Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 15, NUMBER 2
MONDAY, AUGUST 1, 1988

IN THIS ISSUE

Administrative Regulation Review Subcommittee, Aug. Agenda.....105
Regulation Review Procedure.....106
Emergency Regulations Now In Effect:
Personnel.....107
Retirement.....108
Agriculture.....110
Natural Resources - Waste Management.....111
Corrections.....144
Transportation.....161
Education.....164
Workers' Compensation.....169
Insurance.....174
Human Resources.....176
As Amended:
Board of Examiners of Psychologists.....250
Workers' Compensation.....250
Human Resources.....258
Amended After Hearing:
Insurance.....260
Proposed Amendments Received through July 15:
Personnel.....264
Revenue.....271
Agriculture.....275
Economic Development.....276
Natural Resources & Environmental Protection.....281
Surface Mining Reclamation & Enforcement.....390
Corrections.....518
Transportation.....532
Education.....553
Housing, Buildings and Construction.....586
Human Resources.....619
Proposed Regulations Received Through July 15:
Revenue.....691
Economic Development.....692
Natural Resources & Environmental Protection.....693
Corrections.....716
Transportation.....741
Education.....741
Workers' Compensation.....745
Insurance.....751
Human Resources.....757
July Minutes of the Administrative Regulation Review Subcommittee.....770
Other Committee Reports.....772

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....B2
KRS Index.....B7
Subject Index.....B11

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 August 3, 1988. See tentative agenda on pages 105-106 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1988 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

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

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

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

---

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
c 1988 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.
Second class postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator John A. "Eck" Rose
Senate President Pro Tem

Representative Donald J. Blandford
Speaker of the House

Senate Members

Charles W. Berger
Assistant President Pro Tem

Joe Wright
Majority Floor Leader

John D. Rogers
Minority Floor Leader

David K. Karem
Majority Caucus Chairman

Dr. Jack Trevey
Minority Caucus Chairman

Helen Garrett
Majority Whip

Eugene P. Stuart
Minority Whip

House Members

Pete Worthington
Speaker Pro Tem

Gregory D. Stumbo
Majority Floor Leader

Woody Allen
Minority Floor Leader

Jody Richards
Majority Caucus Chairman

Ken Harper
Minority Caucus Chairman

Kenny Rapier
Majority Whip

Bill Lile
Minority Whip

Vic Hellard, Jr. Director
Samuel L. Hensley, Assistant Director for Education and Information

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Representative Mark D. O'Brien, Chairman
Senator Harold Haering
Senator Pat McCuiston
Senator William L. Quinlan
Representative James E. Bruce
Representative Ronny Layman
Representative Joseph U. Meyer

Staff

Susan C. Wunderlich, Regulations Compiler
Carla F. Arnold
Donna M. Pierce
O. Joseph Hood
Gregory Karambellas
Susan Eastman

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - August 3, 1988
(Rm. 107, Capitol Annex @ 10 a.m.)

REVENUE CABINET
Department of Professional and Support Services

Selective Excise Tax; Motor Fuels
103 KAR 43:250. Applications of special fuels tax to the railroad industry.
103 KAR 43:260. Export of special fuels used in commercial ships and vessels.

KENTUCKY EMPLOYEES' RETIREMENT SYSTEM

General Rules
105 KAR 1:010 & E. Contributions and interest rates.

PUBLIC PROTECTION AND REGULATION CABINET
Crime Victims Compensation Board

Claims and Awards
107 KAR 1:050 & E. Prorating awards.

GENERAL GOVERNMENT CABINET

Board of Dentistry
201 KAR 8:400 & E. Complaint procedure.
201 KAR 8:410 & E. Procedures for disciplinary hearings.

Board of Examiners and Registration of Landscape Architects
201 KAR 10:050 & E. Fees.

