Canteen [(Amended 1/15/88)]	NTC 03-20-01	Assistance and Counseling Services for Employees and their Families
NTC 02-10-01	Insurance Coverage	NTC 03-21-01	Procedures for Employee Evaluation System
NTC 02-12-01	Inmate Personal Accounts	NTC 04-01-01	Training and Staff Development
NTC 03-01-01	Employee Dress and Personal Appearance	NTC 04-04-01	Firearms and Chemical Agents Training
NTC 03-02-01	Prohibited Employee Conduct	NTC 06-01-01	Offender Records
NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants	NTC 06-01-02	Records - Release of Information
NTC 03-04-01	Shift Assignments and Transfers	NTC 06-01-03	Taking Offender Record Folders onto the Yard
NTC 03-06-01	Worker's Compensation	NTC 08-05-01	The Fire and Safety Officer
NTC 03-08-01	Procedures for New Employees Reporting for Employment	NTC 08-05-02	Fire Procedures
NTC 03-09-01	Maintenance, Confidentiality and Challenge of Information Contained in Employee Personnel File	NTC 08-05-03	Fire Prevention
NTC 03-10-01	Employment of Ex-offenders	NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 03-11-01	Submission of Northpoint Training Center Staff Recommendation/Changes	NTC 08-07-01	Safety Standards
NTC 03-11-02	Employee Suggestion System	NTC 10-01-01	Special Management Inmates (SMU)
NTC 03-13-01	Travel Reimbursement for Official Business and Professional Meetings	NTC 10-02-01	Security Guidelines for Special Management Inmates
NTC 03-14-01	Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees	NTC 10-03-01	Protective Custody
		NTC 11-03-01	Food Services: General Guidelines
		NTC 11-04-01	Food Service: Meals
		NTC 11-04-02	Menu, Nutrition and Special Diets
		NTC 11-05-02	Health Standards/Regulations for Food Service Employees
		NTC 11-06-01	Inspections and Sanitation
		NTC 11-07-01	Purchasing, Storage and Farm Products
		NTC 12-01-01	Institutional Inspections
		NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
		NTC 12-02-02	Issuance of Personal Hygiene Products
		NTC 13-01-01	Emergency Medical Care Plan
		NTC 13-01-02	Emergency and Specialized Health Services
		NTC 13-02-01	Administration and Authority for Health Services
		NTC 13-03-01	Sick Call and Pill Call
		NTC 13-04-01	Utilization of Pharmaceutical Products
		NTC 13-05-01	Dental Services
		NTC 13-06-01	Licensure and Training Standards
		NTC 13-07-01	Provisions for Health Care Delivery
		NTC 13-08-01	Medical and Dental Records
		NTC 13-09-01	Special Diets
		NTC 13-11-01	Inmate Health Screening and Evaluation
		NTC 13-12-01	Special Health Care Programs
		NTC 13-17-01	Inmates Assigned to Health Services
		NTC 13-19-01	Mental Health Care Program
		NTC 13-19-03	Suicide Prevention and Intervention Program
		NTC 13-20-01	Infectious Disease
		NTC 13-21-01	Vision Care/Optomety Services
		NTC 13-22-01	Informed Consent
		NTC 13-23-01	Special Needs Inmates
		NTC 14-01-01	Legal Services Program
		NTC 14-02-01	Inmate Grievance Procedure
		NTC 14-03-01	Inmate Rights and Responsibilities
		NTC 14-03-02	Board of Claims

NTC 14-04-01 Inmate Search Policy  
 NTC 15-01-01 Restoration of Forfeited Good Time  
 NTC 15-02-01 Due Process/Disciplinary Procedures  
 NTC 15-02-02 Extra Duty Assignments  
 NTC 15-02-03 Hearing Officer  
 NTC 15-03-01 Rules for Inmates Assigned to Outside Detail  
 NTC 15-03-02 Rules and Regulations for General Population Dormitories  
 NTC 15-04-01 Inmate Identification  
 NTC 16-01-01 Mail Regulations (Amended 2/12/88)  
 [(Amended 1/15/88)]  
 NTC 16-02-01 Visiting (Amended 2/12/88)  
 NTC 16-02-03 Honor Dorm Visiting  
 NTC 16-03-01 Inmate Furloughs  
 NTC 16-05-01 Telephone Use and Control  
 NTC 17-01-01 Personal Property Control  
 NTC 17-01-02 Authorized Inmate Personal Property  
 NTC 17-01-03 Unauthorized Inmate Property  
 NTC 17-01-04 Disposition of Unauthorized Property  
 NTC 17-03-01 Assessment/Orientation  
 NTC 18-01-01 Parole Progress Report  
 NTC 18-02-01 Classification  
 NTC 18-02-02 Classification - 48 Hour Notification  
 NTC 18-03-01 Special Notice Form  
 NTC 18-05-01 Transfers of Inmates  
 NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center  
 NTC 19-01-01 Inmate Work Program [(Amended 1/15/88)]  
 NTC 19-01-03 Temporary Leave from Job Assignment  
 NTC 19-02-01 Correctional Industries  
 NTC 19-02-02 Guidelines for Correctional Industries  
 NTC 20-01-01 Academic School Program [(Amended 1/15/88)]  
 NTC 21-01-01 Library Services [(Amended 1/15/88)]  
 NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs  
 NTC 23-01-01 Religious Services (Amended 2/12/88)  
 NTC 23-03-01 Marriage of Inmates  
 NTC 24-04-01 Honor Status (Amended 2/12/88)  
 NTC 24-05-01 Unit Management  
 NTC 25-01-01 Release Preparation Program  
 NTC 25-01-02 Temporary Release/Community Center Release  
 NTC 25-01-03 Graduated Release  
 NTC 25-02-01 Funeral Trips and Bedside Visits  
 NTC 25-03-01 Inmate Release Procedure  
 NTC 26-01-01 Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 242 employees of the Northpoint Training Center, 732 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to

those affected:

1. First year: None
  2. Continuing costs or savings: None
  3. Additional factors increasing or decreasing costs (note any effects upon competition): None
  - (b) Reporting and paperwork requirements: None
  - (2) Effects on the promulgating administrative body:
    - (a) Direct and indirect costs or savings:
      1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
      2. Continuing costs or savings: Same as 2(a)1.
      3. Additional factors increasing or decreasing costs: Same as 2(a)1.
      - (b) Reporting and paperwork requirements: Monthly submission of policy revisions.
      - (3) Assessment of anticipated effect on state and local revenues: None
      - (4) Assessment of alternative methods; reasons why alternatives were rejected: None
      - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
      - (a) Necessity of proposed regulation if in conflict:
        - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
        - (6) Any additional information or comments: None
- TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

#### CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:080. Corrections Cabinet Manuals.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12, 1988 [June 12, 1987] and hereinafter should be referred to as Corrections Cabinet Manuals. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

Offender Records Manual - None.

Stock Procedure Manual - None.

Food Services Manual - Yes.

Classification Manual - Yes [Yes Completely Revised.]

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this

hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 2184 employees of the Corrections Cabinet, 6834 inmates, 10,529 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

## CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12, 1988 [November 13, 1987] and hereinafter should be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-10-01	Political Activities of Merit Employees
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures [(Amended 11/13/87)]
BCC 02-02-03	Fiscal Management: Checks
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts
BCC 03-01-01	EEO - Affirmative Action
BCC 03-02-01	General Guidelines for BCC Employees
BCC 03-02-03	Physical Examinations for New Employees and Emergency Notification
BCC 03-03-01	Travel Reimbursement for Official Business and Professional Meetings
BCC 03-04-01	Employment of Ex-offenders
BCC 03-06-01	Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
BCC 03-06-02	Procedures for Promotional Opportunities
BCC 03-07-01	Workers' Compensation
BCC 03-08-01	Employee Assistance Program
BCC 03-09-01	Holding of Second Jobs by Employees
BCC 03-10-01	Student Intern (Co-op) and Practicum Placement Procedures
BCC 03-11-01	Maintenance, Confidentiality, and Challenge of Information Contained in Employee File
BCC 03-12-01	Work Assignments for Security Staff
BCC 04-02-01	Firearms Training
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado)
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties [(Amended 11/13/87)]
BCC 08-04-02	Immediate Release of Inmates from Locked Areas
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01	Inclement Weather/Emergency Condition Operation

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BCC 09-02-01	Restricted Areas	BCC 13-07-02	Emergency and Specialized Health Services
BCC 09-02-02	Inmate Pass System to Restricted Areas	BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 09-02-03	Regulation of Inmate Movement	BCC 13-08-01	Inmate Health Screening and Evaluation [(Amended 11/13/87)]
BCC 09-03-01	Inmate Identification	BCC 13-09-01	Prohibition on Medical Experimentation
BCC 09-04-02	Complex Entry & Exit	BCC 13-10-01	Dental Services
BCC 09-05-01	Key Control	BCC 13-11-01	Suicide Prevention and Intervention Program
BCC 09-06-02	Transportation to Courts	BCC 13-12-01	Use of Pharmaceutical products
BCC 09-07-01	Drug Abuse and Intoxicants Testing	BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 09-08-02	Use of Restraints	BCC 13-13-01	Inmate Health Education
BCC 09-09-01	Population Counts and Count Documentation	BCC 13-14-01	Management of Serious and Infectious Diseases
BCC 09-10-03	Development of Institutional Post Orders	BCC 13-15-01	Informed Consent
BCC 09-10-04	Governmental Services, Study Release Officer Post Orders	BCC 13-16-01	Health Records
BCC 09-10-05	Unit A-1 Post Orders [(Amended 11/13/87)]	BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 09-10-06	Recreation Post Orders: Observation	BCC 13-19-01	Physicians Referrals/Continuity of Care
BCC 09-10-07	Entrance Gate Post Orders	BCC 13-20-01	Chronic and Convalescent Care
BCC 09-10-08	Visiting Area Post Orders	BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 09-10-09	Security Staff General Orders	BCC 13-23-01	First Aid Kits
BCC 09-10-10	Dining Room Officer Post Orders [(Added 11/13/87)]	BCC 14-01-01	Office of Public Advocacy Attorney Visits
BCC 09-12-01	Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment	BCC 14-02-01	Law Library
BCC 09-13-01	Perimeter Patrol	BCC 14-03-01	Inmate Grievance Procedure
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates	BCC 14-04-01	Inmate Rights and Responsibilities [(Amended 11/13/87)]
BCC 09-15-01	Search Policy/Disposition of Contraband	BCC 14-05-01	Inmate Claims [(Amended 11/13/87)]
BCC 09-16-01	Security Activity Logs	BCC 15-01-01	Authorized Inmate Personal Property
BCC 09-17-01	Institutional Supervisor Inspections	BCC 15-02-01	Meritorious Living Unit (B-1)
BCC 09-18-01	Use of State Vehicles and Staff Owned Vehicles	BCC 15-03-01	Rules and Regulations for Dormitories
BCC 09-19-01	Duties and Responsibilities of the Institutional Captain	BCC 15-04-01	Restoration of Forfeited Good Time
BCC 09-19-02	Duties and Responsibilities of the Shift Supervisor	BCC 15-05-01	Extra Duty Assignments
BCC 09-20-01	Inmate Death	BCC 15-06-01	Due Process/Disciplinary Procedures
BCC 09-21-01	Tool Control	BCC 16-01-01	Inmate Furloughs
BCC 09-22-01	Emergency Communication System	BCC 16-02-01	Visiting <u>[(Amended 2/12/88)]</u> [(Amended 11/13/87)]
BCC 10-01-01	Special Management Inmates	BCC 16-03-01	Inmate Packages
BCC 11-01-01	Menu and Special Diets	BCC 16-03-02	Outgoing Inmate Packages
BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation [(Amended 11/13/87)]	BCC 16-03-03	Inmate Correspondence [(Amended 11/13/87)]
BCC 11-03-01	Food Service: Meals	BCC 18-01-01	Classification: Institutional Classification and Reclassification <u>[(Amended 2/12/88)]</u> [(Amended 11/13/87)]
BCC 11-04-01	Dining Room Guidelines	BCC 18-02-01	Racial Balance in Living Areas
BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument/Utensil Control	BCC 19-01-01	Inmate Work Programs
BCC 11-06-01	Purchasing, Storage and Farm Products	BCC 19-02-01	Classification of Inmates to Governmental Service Program [(Amended 11/13/87)]
BCC 11-07-01	Food Service Operations Manual	BCC 19-03-01	Correctional Industries
BCC 12-02-01	Personal Hygiene Items	BCC 20-01-01	Academic and Vocational School
BCC 12-02-02	Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities	BCC 20-02-01	College Programs
BCC 12-05-01	Barber Shop Services <u>[(Amended 2/12/88)]</u>	BCC 20-04-01	Educational Program Evaluation
BCC 12-06-01	BCC Housekeeping Plan	BCC 20-05-01	Educational Program Planning [(Amended 11/13/87)]
BCC 13-01-01	Sick Call and Pill Call	BCC 20-06-01	Academic and Vocational Curriculum
BCC 13-02-01	Administration and Authority for Health Services [(Amended 11/13/87)]	BCC 21-01-01	Library Services [(Amended 11/13/87)]
BCC 13-03-01	Provisions of Health Care Delivery	BCC 22-01-01	Arts and Crafts/Production and Sale of Items [(Amended 11/13/87)]
BCC 13-04-01	Licensure and Training Standards		
BCC 13-05-01	Medical Alert System		
BCC 13-06-01	Health Care Practices		
BCC 13-07-01	Emergency Medical Care Plan		

BCC 22-02-01 Privileged Trips [(Amended 11/13/87)]  
 BCC 22-03-01 Recreational Employees  
 BCC 22-04-01 Recreation and Inmate Activities  
 BCC 22-04-02 Inmate Clubs and Organizations  
 BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs  
 BCC 22-04-04 Recreation Program Availability [(Amended 11/13/87)]  
 BCC 22-04-05 Supervision of Leisure-Time Craft Club Activities and Materials  
 BCC 22-06-01 Music Club  
 BCC 22-09-01 Use of Inmates in Recreation Programs  
 BCC 23-01-01 Religious Services  
 BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers  
 BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to Unit Director  
 BCC 24-03-01 Social Services  
 BCC 25-01-01 Inmate Check Out Procedure  
 BCC 25-02-02 Temporary Release/Community Center Release  
 BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 86 employees of the Blackburn Correctional Complex, 365 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

#### CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:130. Western Kentucky Farm Center.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12 [January 15], 1988 and hereinafter should be referred to as Western Kentucky Farm Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

WKFC 01-09-01 Duty Officers, External and Internal Inspections, and Staff Tours [(Amended 1/15/88)]  
 WKFC 02-00-03 Invoice/Voucher Processing  
 WKFC 02-00-06 Purchasing Procedures  
 WKFC 02-01-01 Inmate Funds [(Amended 1/15/88)]  
 WKFC 02-02-01 Agency Funds and Accounting Procedures  
 WKFC 02-08-01 Property Receipt and Inventory Procedures  
 WKFC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings  
 WKFC 04-02-01 Employee Training and Development (Amended 2/12/88)  
 WKFC 04-04-01 Educational Assistance Program  
 WKFC 05-01-01 Research, Consultants, and Student Interns [(Amended 1/15/88)]  
 WKFC 06-00-01 Offender Records and Information Access  
 WKFC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc.  
 WKFC 09-00-01 Drug Abuse Testing [(Added 1/15/88)]  
 WKFC 10-02-01 Special Management Inmate(s)  
 WKFC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements  
 WKFC 11-00-03 Food Service Inspections, Sanitation, Purchasing, Storage, and Corrections Cabinet Farm Products  
 WKFC 11-02-01 Food Service General Guidelines  
 WKFC 11-02-02 Food Service Security  
 WKFC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets  
 WKFC 12-01-01 Inmate Clothing  
 WKFC 13-00-01 Special Health Programs [(Amended 1/15/88)]

WKFC 13-01-01 Use of Pharmaceutical Products  
 WKFC 13-02-01 Health Care Services [(Amended 1/15/88)]  
 WKFC 14-00-01 Inmate Rights and Responsibilities (Amended 2/12/88)  
 WKFC 14-04-01 Legal Services Program  
 WKFC 14-06-01 Inmate Grievance Procedure  
 WKFC 15-01-01 Hair and Grooming Standards  
 WKFC 15-03-01 Meritorious Good Time  
 WKFC 15-05-01 Restoration of Forfeited Good Time  
 WKFC 16-01-01 Visiting Policy and Procedures  
 WKFC 16-02-01 Inmate Correspondence (Amended 2/12/88)  
 WKFC 16-03-01 Inmate Access to Telephones  
 WKFC 16-04-01 Inmate Packages (Amended 2/12/88)  
 WKFC 17-01-01 Inmate Personal Property  
 WKFC 17-02-01 Inmate Reception and Orientation  
 WKFC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee  
 WKFC 18-13-01 Meritorious Housing (Amended 2/12/88)  
 WKFC 19-03-01 Inmate Wage Program  
 WKFC 19-04-01 Work/Program Assignments  
 WKFC 20-04-01 Academic Education Program(s)  
 WKFC 20-03-01 Vocational Education Program(s)  
 WKFC 22-00-01 Inmate Recreation and Leisure Time Activities (Amended 2/12/88) [(Amended 1/15/88)]  
 WKFC 22-00-02 Inmate Clubs & Organizations  
 WKFC 23-00-01 Religious Services [(Amended 1/15/88)]  
 WKFC 25-01-01 Gratuities  
 WKFC 25-02-01 Inmate Release Process  
 WKFC 25-03-01 Prerelease Programs  
 WKFC 26-01-01 Volunteer Services Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 77 employees of the Western Kentucky Farm Center, 314 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements:

Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state

and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

#### CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

PURSUANT TO: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on February 12, 1988 [November 13, 1987] and hereinafter should be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

BCFC 01-02-01 Organization and Assignment of Responsibility  
 BCFC 01-04-02 Extraordinary Occurrence Procedure  
 BCFC 01-05-01 Procedures Office: Duties and Responsibilities  
 BCFC 01-08-01 Public Information and Inmate Access to News Media  
 BCFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses  
 BCFC 01-11-01 Institutional Duty Officer's Responsibilities  
 BCFC 02-01-02 Fiscal Management: Accounting Procedures  
 BCFC 02-01-03 Fiscal Management: Agency Funds  
 BCFC 02-01-04 Fiscal Management: Insurance  
 BCFC 02-01-05 Fiscal Management: Budget  
 BCFC 02-01-06 Fiscal Management: Audit  
 BCFC 02-02-01 Inmate Accounts  
 BCFC 02-02-02 Inmate Control of Personal Funds  
 BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays  
 BCFC 02-03-01 Purchase Orders  
 BCFC 02-04-01 Processing of Invoices  
 BCFC 02-05-01 BCFC Materials Receiving Procedure  
 BCFC 02-06-01 Property Inventory  
 BCFC 04-01-01 Employee Training and Development  
 BCFC 05-01-01 Information System [(Added 11/13/87)]



# ADMINISTRATIVE REGISTER - 1863

BCFC 06-01-01	Offender Records [(Added 11/13/87)]	BCFC 13-06-02	First Aid/CPR Training Program [(Added 11/13/87)]
BCFC 06-02-01	Storage of Expunged Records [(Added 11/13/87)]	BCFC 13-06-03	Emergency Medical/Dental Care Services [(Added 11/13/87)]
BCFC 06-03-01	Court Trips [(Added 11/13/87)]	BCFC 13-07-01	Health Records [(Added 11/13/87)]
BCFC 06-03-02	Receipt of Order of Appearance [(Added 11/13/87)]	BCFC 13-08-01	Special Diets [(Added 11/13/87)]
BCFC 08-02-01	Fire Prevention [(Added 11/13/87)]	BCFC 13-09-01	Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death [(Added 11/13/87)]
BCFC 08-03-01	Fire Procedures [(Added 11/13/87)]	BCFC 13-10-01	Health Education/Special Health Programs [(Added 11/13/87)]
BCFC 08-03-02	Fire Extinguishers and Their Use [(Added 11/13/87)]	BCFC 13-11-01	Informed Consent [(Added 11/13/87)]
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances [(Added 11/13/87)]	BCFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC [(Added 11/13/87)]
BCFC 09-06-01	Search Policy/Disposition of Contraband [(Added 11/13/87)]	BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC) [(Added 11/13/87)]
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area [(Added 11/13/87)]	BCFC 13-13-01	Identification of Special Needs Inmates [(Added 11/13/87)]
<u>BCFC 10-01-01</u>	<u>Special Management Inmates (Added 2/12/88)</u>	BCFC 13-14-01	Use of Pharmaceutical Products [(Added 11/13/87)]
BCFC 11-01-01	Food Services: General Guidelines [(Added 11/13/87)]	BCFC 13-15-01	Medical Restraints [(Added 11/13/87)]
BCFC 11-02-01	Food Service: Security [(Added 11/13/87)]	BCFC 13-16-01	Specialized Health Services [(Added 11/13/87)]
BCFC 11-03-01	Dining Room Guidelines [(Added 11/13/87)]	BCFC 13-17-01	Vision Care/Optometry Services [(Added 11/13/87)]
BCFC 11-04-01	Food Service: Meals [(Added 11/13/87)]	BCFC 14-01-01	Inmate Rights and Responsibilities
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets [(Added 11/13/87)]	BCFC 14-02-01	Legal Services Program
BCFC 11-05-02	Health Requirements of Food Handlers [(Added 11/13/87)]	BCFC 14-03-01	Inmate Grievance Procedure
BCFC 11-06-01	Food Service: Inspection and Sanitation [(Added 11/13/87)]	BCFC 14-04-01	Inmate Participation in Authorized Research
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products [(Added 11/13/87)]	BCFC 15-01-01	Due Process/Disciplinary Procedures ( <u>Amended 2/12/88</u> ) [(Added 11/13/87)]
BCFC 11-08-01	Staff/Visitor Meals [(Added 11/13/87)]	BCFC 16-01-01	Inmate Visiting [(Added 11/13/87)]
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues [(Added 11/13/87)]	BCFC 16-02-01	Telephone Communications [(Added 11/13/87)]
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards ( <u>Amended 2/12/88</u> ) [(Added 11/13/87)]	BCFC 16-03-01	Mail Regulations [(Added 11/13/87)]
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry [(Added 11/13/87)]	BCFC 16-03-02	Inmate Packages [(Added 11/13/87)]
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule [(Added 11/13/87)]	BCFC 17-01-01	Assessment/Orientation Procedure [(Added 11/13/87)]
BCFC 12-03-02	Barbership Services and Equipment Control [(Added 11/13/87)]	BCFC 17-02-01	Inmate Reception Process [(Added 11/13/87)]
BCFC 12-04-01	Institutional Inspections [(Added 11/13/87)]	BCFC 17-03-01	Inmate Personal Property and Property Control ( <u>Amended 2/12/88</u> ) [(Added 11/13/87)]
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles [(Added 11/13/87)]	BCFC 17-04-01	Unauthorized Items [(Added 11/13/87)]
BCFC 12-06-01	Pest Control [(Added 11/13/87)]	BCFC 17-05-01	Inmate Canteen [(Added 11/13/87)]
BCFC 13-01-01	Organization of Health Services [(Added 11/13/87)]	BCFC 18-01-01	Institutional Classification Committee [(Added 11/13/87)]
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call [(Added 11/13/87)]	BCFC 18-02-01	Classification Document [(Added 11/13/87)]
BCFC 13-03-01	Dental Policy/Sick Call [(Added 11/13/87)]	BCFC 18-03-01	Classification Process [(Added 11/13/87)]
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations [(Added 11/13/87)]	BCFC 18-03-02	Classification Program Planning [(Added 11/13/87)]
BCFC 13-05-01	Licensure and Training Standards [(Added 11/13/87)]	BCFC 18-03-03	Population Category Status [(Added 11/13/87)]
BCFC 13-06-01	Suicide Prevention and Intervention Program [(Added 11/13/87)]	BCFC 18-04-01	Instructions for Six Month Review [(Added 11/13/87)]
		BCFC 18-05-01	Transfers to Other Minimum Security Institutions [(Added 11/13/87)]
		BCFC 19-01-01	Job and Vocational Program Assignments [(Added 11/13/87)]
		BCFC 19-02-01	Government Service Details [(Added 11/13/87)]
		BCFC 20-01-01	Academic/Vocational School [(Added 11/13/87)]

BCFC 20-01-02 Testing and Verification Procedure [(Added 11/13/87)]  
 BCFC 20-02-01 Educational Program Planning [(Added 11/13/87)]  
 BCFC 20-03-01 Academic and Vocational Curriculum [(Added 11/13/87)]  
 BCFC 20-04-01 Educational Personnel Practices [(Added 11/13/87)]  
 BCFC 21-01-01 Library Services [(Added 11/13/87)]  
 BCFC 22-01-01 Recreation and Inmate Activities [(Added 11/13/87)]  
 BCFC 22-02-01 Inmate Clubs and Organizations [(Added 11/13/87)]  
 BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs [(Added 11/13/87)]  
 BCFC 22-03-01 Privilege Trips [(Added 11/13/87)]  
 BCFC 23-01-01 Religious Service [(Added 11/13/87)]  
 BCFC 23-02-01 Visitors for Religious Programs [(Added 11/13/87)]  
 BCFC 23-03-01 Marriage of Inmates [(Added 11/13/87)]  
 BCFC 24-01-01 Social Services and Counseling Program [(Added 11/13/87)]  
 BCFC 24-01-02 Casework Services [(Added 11/13/87)]  
 BCFC 25-01-01 Release Preparation Program Description [(Added 11/13/87)]  
 BCFC 25-02-01 Temporary Release/Community Center Release [(Added 11/13/87)]  
 BCFC 25-02-02 Furloughs [(Added 11/13/87)]  
 BCFC 25-03-01 Parole Progress Report [(Added 11/13/87)]  
 BCFC 25-03-02 Parole Eligibility Dates [(Added 11/13/87)]  
 BCFC 25-04-01 Inmate Discharge Procedure [(Added 11/13/87)]  
 BCFC 26-01-01 Citizen Involvement and Volunteer Services Program [(Added 11/13/87)]

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: February 12, 1988

FILED WITH LRC: February 12, 1988 at noon

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 36 employees of the Bell County Forestry Camp, 200 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

#### PUBLIC PROTECTION AND REGULATION CABINET Kentucky State Racing Commission (Proposed Amendment)

810 KAR 1:018. Medication; testing procedures.

RELATES TO: KRS 230.210 to 230.360

PURSUANT TO: KRS Chapter 13A

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation relates to the use of medication on the horses and requirements and controls thereof.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) No horse while participating in a race shall carry in its body any medication, or drug, or substance, or metabolic derivative thereof, which is a narcotic, or which could serve as a local anesthetic, or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) Also prohibited are any drugs which might mask or screen the presence of the aforementioned prohibited drugs, or prevent or delay testing procedures.

(3) Proof of detection by the commission chemist of a medication, or drug, or substance, or metabolic derivative thereof, prohibited by subsection (1) of this section, in a saliva, urine, or blood specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that such horse was administered and carried such prohibited medication, drug, or substance, in its body while running in such race in violation of this rule.

(4) Medications, drugs, or substances must be used consistently on horses. Permission to change the use of any NSAID or bleeder medication must be obtained from the commission

veterinarian.

Section 2. When Administration Prohibited. No person other than a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which such horse is entered and prior to such race. No medication, drug, or substance shall be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarian(s).

Section 3. Responsibility for Prohibited Administration. (1) Any person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this regulation, or caused, or participated, or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering; and failing to prove such freedom from negligence (or reliance on the professional ability of a licensed veterinarian) shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this regulation, if found negligent in guarding or protecting such horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing such treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or postrace test may be grounds for disciplinary action:

(1) Such daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Such daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in prerace treatment and submitted daily reports must be in complete accord; any deviation shall result in the scratching of the particular horse, and may be grounds for disciplinary action.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered

exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing, and such detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. The stewards may at any time order the taking of a blood, urine, or other specimen from any horse entered to be tested. Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist, provided the costs of such testing are borne by the owner or trainer requesting such test. In the absence of any such order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which: finish first in any race; finish first or second in any quinella or exacta race; finish first or second or third in any stakes; and any horse whose performance in a race, in the opinion of the stewards, may have been altered by a prohibited substance.

Section 8. Procedure for Taking Specimens. (1) All horses from which specimens are to be drawn are to be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. No person other than the owner, trainer, groom, or hotwalker, of a horse to be tested, and no lead pony, shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than necessary for washing and cooling out a horse are prohibited in the detention area; buckets and water will be furnished by the commission veterinarian. If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian. A licensed veterinarian may attend a horse in the detention area only in the presence of the commission veterinarian.

(3) During the taking of specimens from a horse, the owner, or responsible trainer (who, in the case of a claimed horse shall be the person in whose name such horse raced), or a stable representative designated by such owner or trainer, shall be present and witness the taking of such specimen and so signify in writing.

(4) All containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse by the commission veterinarian or his assistant at the detention barn shall be placed equally in double containers and designated as the "primary" and "secondary" sample. These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that

has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section. The commission veterinarian shall thereon identify the horse from which such specimen was taken, as well as the race and day, verified by such witness, and such detached portions of the identification tags shall be placed in a sealed envelope for delivery only to the stewards. After both portions of samples have been identified in accordance with these provisions, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory. The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and shall be preserved in the same condition and temperature, as near as possible. The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing thereon. When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be disposed of.

(a) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from such horse, the commission veterinarian may permit such horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(b) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml. All blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc. In the event of an initial finding of a prohibited drug or of a negative in violation of these rules, the commission chemist shall notify the commission, both orally and in writing, and an oral and/or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of such initial finding. The commission veterinarian shall immediately freeze the "secondary" urine sample. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested. Testing of the "secondary" samples shall be performed at a laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) [four (4)] laboratories approved by the Kentucky State Racing Commission. The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged. A commission representative and the owner, trainer or other responsible person or a representative

of the persons notified under these rules may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed. [A blind sample may be submitted only if there are fifty (50) ml. or more of urine available. If there are less than fifty (50) ml. of urine available,] The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(c) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause such specimens to be delivered only to the commission chemist as soon as possible after sealing, but in such order or in such manner as not to reveal the identity of any horse from which each sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and another portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening same for prohibited substances, and such other tests as to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3) Upon the finding of a test negative for prohibited substances, the remaining portions of such specimen may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, such tests shall be reconfirmed, and the remaining portions, if available, of such specimen preserved and protected until such time as the stewards rule it may be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating thereon by specimen tag identification number, whether such a specimen was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until given clearance of chemical tests by the stewards.

(5) The commission chemist will make a further report to the state steward on any substance his tests showed, which are not normal in a horse. These reports shall be confidential and are not evidence for disciplinary action. They can be used as a warning to the trainer or veterinarian, by the stewards, by the commission

veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky. The residue of specimen material from such test will be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of such professional opinion as to such positive finding.

LYLE G. ROBEY, Chairman

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: February 1, 1988

FILED WITH LRC: February 1, 1988 at 3 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on March 22, 1988 at 10 a.m. at the offices of the Kentucky State Racing Commission at 535 West Second Street, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky State Racing Commission, P. O. Box 1080, Lexington, Kentucky 40588.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson

(1) Type and number of entities affected: 810 KAR 1:018 identifies the procedures for testing blood and urine samples from thoroughbred race horses. The necessity of this proposed change is a result of the technical advances in the potency of narcotic stimulants outpacing and outdating our existing rule.

If a prohibited substance is currently detected in a horse the owner now has the right to have a backup sample tested from any of four laboratories submitted by the Racing Commission. However, due to recent technical advances there are only two laboratories in the country that can verify the presence of these potent stimulants. Thus the reason for limiting our obligation to supply a list of two laboratories rather than four.

Another aspect of the technological advances creating problems stems from the "blind" submission requirement.

When the owner chooses a laboratory to do the verification the laboratory is not to have advance notice of what they are looking for. Again, with the high-potency drugs available however the two laboratories capable of testing for such substances will not do a "blind" test. The testing procedures are extremely complicated and the laboratories must know in advance what they are looking for before they can verify its presence or absence.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: See (1) above.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A

#### CABINET FOR HUMAN RESOURCES Department for Mental Health and Mental Retardation Services (Proposed Amendment)

902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.

RELATES TO: KRS Chapter 210

PURSUANT TO: KRS 210.010

NECESSITY AND FUNCTION: KRS 210.010 directs the Secretary of the Cabinet for Human Resources to prescribe regulations for the institutions under the control of the cabinet. The function of this regulation is to adopt policies and procedures for such institutions.

Section 1. Oakwood Policy Manual. The policies set forth in the November 15, 1987, edition of the "Oakwood Policy Manual" consisting of three (3) volumes relating to the operation of Oakwood ICF-MR Facility are hereby adopted by reference.

Section 2. Hazelwood Policy Manual. The policies and procedures set forth in the February 15, 1988 [November 15, 1987], edition of the "Hazelwood Policy Manual" consisting of two (2) volumes relating to the operation of Hazelwood ICF-MR Facility are hereby adopted by reference.

Section 3. Central State Hospital ICF-MR Policy Manual. The policies and procedures set forth in the November 15, 1987, edition of the "Central State Hospital ICF-MR Policy Manual" consisting of two (2) volumes relating to the operation of Central State Hospital ICF-MR Facility are hereby adopted by reference.

Section 4. Eastern State Hospital Policy Manual. The policies and procedures set forth in the February 15, 1988 [November 15, 1987], edition of the "Eastern State Hospital Policy Manual" consisting of twenty-one (21) volumes relating to the operation of Eastern State Hospital Facility are hereby adopted by reference.

Section 5. Central State Hospital Policy Manual. The policies and procedures set forth in the February [January] 15, 1988, edition of the "Central State Hospital Policy Manual" consisting of nineteen (19) volumes relating to the operation of Central State Hospital Facility are hereby adopted by reference.

Section 6. Western State Hospital Policy Manual. The policies and procedures set forth in

the February [January] 15, 1988, edition of the "Western State Hospital Policy Manual" consisting of thirty-three (33) volumes relating to the operation of Western State Hospital Facility are hereby adopted by reference.

Section 7. Glasgow ICF Policy Manual. The policies and procedures set forth in the November 15, 1987, edition of the "Glasgow ICF Policy Manual" consisting of twelve (12) volumes relating to the operation of Glasgow ICF Facility are hereby adopted by reference.

Section 8. Western State Hospital ICF Policy Manual. The policies and procedures set forth in the November 15, 1987, edition of the "Western State Hospital ICF Policy Manual" consisting of nine (9) volumes relating to the operation of Western State Hospital ICF Facility are hereby adopted by reference.

Section 9. Volta Policy Manual. The policies and procedures set forth in the November 15, 1987, edition of the "Volta Policy Manual" consisting of one (1) volume relating to the operation of Volta Facility are hereby adopted by reference.

Section 10. Kentucky Correctional Psychiatric Center Policy Manual. The policies and procedures set forth in the February [January] 15, 1988, edition of the "Kentucky Correctional Psychiatric Center Policy Manual" consisting of thirteen (13) volumes relating to the operation of Kentucky Correctional Psychiatric Center Facility are hereby adopted by reference.

Section 11. Location of Manuals Referenced in This Regulation. A copy of each manual referenced in this regulation is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky, and is open to public inspection.

Section 12. Summary of Amendments.

#### Section 2 - Hazelwood Policy Manual

Volume B, Section A, #8 - Affirmation of Residents' Rights.  
The right to vote is added under 5A.

#### Section 4 - Eastern State Hospital Policy Manual

Volume E1, page 35 - policy changed as follows:

- 1) A visitor will no longer be required to go to the Switchboard to obtain a pass. The Security Guard will issue both a "Grounds Pass" and "Permit to Visit" pass. The guard will call the Switchboard and/or the nursing for verification (to verify that we have the patient and to see if there are any restrictions on visiting) before issuing the pass.
- 2) Visiting hours on Saturday, Sunday and holidays now begins at 10 a.m.

#### Section 5 - Central State Hospital Policy Manual

Volume E1, Section FF, Page 1 & 2 - change in 1st paragraph to reflect "Department for Mental Health/Mental Retardation Services."

Volume E5 - Dietary Manual - a revised manual replaces the previous Dietary Manual which has

been completely revised and rewritten. It has been written to meet all applicable standards of the Joint Commission on Accreditation of Health Organizations, State Licensure Regulations and regulations of the Health Department.

#### Volume E7 - Plant Operations and Maintenance Manual

This is a new departmental manual which has not been covered in any previous manual. The manual has been written to meet all applicable standards of the Joint Commission on Accreditation of Health Organizations. It replaces the Engineering/Maintenance Manual.

#### Volume E4 - Administrative Operations Services Manual

This is a new departmental manual, which has not been covered in any previous manual. The manual has been written to meet all applicable standards of the Joint Commission on Accreditation of Health Organizations, where applicable. It covers the Security, Transportation and Switchboard functions of Central State Hospital. It replaces the "Switchboard" Manual.

#### Section 6 - Western State Hospital Policy Manual

Volume 33 - Infection Control Manual - a new authority statement behind the Philosophy and Objectives page.

#### Section 10 - Kentucky Correctional Psychiatric Center Policy Manual

Volume J1 - B40 - Packages for Postconvicted Prisoners. This is a new policy in response to facility needs.

#### [Section 5 - Central State Hospital Policy Manual

##### Vol E 11 Pharmacy Manual

Section 4 - Page Two - The word "nursing" was changed to read "pharmacy" and item number 8 has been added in order to meet JCAH 1988 guidelines.

Section Y No. 7 - Page Two - Items No. 16 and 17 to include PRN orders for medication to be limited to two weeks and physicians' orders must clearly state the administration times for the intervals between doses.

Section Y No. 11 - Items No. 4, 5, and 6 were added to clarify the monitoring and evaluation of adverse drug reactions.

##### Vol E 1 - General Hospital Policy and Procedure Manual

Section B No. 30 - "Hospital Committees" - new policy to be added to facilitate a systematic operation of the hospital and assist departments in providing quality care.

Section D No. 1 - "Bylaws of the Staff" - bylaws were revised to update the ultimate authority of the Governing Board and to include that Medical Staff shall include all physicians and dentists who are privileged to provide quality care for patients at Central State Hospital.

Section K No. 1 - "Psychological Services" - revised policy to add Procedure Nos. 3 and 5. Procedure No. 6 changed Executive Clinical Committee for Credentialing to read Privileging Committee.

Section M No. 1 - "Speech & Language

Pathology/Audiology Programs" - no changes made other than having the new Hospital Director's signature on the policy.

CSH Quality Assurance Committee's Flow Chart - revised to be added behind Section Z No. 1 behind Page 4 to change the bottom block to read "Systematic Monitoring Mechanism."

Utilization Review & Medical Care Evaluation Plan of CSH - revised to be added behind Section FF No. 1 - Page 1, Paragraph I - approved by Medical Staff instead of Clinical Staff. Page 1, Paragraph IV - A. Five active alternates appointed has been added; chairperson will serve two years. Page 2, Paragraph IV - G. An alternate member shall be designated to serve in member's absence. Page 2, Paragraph VI - 3. Federal agencies added. Page 3-6. To comply with the confidentiality. Page 3, Paragraph VII - A. - (3rd paragraph) Health Care Financing Administration has been added (See attached addendum) has been deleted. Page 5, Paragraph 5 - Fifth paragraph on page has been deleted, no longer appropriate. Page 5, Paragraph IV - Discharge planning - bottom paragraph has been added, was deleted a few years back when we had no treatment team.

Section HH No. 1.40 - "Patient Name Bands & Privileges" - revised policy - under Procedure No. 4 White Band was changed to Solid White Band and Blue Band was added to Procedure No. 4.

Section HH No. 2.60 - Testimony in Mental Inquest Court (KRS 202A) Preliminary Health and Jury Trial - revised to change Procedure No. 2 to read in the first sentence (6) days rather than (5) days.

Section HH No. 2.90 - "Referral for Follow-up Outpatient Treatment" - revised to change Procedure No. 1 to read Social Worker instead of Case Manager and the same for the Procedure No. 2. Procedure No. 4 & 5 was deleted to add to the No. 4 which states the Social Worker will document this information on the discharge checklist.

Section HH No. 3.10 - "Death of Patient" - revised the entire policy to update designees to be notified promptly when death occurs and including if an active member of the Army is pronounced dead at Central State Hospital.

Section HH No. 5.76 - "Intimate Sexual Behavior with Consenting Adult Patients" - this is a new policy to be added.

Section HH No. 5.77 - "In-house Rape or Sexual Assault" - new policy to be added to assist clinical staff in making decisions about the care of patients who have been raped or sexually assaulted.

Section HH No. 6.40 - "Prevention of Violence & Destructive Behavior" - revised to delete (30 under the Procedure to remove the age and delete (b) under Procedure No. 1.

Section HH No. 9.51 - "Psychotherapeutic Interventions" - new policy combining Family Therapy, Therapy Progress Notes, Individual Therapy and Group Psychotherapy into one policy. This policy covered similar content areas and were combined for reason of efficiency.

Section HH No. 10.26 - "Anesthesia Services" - revised only to change 10.25-1 to be as 10.26.

Section HH No. 10.50 - "Serum/ETOH and Urine Drug/ETOH Screening" - revised to read Serum/ETOH in the policy and under Procedure No. 3 a new paragraph was added and Procedure No. 7 was added.

Delete the following policies from your manual: Section HH No. 8.45 - Nursing Care Plan

and Form, Section HH No. 9.30 - Family Therapy, Section HH No. 9.35 - Group Psychotherapy and Section HH No. 9.40 - Individual Therapy.

## Section 6 - Western State Hospital Policy Manual

Vol F 2 Nursing procedure Manual  
Table of Contents - to reflect additions.

Unit I Procedure #13 - New Procedure for Hemocult Specimen.

Unit III Procedure #5 - revised to include new intervention in case of poisoning.  
Procedure #2 - new information applicable to isolation.  
Procedures #3, 4, 5, 6, 7, and 8 revised procedure consistent with the guidelines of the Center on Disease Control.

Unit V Procedure #9 - revised to reflect current nursing practice on infection control.

Unit VI Procedure #2, "Lavage" - revised to follow current practice.

Vol F-11 Revised to include statement #3(g).

## Section 10 - Kentucky Correctional Psychiatric Center

J-2/A-4 "Chart Form Sequence," revised.  
Consultation Flow Sheet and DSU Admission Screening, and Seclusion/Restraint Flow Sheet added.  
Nursing Assessment and History deleted. Daily Seclusion/Restraint Record deleted.

J-2/A-4 "Chart Stripping," Revised.  
Seclusion/Restraint Flow Sheet added.  
Nursing Assessment & History, and Daily Seclusion/Restraint Record deleted.

J-2/A-4a "Confidentiality," newly implemented.  
J-2/A-9 "Fire and Safety - Nursing Staff Duties," revised information added.

J-2/A-25a New Policy on "Tornado/Severe Weather-nursing Staff Duties/Responsibilities."

J-2/B-2 "Admission," Revised Information added on DSU Screening, Infection Control, and Room Assignment.

J-2/B-3 "Admission Chart Packet," revised DSU Screening. Nursing History Assessment and Nursing Care Plan added. Nursing Care Plan and Nursing History deleted.

J-2/B-9 "Charting on Inpatients," revised. Policy written with information added concerning Suicide Precaution charting, Nursing Discharge Summary Sheet.

J-2/B-11 "Consultations Off Grounds," revised. Attending physician's approval added. Charting NCP deleted. Consultation Flow Sheet added.

J-2/B-13 "Dental Consultations," revised. Time change for making appointments. Consultation flow sheet added.

J-2/B-18 "Discharge," revised. New Nursing Discharge Summary Sheet added.

J-2/B-22 "EEG," revised. Change scheduling to Medical Records instead of Nursing Clerk. Charting NCP deleted. Charting consultation flow sheet added.

J-2/B-27 "Medical Emergency Plan/Prehospital Care Report" (added), Tri-county Community Hospital added.



J-2/B-28 "Enema (Cleansing)," revised. Charting MAR added. Charting NCP deleted.

J-2/B-30 "Fecal Impaction Removal," revised. Charting MAR added.

J-2/B-37 "In-hospital Incident Report," revised. Nursing quality Assurance statement added.

J-2/B-40 "Laboratory Procedures and EKG Procedures," revised. Stat Lab Procedures changed to include Tri-county Community Hospital.

J-2/B-41 "Medical Treatment," revised. Charting NCP deleted.

J-2/B-51 "Medication Administration Record," revised.

J-2/B-53 "Automatic Stop Order Policy on Drugs," revised.

J-2/B-56 "Reporting Drug Reactions," revised. Added physician to fill out report form obtained from Pharmacist.

J-2/B-57 "Medication Errors," revised. Addition of form "Tool for Scoring Medication Errors" with revised point system.

J-2/B-59 "Drugs Brought to KCPC by Admitted Patients," revised. Recording on Discharge Check-out Form and Nursing Discharge Flow Sheet added.

J-2/B-67 "Physician Log Sheet," revised. Total Patients in Daily Restraint and Seclusion. Name change for clarification. Examples given for recording.

J-2/B-78 "To Obtain a Stool Specimen," revised. Charting NCP deleted.

J-2/B-80 "Suicide Precautions," revised. Charting changed due to use of new Seclusion/Restraint Flow Sheet.

J-2/B-82 "Telephone Orders/Verbal Orders," revised. Verbal orders added.

J-2/B-86 "Transcribing Physician Orders," revised. Addition of verbal orders.

J-2/B-90 "Vital Signs," revised. A. Routine (explained). B. Special (explained).

J-2/B-91 "Weight," revised. Monitoring and teaching included and clarified.

J-2/B-92 "X-Ray Procedures," revised. Scheduling discipline changed. Consultation Flow Sheet added.]

DENNIS D. BOYD, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 3, 1988

FILED WITH LRC: February 11, 1988 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988, at 9 a.m. in the Health Services Auditorium, 1st Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1988 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Verna Fairchild

(1) Type and number of entities affected: This regulation with the attached reference material is the ongoing policy and procedure manual of the state facilities for the treatment of patients with mental illness and mental

retardation. These facilities function with 2,880 staff members serving 1,850 residents.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: This regulation usually does not affect the fiscal operation of these state facilities significantly. It affects the care and treatment of patients, compliance with JCAH standards, and Kentucky licensure regulations. The work environment of the staff is frequently the subject of this regulation also, along with the orderly management of the various programs.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: Present procedure not previously adopted by regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

#### CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

902 KAR 20:008. License procedures and fee schedule.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990  
PURSUANT TO: KRS 216B.040, 216B.105, Executive Order 86-366

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This regulation provides for the requirements for obtaining a license to operate a health facility and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Volunteer service" means an ambulance service in which none of the drivers or attendants receive any compensation for their work.

(2) "Inspecting agency" means the Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(3) "Commission" means the Commission on Health Economics Control in Kentucky.

Section 2. Licenses. (1) No person shall operate any health facility in this Commonwealth without first obtaining the appropriate license therefor.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) All applications for licensure shall be filed with the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(4) All applicants for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular health facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the health facility. Any regulatory violation identified during such inspections will be transmitted in writing to the health facility by the inspecting agency. The health facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. Such plan shall specify the date(s) by which each of the violations will be corrected. Following a review of the plan, the inspecting agency shall notify the health facility in writing of the acceptability of the plan. In instances where a portion or all of the plan is unacceptable, the inspecting agency shall specify the reasons for the unacceptability. In such cases, the health facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(5) All licensees shall, as a condition of licensure or relicensure, be in compliance with the following reporting requirements unless otherwise exempted by statute. All licensees shall have submitted completed annual routine reports approved by the Commission on Health Economics Control in Kentucky and any special reports required by the commission concerning health services provided, health manpower employed, or utilization of health services within forty-five (45) days of the date the request is mailed. Completed routine semiannual reports approved by the commission shall be submitted within thirty (30) days of the date the request is mailed. Licensees shall be notified of the content of routine (e.g., annual and semiannual reports) reports as follows:

(a) Licensees shall be notified of the content of reports for calendar year 1986 and subsequent years no later than October 1 of the previous year.

(b) The cabinet shall recommend the content of the reports to the commission no later than the date of the regularly scheduled September meeting of the commission.

(6) Unannounced inspections shall be conducted on complaint allegations. Such inspections shall be conducted utilizing the procedures outlined under subsection (4) of this section.

(7) All licenses shall expire on December 31 following the date of issuance unless otherwise expressly provided in the license certificate.

(8) Licenses may be renewed upon payment of the prescribed fee and compliance with the applicable provisions of the licensure regulations.

(9) Each license to operate shall be issued only for the person or persons and premises, including the number of beds (if applicable), named in the application and shall not be transferable. A new application shall be filed in the event of change of ownership. A change of ownership for licenses shall be deemed to occur when more than fifty (50) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one (1) person from

another.

(10) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee will be charged for the remainder of the licensure period.

(11) There shall be full disclosure to the commission of the name and address (and any changes) of:

(a) Each person having (directly or indirectly) ownership interest of ten (10) percent or more in the facility;

(b) Each officer and director of the corporation, where a facility is organized as a corporation; and

(c) Each partner, where a facility is organized as a partnership.

Section 3. Fee Schedule. (1) Fees for review of plans and specifications for construction of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	\$ .03 per sq. ft. [ .025 ]
(initial through final)	\$1,900 maximum [1,500]
(b) All other health facilities plans and specifications review	\$ .03 per sq. ft. [ .025 ]
(initial through final)	\$1,000 maximum [800]

(2) Annual fees. The annual licensure fee (including renewals) for health services shall be as follows:

License Type	Rate
(a) Air ambulance services	\$ 65 [50]
(b) Alternative birth centers	\$130 [100]
(c) Ambulatory surgical center	\$130 [100]
(d) Chemical dependency treatment service	\$7 [5] per bed \$130 [100]/minimum \$1,300 /maximum [1,000]
(e) Community mental health and mental retardation center	\$630 [500]
(f) Day health care	\$65 [50]
(g) Ambulance service (Per nonvolunteer service)	\$65 [50]
(Per volunteer service)	\$15 [10]
(h) Family care homes	\$35 [25]
(i) Group homes mentally retarded/developmentally disabled	\$65 [50]
(j) Health maintenance organizations	\$4 [3] per 100 patients
(k) Home health agencies	\$65 [50]
(l) Homemaker	\$65 [50]
(m) Hospice	\$15 [10]
(n) Hospitals	
1. Accredited hospital	\$4 [3] per bed \$130 [100]/minimum \$1,300 /maximum [1,000]
2. Nonaccredited hospital	\$7 [5] per bed \$130 [100]/minimum \$1,300 maximum [1,000]

(o) Intermediate care facilities	\$7 [5] per bed \$130 [100]/minimum \$1,300 maximum [1,000]
(p) Medical detoxification services	No fee
(q) Nonemergency health transportation service (per service)	\$65 [50]
(r) Nursing home	\$7 [5] per bed \$130 [100]/minimum \$1,300 maximum [1,000]
(s) Outpatient clinics and ambulatory care facilities	\$130 [100]
(t) Personal care home	\$3 [2] per bed \$65 [80]/minimum \$650 [500]/maximum
(u) Primary care center	\$130 [100] \$20 per satellite [15]
(v) Psychiatric hospitals	
1. Accredited	\$4 [3] per bed \$130 [100]/minimum \$1,300 maximum [1,000]
2. Nonaccredited hospital	\$7 [5] per bed \$130 [100]/minimum \$1,300 maximum [1,000]
(w) Rehabilitation (outpatient)	\$65 [50]
(x) Renal dialysis	\$15 per station [10]
(y) Rural health clinics	\$65 [50]
(z) Skilled nursing facilities	\$7 [5] per bed \$130 [100]/minimum \$1,300 maximum [1,000]
(aa) Special health clinics	\$130
(bb) Specialized medical technologies	\$130
(cc) Mobile health services	\$130
(dd) Comprehensive physical rehabilitation hospitals	
1. Accredited	\$4 per bed \$130/minimum \$1,300/maximum
2. Nonaccredited	\$7 per bed \$130/minimum \$1,300/maximum

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 2, 1988

FILED WITH LRC: February 11, 1988 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander

(1) Type and number of entities affected: All health care facilities licensed under the

authority of KRS Chapter 216B.

(a) Direct and indirect costs or savings to those affected:

1. First year: Total increased costs to those who received licenses from this decision will be approximately \$95,000.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: State revenues in form of licensure fees will increase \$95,000.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This may be an example of tiering in that different health services are required to pay fees related to their type and size.

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Proposed Amendment)

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

RELATES TO: KRS 205.200(2), 205.210(1)

PURSUANT TO: KRS 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, hereinafter referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his/her eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied

for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

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

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 8 of this regulation, and any educational allowance as set forth in Section 9 of this regulation.

(9) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(10) "Recoupment" means recovery of overpayments of assistance payments.

(11) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

(12) "Lump sum income" means income that is not earned, does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his/her parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

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

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

(b) Home furnishings, including all appliances;

(c) Clothing;

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

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot/space per family member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

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

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

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and/or amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and/or amount deemed available from a stepparent(s) living in the home, and/or amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months

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

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

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

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

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

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

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience

Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Principal of loans;

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

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

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

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

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

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

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

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

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which

represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance; and

(aa) The first thirty (30) dollars of small nonrecurring gifts received per calendar quarter for each individual included in the assistance group.

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

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of seventy-five (75) dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$160 per month per individual for full-time employment or \$110 per month per individual for part-time employment.

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

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

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/her earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

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

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and/or parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

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

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or could be claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. The gross non-AFDC income and resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) hereinafter referred to as sponsor shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

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

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

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

(c) Amounts paid by the sponsor to nonhousehold members who are or could be claimed as dependents in determining his/her federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

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

Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.

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

Number of Eligible Persons	Monthly Standard
1 child	\$147
2 persons	\$179
3 persons	\$207
4 persons	\$259
5 persons	\$303
6 persons	\$342
7 or more persons	\$381

Section 9. Educational Allowance. An educational allowance shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for said month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly.

(1) Technical requirements. The following requirements must be met during any month for which an education allowance is paid.

(a) The caretaker relative must be included in the assistance grant;

(b) The caretaker relative must be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program for which no wage or child care allowance is received. If attending college, the caretaker relative must be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost must have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines said child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. The payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	\$ 20	-	\$ 25	-
GED	\$ 94	-	\$117	-
Elementary School/				
Junior High	\$174	-	\$218	-
High School	\$174	-	\$218	-
Vocational School	\$174	-	\$218	-
College/University	\$174	\$103	\$218	\$129

(3) Limitations. The number of months an educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy: Type of Program      Maximum  
Literacy                                      24 months

(b) High school level.

1. A student may change programs within this



level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED) High School (includes primary and secondary)	16 months 27 months

2. A student wishing to continue his/her education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; and/or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8; and/or

(c) Civil action in the court of appropriate jurisdiction.

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

(5) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(6) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective April 1, 1988 unless otherwise specified [December 1, 1987].

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 28, 1988

FILED WITH LRC: January 29, 1988 at 2 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for March 21, 1988 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by March 16, 1988 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: These program changes potentially affect all AFDC families. The provision relating to JTPA income will affect only those families with children participating in the Work Experience Limited Work Experience, and Tryout Employment Programs. This is estimated to be 534 families. The provisions relating to good cause will allow an applicant/recipient to receive deductions from income when he/she refused, reduced, or terminated employment in certain situations relating to availability of child care. This will be a direct savings to those affected, but the number is minimal. Removal of nonmedical transportation from the list of needs covered by the AFDC standard will not affect the amount of the basic AFDC payment.

(a) Direct and indirect costs or savings to those affected: Savings are to the 534 families with children participating in the specified JTPA programs. The other provisions have minimal or no fiscal impact.

1. First year: \$322 increased benefits per family for approximately 534 families.

2. Continuing costs or savings: \$644 increased benefits per family for approximately 534 families.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minimal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct costs of the provision relating to JTPA - \$172,000 (\$48,300 state, \$123,700 federal).

2. Continuing costs or savings: \$344,000 direct costs (\$93,800 state, \$250,200 federal).

3. Additional factors increasing or decreasing costs: Changes in JTPA funding or priority of programs.

(b) Reporting and paperwork requirements: Minimal.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering not applicable to this program.

**CABINET FOR HUMAN RESOURCES  
Department for Social Services  
Division of Family Services  
(Proposed Amendment)**

905 KAR 1:180. DSS policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, and 600 to 645

PURSUANT TO: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250

NECESSITY AND FUNCTION: P.L. 97-35, "Block Grants for Social Services - Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this manual is to implement a statewide social services program.

Section 1. DSS Policies and Procedures Manual. For the purpose of implementing and enforcing those sections of the Kentucky Revised Statutes relating to social service programs for children and adults that apply to the Department for Social Services, the Secretary of the Cabinet for Human Resources hereby adopts, by reference, the Department for Social Services' Policy and Procedural Manual as revised through January 1, 1988 [November 6, 1987], as the current policies and procedures of that department. The manual contains policies and procedures relating to management procedures, adult services, support services, family and children's services, and youth services. The Department for Social Services' Policy and Procedures Manual may be reviewed in any departmental field office located in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky, during regular working hours.

Section 2. Summary of Amendment. In Chapter IV, Family and Children's Services, delete in their entirety Section A, Child Protective Services, and Section B, Commitment and Termination, dated 7/87, and substitute in lieu thereof the revised Section A, Child Protective Services, and Section B, Commitment and Termination, dated 1/88. These revised sections clarify a variety of procedures including the procedures for child abuse/neglect reporting, interviewing children, and medical consent for children under temporary or emergency custody of the Department for Social Services. [In Chapter

I, Management Procedures, strike the entire Section A.5, Fair Hearing, pages 1 through 13 dated 7/87, and substitute in lieu thereof Section A.5, Fair Hearing, pages 1 through 13 dated 11/87. The revised Section A.5 transmits revisions dealing with clarifying when services should be continued, giving adequate notice to clients, requesting a hearing, adding a definition for "affecting," and changing the definition of "hearing officer."]

LARRY MICHALCZYK, Acting Commissioner  
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 10, 1988

FILED WITH LRC: February 11, 1988 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on March 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by March 16, 1988: Ryan Halloran, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Eugenia Jump

(1) Type and number of entities affected: Department staff statewide.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No significant changes.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Applies statewide.

PROPOSED REGULATIONS RECEIVED THROUGH FEBRUARY 15, 1988

REVENUE CABINET

Department of Professional & Support Services

103 KAR 18:140. Twice-monthly filing and payment of withholding of individual income tax.

RELATES TO: KRS 141.330, 141.990

PURSUANT TO: KRS Chapter 13A

NECESSITY AND FUNCTION: Under authority of KRS 141.330, this regulation prescribes a procedure whereby employers, whose average monthly withholding of individual income tax for the previous twelve (12) months exceeds \$60,000, are required to remit in two (2) installments the tax determined to be withheld.

Section 1. Taxpayers whose average monthly withholding of individual income tax for the previous twelve (12) months exceeds \$60,000, are required to remit in two (2) installments the tax determined to be withheld. The withholding tax return for the first fifteen (15) days of the month shall be due and the tax withheld or required to be withheld shall be paid within ten (10) days after the close of such reporting period. The withholding tax return for the remainder of the month shall be due and the tax withheld or required to be withheld shall be paid within ten (10) days after the close of such reporting period.

Section 2. The Revenue Cabinet shall review all employer accounts for the previous twelve (12) monthly periods and identify those employers who first meet the \$60,000 test based on the average monthly tax liability for these periods. In determining the amount of tax due from a taxpayer for a reporting period, the cabinet shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. The cabinet shall notify such employers in writing of their obligation to start making twice-monthly payments at least forty (40) days in advance of the date that the first such payment is to be forwarded to the cabinet.

Section 3. Employers required to make twice-monthly payments as provided in Section 1 of this regulation shall continue such practice until notified otherwise in writing by the cabinet. Employers will be relieved of such responsibility only if their average monthly withholding liability for the year is less than \$55,000 for two (2) successive years.

Section 4. The Revenue Cabinet shall develop procedures for implementing and administering this twice-monthly filing and payment program.

Section 5. Employers failing to comply with the provisions of this regulation shall be subject to penalties as provided in KRS 141.990(6)(a) and interest as provided in KRS 131.183.

Section 6. The initial filing period to which the filing requirements set forth in this regulation apply shall be July 1 through July 15, 1988.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: February 4, 1988

FILED WITH LRC: February 5, 1988 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on March 28, 1988, at 10 a.m. in Room 406 of the Capital Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capital Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: This income tax withholding regulation impacts on those employers whose monthly income tax withholding for the prior 12 months exceeds \$60,000. There are approximately 100 employers in this classification and they currently file monthly withholding returns.

(a) Direct and indirect costs or savings to those affected:

1. First year: Employers currently file withholding returns by the fifteenth of each month to report and pay tax withheld during the previous month. Thus, they have retained tax withheld for varying periods of time prior to filing returns by the fifteenth of the following month. The regulation does not increase taxpayer liability for tax withheld, but will add varying but unknown amounts of administrative and accounting costs to account for and pay tax withheld twice monthly. The bulk of this cost will occur in establishing necessary programs.

2. Continuing costs or savings: A portion of additional costs discussed in (1) above will be repeated each month.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Any interest lost by employer on income tax withheld and invested until return due dates.

(b) Reporting and paperwork requirements: Approximately 100 employers will incur additional accounting costs and paperwork in order to determine income tax withholding under this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minor additional administrative cost for form redesign and processing modifications.

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: This regulation results in an increase in state revenue in the initial month of \$8,000,000 which reflects an additional one-half month collection.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Since statutory authority exists to revise filing and payment requirements by regulation, alternatives were not considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

#### REVENUE CABINET

Department of Professional and Support Services

103 KAR 25:130. Twice-monthly filing and payment of sales and use taxes.

RELATES TO: KRS 139.590, 139.980, 139.990

PURSUANT TO: KRS Chapter 13A

NECESSITY AND FUNCTION: In order to facilitate payment of the sales and use taxes levied in KRS Chapter 139, KRS 139.590 permits the Revenue Cabinet, within its discretion, to require tax payments for periods other than monthly. This regulation prescribes a procedure whereby taxpayers whose average monthly sales and use tax liability exceeds \$10,000 are required to remit in two (2) installments the sales and use tax determined to be due.

Section 1. Taxpayers whose average monthly sales and use tax liability exceeds \$10,000 must report and remit in two (2) installments the sales and use tax due for the month. The sales and use tax return for the first fifteen (15) days of the month shall be due and the tax applicable to transactions which occurred during this period shall be paid on or before the 25th day of the month in which the fifteen (15) day reporting period occurred. The sales and use tax return for the remainder of the month shall be due and the tax applicable to transactions which occurred during this period shall be paid on or before the tenth day of the month following the remainder of the month reporting period.

Section 2. The Revenue Cabinet shall review all taxpayer payments for the previous twelve (12) monthly periods and identify those taxpayers who first meet the \$10,000 test based on tax liability for these periods. In determining the amount of tax due from a taxpayer for a reporting period, the cabinet shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. The cabinet shall notify such taxpayers in writing of their obligation to begin making twice-monthly payments at least forty (40) days in advance of the date that the first such payment is to be forwarded to the cabinet.

Section 3. Taxpayers required to make twice-monthly payments described in Section 1 of this regulation shall continue such practice until notified otherwise in writing by the cabinet. Taxpayers will be relieved of such responsibility only if their average monthly tax liability for the year is less than \$8,000 for two (2) successive years.

Section 4. The Revenue Cabinet shall develop procedures for implementing and administering

the twice-monthly filing and payment program.

Section 5. Taxpayers failing to comply with the provisions of this regulation shall be subject to penalties as provided in KRS 139.980 and interest as provided in KRS 131.183.

Section 6. The initial filing period to which the filing requirements set forth in this regulation apply shall be July 1 through July 15, 1988.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: February 4, 1988

FILED WITH LRC: February 5, 1988 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation will be held on March 28, 1988, at 10 a.m. in Room 406 of the Capital Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five (5) days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capital Annex Building, Frankfort, Kentucky 40620.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: This sales and use tax regulation impacts those taxpayers whose average monthly tax liability for the prior 12 months exceeds \$10,000. There are approximately 1,000 sales and use taxpayers in this classification and they currently file monthly sales and use tax returns.

(a) Direct and indirect costs or savings to those affected:

1. First year: Taxpayers currently file sales and use tax returns by the 20th of each month for tax collected on the transactions occurring in the previous month. Thus, they have retained sales tax collected for varying periods of time. The regulation does not increase taxpayer sales and use tax liability, but will add varying but unknown amounts of administrative and accounting costs to determine sales and use tax liability twice monthly. The bulk of this cost will occur in establishing necessary programs.

2. Continuing costs or savings: A portion of additional costs discussed in (1) above will be repeated each month.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Interest is lost by taxpayer on sales tax collected and invested until return due date.

(b) Reporting and paperwork requirements: Approximately 1,000 taxpayers will incur additional accounting and paperwork in order to determine sales and use tax liability.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minor additional administrative costs for form design and processing modifications.

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: This regulation results in an increase in state revenue in the initial

month of \$22,000,000 which reflects an additional one-half month collection.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Since statutory authority exists to revise filing and payment requirements by regulation, alternatives were not considered.

(5) Identify any statute, administrative regulation or government policy which may be in

conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of the February 8, 1988 Meeting

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 8, 1988 at 2 p.m. in Room 109. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. On motion of Senator McCuiston, seconded by Representative Meyer, the minutes of the January 4, 1988 meeting were approved.

Present February 8, 1988 were:

**Members:** Representative Mark D. O'Brien, Chairman; Senators Harold Haering and Pat McCuiston; Representatives Jim Bruce and Joe Meyer.

**Guests:** Representative Bill Lear; Pete Pfeiffer, Department of Fish and Wildlife Resources; Ward "Butch" Burnette, J. Michael Noyes, Charles Prebble, Department of Agriculture; John E. Hornback, Natural Resources & Environmental Protection Cabinet (Division of Water); Michael Bradley, Corrections Cabinet; G. Stephen Anders, Robert K. Bird, Transportation Cabinet; Charles W. McDowell, Sue G. Simon, Department for the Blind; Rose Ashcraft, Tom Edwards, Guy Schoolfield, Labor Cabinet; Carl B. Larsen, Harness Racing Commission; Betty Beshoar, Barbara Coleman, Karen Doyle, Eric Friedlander, Eugenia Jump, Nancy Rawlings, Cabinet for Human Resources; David S. Beck, Sam Crawford, Ron Pryor, KY Farm Bureau; Shirley Buckman, Central KY Community Action Day Care; Sue Winans, Edu-Care School; Margaret W. Bridgers, Jefferson County Association for Child Care; Iva Sergeant, J-Town Pre-School Inc.; Amelia Tyra, Jefferson County Public Schools; Karen Hellard, KY Association for Child Care Management; Bonnie Sullivan, KY Association of Child Care Managers; Linda Locke, KY Citizens for Child Development; Joyce Tungate, Kiddies Play-A-Day Nursery School & Kindergarten; Helga L. Kelly, Lorer Inc.; Mrs. L. D. Fulkerson, Second Presbyterian Weekday School; Kim S. McClure, Springdale Presbyterian Preschool; Faye Basham, T.L.C. Day Care Center; Betty Cotton, Thomas Jefferson Preschool; Ted Estes; James McGee; R. W. "Dub" Wilkins, Associated General Contractors; D. Ray Gillespie, KY Hotel-Motel Association; Marineil C. Brown, Northern KY Voc-Tech School; Robert Hughes, Doug Oliver, East Kentucky Power; Buddy C. Yount, Federal Highway Administration; Robert Page, Vending Stand; John T. Phillips, U.S. Department of Labor - OSHA.

**LRC Staff:** Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, Ann Gordon & Carla Arnold.

**Press:** Ted Sloan, State Journal.

The Administrative Regulation Review Subcommittee met on February 8, 1988, and submits this report:

The Subcommittee attached a statement of objection to the following regulation and requests that the LRC refer this to the appropriate committee for further review:

**Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Sanitary Engineering**

401 KAR 6:040 (Water treatment plants; water distribution systems; certification of operators.) Representative Bill Lear attended and questioned the authority of the cabinet to limit the time a consulting operator may operate a system. After discussion, the Subcommittee approved the following motion: The Subcommittee attaches a statement of objection that this regulation exceeds statutory authority by including this limitation; the Subcommittee further requests that LRC refer this regulation to the appropriate committee for study during this session.

The Subcommittee determined that the following regulations, as amended, complied with KRS Chapter 13A:

**Commerce Cabinet: Department of Agriculture: Kentucky Grain Insurance and Grain Dealers**

302 KAR 34:050 (Grain Dealer Licensing of Federal Warehouses.) The department amended the administrative regulation to exempt grain warehouses that do not buy grain from producers for resale, milling or processing.

**Corrections Cabinet: Office of the Secretary**

501 KAR 6:020 (Corrections policies and procedures.) An objection had been raised to the sections of this administrative regulation that related to pretrial diversion. While required in some courts, it has never been authorized by the General Assembly. The Cabinet amended the regulation to delete the sections relating to pretrial diversion, and requested the Subcommittee to refer the issue of pretrial diversion. The Subcommittee approved a motion requesting LRC to refer the issue of pretrial diversion to the appropriate committee.

**Labor Cabinet: Occupational Safety and Health**

803 KAR 2:020 (Adoption of 29 CFR Part 1910.)  
803 KAR 2:027 (Adoption of 29 CFR Parts 1915, 1917, 1918 and 1919, maritime employment.) These administrative regulations were technically amended to correct citations of material incorporated by reference.

**Cabinet for Human Resources: Department for Social Services: Day Care**

905 KAR 2:010 (Standards for all child day care facilities.) This regulation was amended to

delete the requirement for cribs for children up to eighteen months old, to add required an item in the required foods, and to correct terminology.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:085 (Mussel shell harvesting.)

301 KAR 1:191 (Repeal of 301 KAR 1:190.)

Commerce Cabinet: Department of Agriculture: Bond & Grain Fund Distribution

302 KAR 36:010 (Disputed claims to bond, certificate of deposit and irrevocable letter of credit proceeds.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:010 (Certification of wastewater system operators.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:050 (Luther Luckett Correctional Complex.)

501 KAR 6:070 (Kentucky Correctional Institution for Women.)

Education and Humanities Cabinet: Department for the Blind

720 KAR 1:010 (Federal vocational rehabilitation program.) The State Committee of Blind Vendors submitted a resolution stating that the Department of the Blind was not in compliance with applicable regulations.

Labor Cabinet: Occupational Safety and Health

803 KAR 2:030 (Adoption of 29 CFR Part 1926.)

803 KAR 2:032 (Adoption of 29 CFR Part 1928.)

Public Protection and Regulation Cabinet: Harness Racing Commission: Harness Racing Rules

811 KAR 1:090 (Stimulants and drugs.)

Quarter Horse, Appaloosa and Arabian Racing Rules

811 KAR 2:060 (Pari-mutuel wagering.)

Cabinet for Human Resources: Department for Social Insurance: Food Stamp Program

904 KAR 3:045 (Coupon issuance procedures.)

The Subcommittee deferred the following regulations at the agencies' request:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: General Administrative Procedures

401 KAR 30:010 (Definitions.)

401 KAR 30:020 (General provisions.)

401 KAR 30:070 (Reference documents.)

401 KAR 30:080 (Standards for variances.)

Identification and Listing of Hazardous Waste

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

401 KAR 31:030 (Characteristics of hazardous waste.)

401 KAR 31:040 (Lists of hazardous wastes.)

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

401 KAR 31:120 (Appendix on chemical analysis test methods.)

401 KAR 31:160 (Appendix on basis for listing hazardous waste.)

401 KAR 31:170 (Appendix on hazardous constituents.)

Standards Applicable to Generators of Hazardous Waste

401 KAR 32:010 (General provisions for generators.)

401 KAR 32:030 (Pretransport requirements.)

401 KAR 32:040 (Recordkeeping and reporting.)

401 KAR 32:050 (Special conditions.)

401 KAR 32:100 (Appendix on hazardous waste manifest and instructions.)

Standards Applicable to Transporters of Hazardous Waste

401 KAR 33:010 (General provisions for transporters.)

401 KAR 33:020 (Compliance with the manifest system and recordkeeping.)

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

401 KAR 34:010 (General provisions for facilities.)

401 KAR 34:020 (General facility standards.)

401 KAR 34:050 (Manifest system, recordkeeping and reporting.)

401 KAR 34:070 (Closure and postclosure.)

401 KAR 34:080 (General financial requirements.)

401 KAR 34:090 (Closure financial requirements.)

401 KAR 34:100 (Postclosure financial requirements.)

401 KAR 34:190 (Tanks.)

401 KAR 34:200 (Surface impoundments.)

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

401 KAR 35:010 (General provisions for facilities (IS).)

401 KAR 35:020 (General facilities standards (IS).)

401 KAR 35:050 (Manifest system, recordkeeping and reporting (IS).)

401 KAR 35:070 (Closure and postclosure (IS).)

401 KAR 35:080 (General financial requirements (IS).)

401 KAR 35:090 (Closure financial requirements (IS).)

401 KAR 35:100 (Postclosure financial requirements (IS).)

401 KAR 35:190 (Tanks (IS).)

401 KAR 35:200 (Surface impoundments (IS).)

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

401 KAR 36:030 (Recyclable materials used in a manner constituting disposal.)

401 KAR 36:040 (Hazardous waste burned for energy recovery.)

401 KAR 36:050 (Used oil burned for energy recovery.)

Waste Management - Land Disposal Restrictions

401 KAR 37:010 (General provisions for land disposal restrictions.)

401 KAR 37:030 (Prohibitions on land disposal.)

401 KAR 37:040 (Treatment standards.)

401 KAR 37:050 (Prohibitions on storage.)

401 KAR 37:100 (Appendix on treatment standards.)

Hazardous Waste Permitting Process

401 KAR 38:010 (General provisions for permitting.)

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401 KAR 38:020 (Interim status provisions.)

401 KAR 38:030 (Conditions applicable to all permits.)

401 KAR 38:040 (Changes to permits; expiration of permits.)

401 KAR 38:070 (Application procedures.)

401 KAR 38:090 (General contents of Part B application.)

401 KAR 38:100 (Specific Part B requirements for groundwater protection.)

401 KAR 38:160 (Specific Part B requirements for tanks.)

**Hazardous Waste Fees**

401 KAR 39:010 (Generator registration fees.)

401 KAR 39:080 (Recycling fees.)

401 KAR 39:090 (Postclosure fees.)

401 KAR 39:100 (Exposure information report fee.)

**Underground Storage Tanks**

401 KAR 42:010 (General provisions for

underground storage tanks.)

**Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers**

601 KAR 1:025 (Transporting hazardous materials; permit.)

601 KAR 1:115 (Taxicabs.)

**Education and Humanities Cabinet: Department of Education: Office of Instruction: Elementary and Secondary Education Act**

704 KAR 10:022 (Elementary, middle and secondary schools standards.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 2:30 p.m. until March 10, 1988.





ADMINISTRATIVE REGISTER - I1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....I2

KRS Index.....I11

Subject Index to Volume 14.....I19

## ADMINISTRATIVE REGISTER - I2

## LOCATOR INDEX -- EFFECTIVE DATES

NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.

## VOLUME 13

Regulation	13 Ky.R. Page No.	Effective Date	Regulation	13 Ky.R. Page No.	Effective Date
201 KAR 8:006	1859 (See 14 Ky.R.)		902 KAR 13:010		
201 KAR 8:390	1860 (See 14 Ky.R.)		Amended	2121	8-5-87
201 KAR 27:017	2169	8-5-87	902 KAR 13:030		
806 KAR 12:110			Amended	2122	8-5-87
Amended	2107	8-5-87	902 KAR 13:050		
806 KAR 38:060			Amended	2123	8-5-87
Amended	2109	8-5-87	902 KAR 13:080		
806 KAR 38:080			Amended	2125	8-5-87
Amended	2111	8-5-87	902 KAR 13:090		
			Amended	2126	8-5-87

## VOLUME 14

Emergency Regulation	14 Ky.R. Page No.	Effective Date	Emergency Regulation	14 Ky.R. Page No.	Effective Date
101 KAR 2:040E	1045	10-15-87	401 KAR 34:162E	713	10-15-87
Replaced	832	12-11-87	Replaced	873	1-4-88
101 KAR 2:050E	1048	10-15-87	401 KAR 34:165E	716	10-15-87
Replaced	834	12-11-87	Replaced	876	1-4-88
201 KAR 25:011E	544	8-24-87	401 KAR 35:120E	718	10-15-87
Replaced	597	12-11-87	Replaced	1201	1-4-88
201 KAR 25:012E	545	8-24-87	401 KAR 47:010E	408	8-14-87
Replaced	598	12-11-87	Expired		10-29-87
201 KAR 27:017E			401 KAR 47:020E	408	8-14-87
Replaced		8-5-87	Expired		10-29-87
201 KAR 27:018E	545	8-27-87	401 KAR 47:040E	411	8-14-87
Replaced	669	12-11-87	Replaced	821	11-6-87
201 KAR 27:019E	546	8-27-87	401 KAR 49:030E	416	8-14-87
Replaced	669	12-11-87	Replaced	827	11-6-87
301 KAR 1:190E	546	8-27-87	401 KAR 49:050E	419	8-14-87
Replaced	670	11-6-87	Replaced	829	11-6-87
301 KAR 2:044E	407	8-7-87	405 KAR 7:070E	4	6-15-87
Replaced	463	10-2-87	Replaced	432	9-10-87
301 KAR 2:220E	686	9-16-87	500 KAR 6:010E	122	7-1-87
Replaced	598	11-6-87	Replaced	328	10-2-87
301 KAR 2:230E	691	9-25-87	500 KAR 6:020E	124	7-1-87
Replaced	841	12-11-87	Replaced	330	10-2-87
301 KAR 3:021E	692	9-25-87	500 KAR 6:030E	126	7-1-87
Replaced	842	12-11-87	Replaced	332	10-2-87
301 KAR 4:050E	693	9-16-87	500 KAR 6:040E	127	7-1-87
Replaced	604	11-6-87	Replaced	333	10-2-87
302 KAR 20:040E	693	10-8-87	500 KAR 6:050E	128	7-1-87
Replaced	844	12-11-87	Replaced	334	10-2-87
302 KAR 20:055E	698	10-8-87	500 KAR 6:060E	129	7-1-87
Replaced	850	12-11-87	Replaced	336	10-2-87
302 KAR 20:065E	700	10-8-87	500 KAR 6:070E	130	7-1-87
Replaced	854	12-11-87	Replaced	337	10-2-87
302 KAR 20:070E	702	10-8-87	500 KAR 6:080E	131	7-1-87
Replaced	858	12-11-87	Replaced	338	10-2-87
302 KAR 20:210E	706	10-8-87	500 KAR 6:090E	132	7-1-87
Replaced	1023	12-11-87	Replaced	339	10-2-87
302 KAR 34:050E	121	7-2-87	500 KAR 6:100E	133	7-1-87
Expired		10-31-87	Replaced	340	10-2-87
302 KAR 36:010E	1187	12-4-87	500 KAR 6:110E	134	7-1-87
Replaced	1542	2-8-88	Replaced	342	10-2-87
401 KAR 34:120E	707	10-15-87	500 KAR 6:120E	136	7-1-87
Replaced	1198	1-4-88	Replaced	344	10-2-87
401 KAR 34:144E	710	10-15-87	500 KAR 6:130E	137	7-1-87
Replaced	868	1-4-88	Replaced	346	10-2-87
401 KAR 34:159E	712	10-15-87	500 KAR 6:140E	138	7-1-87
Replaced	870	1-4-88	Replaced	346	10-2-87



# ADMINISTRATIVE REGISTER - I3

Emergency Regulation	14 Ky.R. Page No.	Effective Date	Emergency Regulation	14 Ky.R. Page No.	Effective Date
500 KAR 6:150E	138	7-1-87	904 KAR 2:116E	804	9-16-87
Replaced	347	10-2-87	Replaced	648	11-6-87
500 KAR 6:160E	139	7-1-87	Resubmitted	1573	1-14-88
Replaced	348	10-2-87	904 KAR 3:010E	807	10-2-87
500 KAR 6:170E	140	7-1-87	Replaced	1006	12-11-87
Replaced	349	10-2-87	904 KAR 3:020E	553	9-2-87
500 KAR 6:180E	140	7-1-87	Replaced	652	11-6-87
Replaced	349	10-2-87	904 KAR 3:030E	1193	12-2-87
501 KAR 6:020E	10	6-15-87	904 KAR 3:045E	1194	12-2-87
Replaced	45	8-5-87	Replaced	1539	2-8-88
Resubmitted	1188	12-7-87	905 KAR 1:091E	427	8-7-87
Replaced	1509	2-8-88	Replaced	521	10-2-87
501 KAR 6:030E	12	5-19-87	905 KAR 1:180E	1064	11-10-87
501 KAR 6:040E	13	6-15-87	905 KAR 1:200E	141	7-6-87
Replaced	48	8-5-87	Replaced	389	9-10-87
Resubmitted	546	8-17-87	905 KAR 1:210E	146	7-6-87
Replaced	478	10-2-87	Replaced	525	9-10-87
Resubmitted	721	10-13-87	905 KAR 1:220E	810	10-15-87
Replaced	907	12-11-87	Expired		12-4-87
501 KAR 6:060E	15	6-15-87	907 KAR 1:004E	811	10-6-87
Replaced	50	8-5-87	Replaced	1011	12-11-87
Resubmitted	548	8-17-87	907 KAR 1:010E	1065	11-6-87
Replaced	481	10-2-87	Replaced	1168	1-4-88
501 KAR 6:070E	1734	1-19-88	907 KAR 1:011E	817	10-2-87
501 KAR 6:080E	16	6-15-87	Replaced	1017	12-11-87
Replaced	52	8-5-87	907 KAR 1:016E	431	7-17-87
501 KAR 6:120E	722	9-25-87	Replaced	512	10-2-87
Replaced	911	12-11-87	907 KAR 1:031E	150	7-1-87
501 KAR 6:130E	1190	11-16-87	Replaced	301	9-10-87
Replaced	1091	1-4-88	907 KAR 1:036E	152	7-1-87
501 KAR 6:140E	1191	11-16-87	Replaced	303	9-10-87
Replaced	1092	1-4-88	907 KAR 1:037E	158	7-1-87
600 KAR 4:010E	1049	10-15-87	Replaced	310	9-10-87
Replaced	1203	1-4-88	907 KAR 1:042E	159	7-1-87
600 KAR 4:020E	1053	10-15-87	Replaced	310	9-10-87
Replaced	1208	1-4-88	907 KAR 1:045E	160	7-8-87
603 KAR 5:210E	725	10-15-87	Replaced	312	9-10-87
Replaced	1211	1-4-88	907 KAR 1:140E	17	6-8-87
603 KAR 5:230E	755	10-15-87	Replaced	81	8-5-87
Replaced	1241	1-4-88	907 KAR 1:150E	19	6-8-87
605 KAR 1:160E	550	9-15-87	Replaced	83	8-5-87
Replaced	678	11-6-87	907 KAR 1:250E	20	6-8-87
702 KAR 3:190E	550	9-8-87	Replaced	85	8-5-87
Replaced	615	11-6-87			
702 KAR 7:065E	800	10-14-87	Regulation	14 Ky.R. Page No.	Effective Date
Replaced	989	12-11-87	101 KAR 1:325		
807 KAR 5:008E	1056	10-30-87	Amended	831	12-11-87
Replaced	1109	1-4-88	101 KAR 2:040		
810 KAR 1:018E	1736	2-8-88	Amended	832	12-11-87
811 KAR 2:096E	420	7-24-87	101 KAR 2:050		
Replaced	535	10-2-87	Amended	834	12-11-87
815 KAR 7:070E	551	8-27-87	103 KAR 18:140	1879	
Replaced	632	11-6-87	103 KAR 25:130	1880	
902 KAR 4:050E	800	10-2-87	201 KAR 1:062		
Replaced	993	12-11-87	Amended	161	7-2-87
902 KAR 8:020E	801	9-25-87	201 KAR 8:006		
Replaced	1151	12-11-87	Amended	821	10-2-87
902 KAR 10:120E			201 KAR 8:390		
Replaced	214	8-5-87	Amended	1196	12-11-87
903 KAR 5:270E	17	6-15-87	201 KAR 9:101		
Replaced	80	8-5-87	Amended	1577	
904 KAR 2:015E	802	10-8-87	201 KAR 9:121		
Replaced	1003	12-11-87	Amended	836	12-11-87
Resubmitted	1738	1-18-88	201 KAR 9:161		
904 KAR 2:016E	422	8-13-87	Amended	1578	
Replaced	512	10-2-87	201 KAR 11:220	1021	12-11-87
Resubmitted	1057	11-6-87	Amended	1579	
Replaced	1562	1-4-88	201 KAR 12:170	666	11-6-87
Resubmitted	1741	2-3-88	201 KAR 18:050		
904 KAR 2:020E	1062	10-23-87	Amended	571	11-6-87
Replaced	1165	1-4-88			



# ADMINISTRATIVE REGISTER - I4

Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
201 KAR 18:170	1170	1-4-88	201 KAR 27:018	669	
201 KAR 19:095			Amended	1197	12-11-87
Amended	837	12-11-87	201 KAR 27:019	669	12-11-87
201 KAR 20:057			201 KAR 28:010		
Amended	30	9-10-87	Amended	1847	
201 KAR 20:070			201 KAR 28:050		
Amended	571	11-6-87	Amended	31	8-5-87
201 KAR 20:090			201 KAR 28:060		
Amended	573	11-6-87	Amended	32	8-5-87
201 KAR 20:095			201 KAR 28:080		
Amended	574		Amended	232	9-10-87
Amended	1066	11-6-87	201 KAR 28:090		
Amended	1581		Amended	233	9-10-87
201 KAR 20:110			201 KAR 28:110		
Amended	575		Amended	33	8-5-87
Amended	1067	11-6-87	201 KAR 28:120		
Amended	1582		Amended	1849	
201 KAR 20:115			301 KAR 1:055		
Amended	576	11-6-87	Repealed	1170	1-4-88
201 KAR 20:161			301 KAR 1:075		
Amended	578		Amended	1080	1-4-88
Amended	1068	11-6-87	301 KAR 1:085		
201 KAR 20:162			Amended	1288	2-8-88
Amended	579		301 KAR 1:120		
Amended	1069	11-6-87	Amended	1081	1-4-88
201 KAR 20:205			301 KAR 1:145		
Amended	581	11-6-87	Amended	1082	1-4-88
201 KAR 20:210			301 KAR 1:190	670	11-6-87
Amended	582	11-6-87	Repealed	1542	2-8-88
201 KAR 20:215			301 KAR 1:191	1542	2-8-88
Amended	583	11-6-87	301 KAR 1:200	1170	1-4-88
201 KAR 20:220			301 KAR 2:044		
Amended	584	11-6-87	Amended	463	10-2-87
201 KAR 20:225			301 KAR 2:050		
Amended	585		Amended	33	8-5-87
Amended	1071	11-6-87	301 KAR 2:110		
Amended	1583		Amended	35	8-5-87
201 KAR 20:230			301 KAR 2:140		
Amended	587	11-6-87	Amended	839	12-11-87
201 KAR 20:240			301 KAR 2:220		
Amended	588	11-6-87	Amended	598	11-6-87
201 KAR 20:270			301 KAR 2:230		
Amended	589	11-6-87	Amended	841	12-11-87
201 KAR 20:290			301 KAR 2:240	87	8-5-87
Amended	590	11-6-87	301 KAR 3:021		
201 KAR 20:310			Amended	842	12-11-87
Amended	591	11-6-87	301 KAR 3:030		
201 KAR 20:320			Amended	36	8-5-87
Amended	593	11-6-87	301 KAR 4:050		
201 KAR 20:330			Amended	604	11-6-87
Amended	594	11-6-87	302 KAR 16:040		
201 KAR 20:360			Amended	234	9-10-87
Amended	595	11-6-87	302 KAR 20:040		
201 KAR 20:370			Amended	844	12-11-87
Amended	596	11-6-87	302 KAR 20:055		
201 KAR 20:380	667	11-6-87	Amended	850	12-11-87
201 KAR 23:040			302 KAR 20:065		
Amended	167	8-5-87	Amended	854	12-11-87
201 KAR 23:060			302 KAR 20:070		
Amended	168	8-5-87	Amended	858	12-11-87
201 KAR 23:070			302 KAR 20:210	1023	12-11-87
Amended	168	8-5-87	302 KAR 34:050	315	
201 KAR 25:011			Amended	1746	2-8-88
Amended	597	12-11-87	302 KAR 36:010	1542	2-8-88
201 KAR 25:012			302 KAR 45:010		
Amended	598	12-11-87	Amended	431	8-5-87
201 KAR 26:171	526	10-2-87	401 KAR 4:060	316	
201 KAR 26:200			Amended	556	10-2-87
Amended	231	9-10-87	401 KAR 5:010		
201 KAR 26:210	313	9-10-87	Amended	1289	2-8-88
201 KAR 26:220	314	9-10-87	401 KAR 6:040		
201 KAR 26:230	528	10-2-87	Amended	1292	2-8-88



# ADMINISTRATIVE REGISTER - I5

Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
401 KAR 30:010			401 KAR 34:190		
Amended	1297		Amended	1415	
Amended	1756		Amended	1813	
401 KAR 30:020			401 KAR 34:200		
Amended	1309		Amended	1424	
Amended	1767		401 KAR 35:010		
401 KAR 30:070			Amended	1428	
Amended	1311		401 KAR 35:020		
Amended	1768		Amended	1430	
401 KAR 30:080			401 KAR 35:050		
Amended	1313		Amended	1433	
401 KAR 31:010			Amended	1821	
Amended	1316		401 KAR 35:070		
Amended	1769		Amended	1437	
401 KAR 31:030			Amended	1823	
Amended	1325		401 KAR 35:080		
401 KAR 31:040			Amended	1444	
Amended	1327		Amended	1829	
Amended	1779		401 KAR 35:090		
401 KAR 31:060			Amended	1446	
Amended	1340		401 KAR 35:100		
401 KAR 31:120			Amended	1454	
Amended	1343		401 KAR 35:120		
401 KAR 31:160			Amended	879	
Amended	1347		Amended	1201	1-4-88
401 KAR 31:170			401 KAR 35:190		
Amended	1350		Amended	1462	
401 KAR 32:010			Amended	1831	
Amended	1360		401 KAR 35:200		
401 KAR 32:030			Amended	1470	
Amended	1362		401 KAR 36:030		
Amended	1790		Amended	1473	
401 KAR 32:040			401 KAR 36:040		
Amended	1363		Amended	1474	
401 KAR 32:050			401 KAR 36:050		
Amended	1365		401 KAR 37:010		
Amended	1791		Amended	1546	
401 KAR 32:100			401 KAR 37:030		
Amended	1369		401 KAR 37:040		
401 KAR 33:010			401 KAR 37:050		
Amended	1376		401 KAR 37:100		
Amended	1794		401 KAR 38:010		
401 KAR 33:020			Amended	1479	
Amended	1377		401 KAR 38:020		
401 KAR 34:010			Amended	1482	
Amended	1380		401 KAR 38:030		
401 KAR 34:020			Amended	1485	
Amended	1381		401 KAR 38:040		
Amended	1795		Amended	1489	
401 KAR 34:050			Amended	1842	
Amended	1386		401 KAR 38:070		
Amended	1798		Amended	1493	
401 KAR 34:070			401 KAR 38:090		
Amended	1389		Amended	1496	
Amended	1800		401 KAR 38:100		
401 KAR 34:080			Amended	1501	
Amended	1395		401 KAR 38:160		
401 KAR 34:090			Amended	1503	
Amended	1397		Amended	1845	
Amended	1806		401 KAR 39:010		
401 KAR 34:100			Amended	1504	
Amended	1406		401 KAR 39:080		
401 KAR 34:120			Amended	1506	
Amended	864		401 KAR 39:090		
Amended	1198	1-4-88	401 KAR 39:100		
401 KAR 34:144			401 KAR 42:010		
Amended	868	1-4-88	Amended	1507	
401 KAR 34:159			401 KAR 47:010		
Amended	870	1-4-88	Withdrawn	529	10-29-87
401 KAR 34:162			401 KAR 47:020		
Amended	873	1-4-88	Amended	464	
401 KAR 34:165			Withdrawn		10-29-87
Amended	876	1-4-88			



# ADMINISTRATIVE REGISTER - I6

Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
401 KAR 47:040			500 KAR 6:010	328	10-2-87
Amended	468		500 KAR 6:020	330	10-2-87
Amended	821	11-6-87	500 KAR 6:030	332	10-2-87
401 KAR 49:030			500 KAR 6:040	333	10-2-87
Amended	475		500 KAR 6:050	334	10-2-87
Amended	827	11-6-87	500 KAR 6:060	336	10-2-87
401 KAR 49:050	530		500 KAR 6:070	337	10-2-87
Amended	829	11-6-87	500 KAR 6:080	338	10-2-87
401 KAR 50:010			500 KAR 6:090	339	10-2-87
Amended	1585		500 KAR 6:100	340	10-2-87
401 KAR 50:015			500 KAR 6:110	342	10-2-87
Amended	1589		500 KAR 6:120	344	10-2-87
401 KAR 50:035			500 KAR 6:130	346	10-2-87
Amended	1593		500 KAR 6:140	346	10-2-87
401 KAR 51:010			500 KAR 6:150	347	10-2-87
Amended	1598		500 KAR 6:160	348	10-2-87
401 KAR 51:017			500 KAR 6:170	349	10-2-87
Amended	883	12-11-87	500 KAR 6:180	349	10-2-87
Amended	1601		500 KAR 6:190	531	*(No eff. date)
401 KAR 51:052			*Since Statement of Consideration was not received by 15th day following hearing, proposed regulation must be refiled. (KRS 13A.280(2))		
Amended	892	12-11-87	500 KAR 6:200	1171	1-4-88
Amended	1612		501 KAR 6:020		
401 KAR 53:005			Amended	45	8-5-87
Amended	1619		Amended	235	9-10-87
401 KAR 53:010			Amended	1509	
Amended	1621		Amended	1746	2-8-88
401 KAR 55:005			Amended	1850	
Amended	1624		501 KAR 6:030		
401 KAR 55:010			Amended	47	8-5-87
Amended	1625		Amended	236	9-10-87
401 KAR 57:045			Amended	605	11-6-87
Amended	900	12-11-87	Amended	905	12-11-87
401 KAR 59:010			Amended	1083	1-4-88
Amended	1627		Amended	1511	2-8-88
401 KAR 59:050			Amended	1638	
Amended	1629		Amended	1852	
401 KAR 59:052	1706		501 KAR 6:040		
401 KAR 59:221			Amended	48	8-5-87
Amended	902	12-11-87	Amended	238	9-10-87
401 KAR 59:236			Amended	478	10-2-87
401 KAR 59:305			Amended	907	12-11-87
Amended	903	12-11-87	Amended	1085	1-4-88
401 KAR 59:310	1025	12-11-87	Amended	1639	
401 KAR 61:020			Amended	1854	
Amended	1633		501 KAR 6:050		
401 KAR 61:170			Amended	480	10-2-87
Amended	1636		Amended	908	12-11-87
401 KAR 63:041	320	*(No eff. date)	Amended	1513	2-8-88
*Since Statement of Consideration was not received by 15th day following hearing, proposed regulation must be refiled. (KRS 13A.280(2))			Amended	1855	
401 KAR 63:042	670	11-6-87	501 KAR 6:060		
405 KAR 7:070			Amended	50	8-5-87
Amended	37		Amended	239	9-10-87
Amended	432	9-10-87	Amended	481	10-2-87
405 KAR 16:060			Amended	910	12-11-87
Amended	22		Amended	1086	1-4-88
405 KAR 18:060			Amended	1641	
Amended	24		Amended	1857	
405 KAR 18:190			501 KAR 6:070		
Amended	27		Amended	1515	2-8-88
500 KAR 4:030			Amended	1643	
Amended	162	7-2-87	501 KAR 6:080		
500 KAR 4:040			Amended	52	8-5-87
Amended	163	7-2-87	Amended	1858	
500 KAR 4:050			501 KAR 6:120		
Amended	163	7-2-87	Amended	52	8-5-87
500 KAR 4:060			Amended	911	12-11-87
Amended	164	7-2-87	Amended	1088	1-4-88
500 KAR 4:070			Amended	1859	
Amended	165	7-2-87			



# ADMINISTRATIVE REGISTER - I7

Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
501 KAR 6:130			601 KAR 9:130	1709	
Amended	54	8-5-87	601 KAR 9:135	1710	
Amended	241	9-10-87	601 KAR 12:020		
Amended	483	10-2-87	Amended	485	10-2-87
Amended	1091	1-4-88	601 KAR 12:030		
Amended	1644		Amended	486	10-2-87
Amended	1861		601 KAR 12:040		
501 KAR 6:140	533	10-2-87	Amended	486	10-2-87
Amended	1092	1-4-88	601 KAR 13:010		
Amended	1862		Amended	487	10-2-87
501 KAR 8:010	88	9-10-87	601 KAR 13:020		
502 KAR 20:020			Amended	489	10-2-87
Amended	607	11-6-87	601 KAR 13:030		
503 KAR 1:100			Amended	491	10-2-87
Amended	242	9-10-87	602 KAR 15:010		
503 KAR 5:090			Amended	262	9-10-87
Amended	608		602 KAR 15:020		
Withdrawn		11-16-87	Amended	263	9-10-87
600 KAR 1:050			602 KAR 50:010		
Amended	611	12-11-87	Amended	265	9-10-87
600 KAR 1:070			602 KAR 50:030		
Amended	55	8-5-87	Amended	267	9-10-87
600 KAR 2:010			602 KAR 50:050		
Amended	243	9-10-87	Amended	268	9-10-87
600 KAR 2:020			602 KAR 50:120		
Amended	244	9-10-87	Amended	269	9-10-87
600 KAR 2:030			603 KAR 1:030		
Amended	245	9-10-87	Amended	492	10-2-87
600 KAR 4:010	1027		603 KAR 2:015		
Amended	1203	1-4-88	Amended		9-10-87
600 KAR 4:020	1032		Amended	1645	
Amended	1208	1-4-88	603 KAR 5:025		
601 KAR 1:005			Amended	271	9-10-87
Amended	1094	1-4-88	603 KAR 5:061		
601 KAR 1:020			Amended	55	8-5-87
Amended	484		603 KAR 5:066		
Amended	830	11-6-87	Amended	272	9-10-87
601 KAR 1:025			603 KAR 5:075		
Amended	1097		Amended	274	9-10-87
Amended	1576		603 KAR 5:100		
601 KAR 1:115			Amended	492	10-2-87
Amended	246		603 KAR 5:110		
Amended	560		Amended	57	8-5-87
601 KAR 2:010			603 KAR 5:120		
Amended	248	9-10-87	Amended	1648	
601 KAR 9:010			603 KAR 5:210		
Amended	249	9-10-87	Amended	914	
601 KAR 9:012			Amended	1211	1-4-88
Amended	250	9-10-87	603 KAR 5:230		
601 KAR 9:013			Amended	174	8-5-87
Amended	251	9-10-87	Amended	945	
601 KAR 9:015			Amended	1241	1-4-88
Amended	252	9-10-87	603 KAR 8:010		
601 KAR 9:040			Amended	275	9-10-87
Amended	252	9-10-87	605 KAR 1:160	678	11-6-87
601 KAR 9:047			605 KAR 1:170	1712	
Amended	254	9-10-87	702 KAR 3:190		
601 KAR 9:060			Amended	615	11-6-87
Amended	255	9-10-87	702 KAR 7:065		
601 KAR 9:074			Amended	989	12-11-87
Amended	256	*(No eff. date)	702 KAR 7:090		
Amended	1098	1-4-88	Amended	1651	
*Since Statement of Consideration was not received by 15th day following hearing, proposed regulation must be refiled. (KRS 13A.280(2))			704 KAR 3:030		
601 KAR 9:080			Amended	1102	1-4-88
Amended	260	9-10-87	704 KAR 10:022		
601 KAR 9:085			Amended	277	9-10-87
Amended	261	9-10-87	Amended	1103	
601 KAR 9:125	91	8-5-87	704 KAR 15:030		
Amended	614	11-6-87	Amended	1104	1-4-88
			704 KAR 15:080		
			Amended	1652	
			704 KAR 20:005		
			Amended	616	11-6-87



# ADMINISTRATIVE REGISTER - I8

Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
704 KAR 20:215			811 KAR 2:040		
Amended	1105	1-4-88	Amended	1670	
704 KAR 20:280			811 KAR 2:045		
Amended	617	11-6-87	Amended	1673	
704 KAR 20:330			811 KAR 2:050		
Amended	1654		Amended	1674	
704 KAR 20:450	350	9-10-87	811 KAR 2:060		
704 KAR 20:460	1174	1-4-88	Amended	1533	2-8-88
705 KAR 2:120	351		Amended	1676	
Amended	561	10-2-87	811 KAR 2:070		
705 KAR 4:210			Amended	1683	
Amended	1107	1-4-88	811 KAR 2:080		
705 KAR 5:060			Amended	1686	
Amended	278	9-10-87	811 KAR 2:085		
705 KAR 5:100	352	9-10-87	Amended	1687	
705 KAR 5:110	353	9-10-87	811 KAR 2:096	535	10-2-87
705 KAR 5:130	1175	1-4-88	Amended	1689	
706 KAR 1:010			811 KAR 2:110	1713	
Amended	279	9-10-87	815 KAR 7:010		
Amended	618	11-6-87	Amended	281	9-10-87
706 KAR 1:020			815 KAR 7:013		
Amended	619	12-11-87	Amended	1111	1-4-88
707 KAR 1:003			815 KAR 7:020		
Amended	279	9-10-87	Amended	289	9-10-87
709 KAR 1:070			Amended	1112	1-4-88
Amended	1108	1-4-88	815 KAR 7:070		
Amended	1655		Amended	632	11-6-87
720 KAR 1:010			815 KAR 10:020		
Amended	1516	2-8-88	Amended	496	11-6-87
803 KAR 2:020			815 KAR 15:010		
Amended	59	8-5-87	Amended	634	
Amended	1518	2-8-88	Withdrawn		1-11-88
803 KAR 2:027			815 KAR 20:010		
Amended	1523	2-8-88	Amended	1116	1-4-88
803 KAR 2:030			815 KAR 20:020		
Amended	65	8-5-87	Amended	1123	1-4-88
Amended	1524	2-8-88	815 KAR 20:060		
803 KAR 2:032			Amended	1123	1-4-88
Amended	1530	2-8-88	815 KAR 20:073		
804 KAR 4:245	534	10-2-87	Amended	1126	1-4-88
806 KAR 5:050			815 KAR 20:075		
Amended	212	8-5-87	Amended	1127	1-4-88
806 KAR 6:090	1035		815 KAR 20:076	1176	1-4-88
Amended	1285	1-4-88	815 KAR 20:077	1178	1-4-88
806 KAR 9:200			815 KAR 20:090		
Amended	212	8-5-87	Amended	1129	1-4-88
806 KAR 9:210			815 KAR 20:100		
Amended	213	8-5-87	Amended	1133	1-4-88
807 KAR 5:008			815 KAR 20:120		
Amended	1109	1-4-88	Amended	636	11-6-87
808 KAR 3:050			Amended	1135	1-4-88
Amended	71	8-5-87	815 KAR 20:130		
810 KAR 1:011			Amended	1142	1-4-88
Amended	620	11-6-87	815 KAR 20:191		
810 KAR 1:013			Amended	1146	1-4-88
Amended	493	10-2-87	902 KAR 3:005		
Amended	625	11-6-87	Repealed	354	10-2-87
Amended	990		902 KAR 3:007		
Withdrawn		12-11-87	Repealed	357	10-2-87
810 KAR 1:018			902 KAR 3:010		
Amended	1864		Repealed	561	10-2-87
811 KAR 1:090			902 KAR 3:015		
Amended	1531	2-8-88	Repealed	363	10-2-87
811 KAR 1:105			902 KAR 3:020		
Amended	628	11-6-87	Repealed	361	10-2-87
811 KAR 1:125			902 KAR 3:025		
Amended	1656		Repealed	357	10-2-87
811 KAR 1:215			902 KAR 3:030		
Amended	630	11-6-87	Repealed	359	10-2-87
811 KAR 1:225			902 KAR 3:035		
Amended	1663		Repealed	360	10-2-87
811 KAR 2:035			902 KAR 3:040		
Amended	1666		Repealed	363	10-2-87



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Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
902 KAR 3:045			902 KAR 20:250	1714	
Repealed	363	10-2-87	902 KAR 20:260	1718	
902 KAR 3:050			902 KAR 20:270	1721	
Repealed	365	10-2-87	903 KAR 5:250		
902 KAR 3:055	354	10-2-87	Amended	166	7-2-87
902 KAR 3:060	355		903 KAR 5:260		
Amended	561	10-2-87	Amended	299	9-10-87
902 KAR 3:065	357	10-2-87	903 KAR 5:270		
902 KAR 3:070	359	10-2-87	Amended	80	8-5-87
902 KAR 3:075	360	10-2-87	903 KAR 5:300		
902 KAR 3:080	361	10-2-87	Amended	1696	
902 KAR 3:085	363	10-2-87	903 KAR 6:060	388	10-2-87
902 KAR 3:090	363	10-2-87	904 KAR 2:006		
902 KAR 3:095	365	10-2-87	Amended	1156	1-4-88
902 KAR 3:100	366		904 KAR 2:015		
Amended	563	10-2-87	Amended	1003	12-11-87
902 KAR 3:105	367		Amended	1697	
Amended	564	10-2-87	904 KAR 2:016		
902 KAR 3:110	368		Amended	512	10-2-87
Amended	564	10-2-87	Amended	1160	
902 KAR 3:115	369		Reprint	1562	1-4-88
Amended	565	10-2-87	Amended	1872	
902 KAR 3:120	371	10-2-87	904 KAR 2:020		
902 KAR 3:200			Amended	1165	1-4-88
Repealed	372	10-2-87	904 KAR 2:116		
902 KAR 3:205	372	10-2-87	Amended	648	11-6-87
902 KAR 3:210	373		Amended	1699	
Amended	566	10-2-87	904 KAR 2:140		
902 KAR 3:215	375	10-2-87	Amended	517	10-2-87
902 KAR 3:220	376	10-2-87	Amended	1702	
902 KAR 3:225	377	10-2-87	904 KAR 2:150		
902 KAR 3:230	379	10-2-87	Amended	518	10-2-87
902 KAR 3:235	380	10-2-87	904 KAR 2:170		
902 KAR 3:240	381	10-2-87	Amended	519	10-2-87
902 KAR 3:245	382		Amended	1704	
Amended	567	10-2-87	904 KAR 3:010		
902 KAR 3:250	385		Amended	1006	12-11-87
Amended	569	10-2-87	904 KAR 3:020		
902 KAR 3:255	387	10-2-87	Amended	652	11-6-87
902 KAR 3:260	388	10-2-87	904 KAR 3:030		
902 KAR 4:050			Amended	1538	
Amended	993	12-11-87	Amended	1846	
902 KAR 8:020			904 KAR 3:045		
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  - General administrative procedures; 401 KAR Chapter 30
  - Generator, standards; 401 KAR Chapter 32
  - Identification, listing; 401 KAR Chapter 31
  - Land disposal restrictions; 401 KAR Chapter 37
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  - Solid waste facilities; 401 KAR Chapter 47
  - Solid waste planning; 401 KAR Chapter 49
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  - Storage, treatment, disposal facilities; 401 KAR Chapter 34
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### OCCUPATIONAL SAFETY, HEALTH

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29 CFR Parts 1915, 1917, 1918, 1919; 803 KAR 2:027  
29 CFR Part 1926; 803 KAR 2:030  
29 CFR Part 1928; 803 KAR 2:032

### OCCUPATIONAL THERAPY

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### PERSONNEL

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### PLUMBING

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### PSYCHOLOGY

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Facility and agency standards; 905 KAR 1:091 and E  
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**TOLL FACILITIES**

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**TOURISM**

Fish and Wildlife Resources

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Administration

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Highways

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Minority Affairs

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Toll facilities; 600 KAR Chapter 2

Assessment on turnpikes; 600 KAR 2:010  
Emergency vehicles; 600 KAR 2:020  
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**TRANSPORTATION (cont'd)**

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**VEHICLE REGULATION**

Administration

General procedures; 601 KAR 2:010

Driver Improvement

Alcohol driver education clinic; 601 KAR 13:030  
Medical review board; 601 KAR 13:010  
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Driver's License

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Instruction permit; 601 KAR 12:030  
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Motor Carriers

Hazardous material, transport; 601 KAR 1:025  
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Assigned, replacement vehicle registration; 601 KAR 9:080

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Highway use license, records, taxes; 601 KAR 9:074

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Motor carrier registration; 601 KAR 9:010

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Admission priorities; 705 KAR 5:110  
Attendance policies; 705 KAR 5:130  
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**VOCATIONAL REHABILITATION SERVICES**

Independent living; 706 KAR 1:020

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Exposure information report; 401 KAR 39:100  
Generator registration; 401 KAR 39:010

Postclosure; 401 KAR 39:090

Recycling; 401 KAR 39:080

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Definitions; 401 KAR 30:010  
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- Characteristics; 401 KAR 31:030
- Chemical analysis test appendix; 401 KAR 31:120
- General provisions; 401 KAR 31:010
- Hazardous constituents; 401 KAR 31:170
- Lists; 401 KAR 31:040
- Rulemaking petitions; 401 KAR 31:060

### Land Disposal Restrictions

- General provisions; 401 KAR 37:010
- Prohibitions; 401 KAR 37:030
- Prohibitions on storage; 401 KAR 37:050
- Treatment standards; 401 KAR 37:040
- Treatment standards appendix; 401 KAR 37:100

### Permitting Process

- Application procedures; 401 KAR 38:070
- General provisions; 401 KAR 38:010
- Interim status provisions; 401 KAR 38:020
- Part B application contents; 401 KAR 38:090
- Part B requirements, groundwater; 401 KAR 38:100
- Part B requirements, tanks; 401 KAR 38:100
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- Permit conditions; 401 KAR 38:030

### Solid Waste Facilities

- General provisions; 401 KAR 47:010 and E
- Permit process; 401 KAR 47:020 and E
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### Solid Waste Planning

- Designation; 401 KAR 49:030 and E
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### Specific Hazardous Waste Management Facilities

- Energy recovery; 401 KAR 36:040
- Recyclable materials; 401 KAR 36:030
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### Storage, Treatment, Disposal Facilities

- Closure, postclosure; 401 KAR 34:070
- Closure financial requirements; 401 KAR 34:090
- Corporate guarantee; 401 KAR 34:165 and E
- Financial test, closure, postclosure; 401 KAR 34:159 and E
- Financial test, liability coverage; 401 KAR 34:162 and E
- General financial requirements; 401 KAR 34:080
- General provisions, facilities; 401 KAR 34:010
- General standards, facilities; 401 KAR 34:020
- Liability requirements; 401 KAR 34:120 and E
- Manifest, recordkeeping, reporting; 401 KAR 34:050

- Postclosure financial requirements; 401 KAR 34:100

- Surety bond guarantee; 401 KAR 34:144 and E
- Surface impoundments; 401 KAR 34:200

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### Storage, Treatment, Disposal Facilities; Interim

### Status Standards

- Closure, postclosure; 401 KAR 35:070
- Closure financial requirements; 401 KAR 35:090
- General financial requirements; 401 KAR 35:080
- General provisions, facilities; 401 KAR 35:010
- General standards, facilities; 401 KAR 35:020
- Liability requirements; 401 KAR 35:120 and E
- Manifest, recordkeeping, reporting; 401 KAR 35:050

- Postclosure financial requirements; 401 KAR 35:100

- Surface impoundments; 401 KAR 35:200
- Tanks; 401 KAR 35:190

### Transporters

- General provisions; 401 KAR 33:010
- Manifest, recordkeeping; 401 KAR 33:020

### Underground Storage Tanks

- General provisions; 401 KAR 42:010

## WATER

### Resources

- Stream construction criteria; 401 KAR 4:060

### Quality

- Wastewater system operators certification; 401 5:010

### Sanitary Engineering

- Operator certification; 401 KAR 6:040