CORRECTIONS CABINET

Office of the Secretary
501 KAR 6:020 & E. Corrections policies and procedures.
501 KAR 6:040. Kentucky State Penitentiary.
501 KAR 6:060. Northpoint Training Center.
501 KAR 6:070. Kentucky Correctional Institute for Women.
501 KAR 6:080 & E. Corrections Cabinet Manuals.
501 KAR 6:130 & E. Western Kentucky Farm Center.
501 KAR 6:140. Bell County Forestry Camp.

TRANSPORTATION CABINET

Administration
600 KAR 1:080 & E. Repeal of transportation related administrative regulations. (Repeals 601 KAR 9:110; 603 KAR 5:200)

Department of Vehicle Regulation

Division of Motor Carriers
601 KAR 1:005 & E. Safety regulations.

Department of Highways

Traffic
603 KAR 5:072 & E. Mandatory annual bus inspection.

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. (Not Amended After Hearing) (Deferred from March meeting)

Office of Instruction

Teacher Education
704 KAR 15:080. Paraprofessional employees and volunteer personnel. (Not Amended After Hearing) (Deferred from March meeting)

LABOR CABINET
Department of Workplace Standards

Occupational Safety and Health
803 KAR 2:020. Adoption of 29 CFR Part 1910.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Trade Practices and Frauds
806 KAR 12:090. Unfair claims settlement practices. (Amended After Hearing)

Casualty Insurance Contracts
806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance. (Amended After Hearing)

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Substance Abuse

Alcohol, Drugs and Occupational Programs
902 KAR 3:060 & E. Licensing procedures.
902 KAR 3:075 & E. Quality assurance.
902 KAR 3:080. Client's rights.
902 KAR 3:115 & E. Day/night intensive outpatient treatment.
902 KAR 3:205 & E. Definitions for drug abuse treatment and education (DATE) centers.
902 KAR 3:210 & E. Licensing procedures.
902 KAR 3:225 & E. Quality assurance.
902 KAR 3:230. Client's rights.
902 KAR 3:250 & E. Nonresidential day care centers.

Local Health Departments
902 KAR 8:020. Policies and procedures for local health department operations.
902 KAR 8:030. Merit system for local health departments.
Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:080. Policies and procedures for mental health/mental retardation facilities.
State Health Plan
902 KAR 17:010 & E. State health plan.
Commission for Health Economics Control in Kentucky
902 KAR 20:006. Certificate of need process.
902 KAR 20:126. Licensure hearings.
902 KAR 20:127. Certificate of need hearings.
902 KAR 20:132. Certificate of need expenditure minimums.
902 KAR 20:135. Certificate of need application fee schedule.

Department for Employment Services

Unemployment Insurance
903 KAR 5:270 & E. Maximum weekly benefit rates.

Department for Social Insurance

Public Assistance
904 KAR 2:140. Supplementary policies for programs administered by the Department for Social Insurance.
904 KAR 2:202. Repeal of 904 KAR 2:150; 904 KAR 2:180; 904 KAR 2:190; and 904 KAR 3:090.

OTHER BUSINESS:

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Banking
Division of Thrift Institutions

Administration
808 KAR 1:060. Remote service units.

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.

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 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 reviewed by the Administrative Regulation Review Subcommittee 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 reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement, repeal or withdrawal - whichever occurs first.)

STATEMENT OF EMERGENCY
101 KAR 1:325E

The Transportation Cabinet with the approval of the Department of Personnel established a new classification of Motor Vehicle Enforcement (MVE) Trainee effective April 15, 1988. Other positions within this class series have received previous Department of Personnel and board approval assigning a twelve (12) month probationary period. The Department of Personnel is to begin testing for this classification on May 16, 1988, and shortly thereafter the Transportation Cabinet would begin to make initial probationary appointments. This emergency is to provide uniformity of this class series and to insure that equitable salaries shall be awarded to similarly employed individuals. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
ARTHUR HATTERICK, JR., Secretary

PERSONNEL BOARD

101 KAR 1:325E. Initial probationary periods in excess of six (6) months.

RELATES TO: KRS 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.0751
EFFECTIVE: June 16, 1988
NECESSITY AND FUNCTION: KRS 18A.111 provides that specified job classifications may require an initial probationary period in excess of six (6) months. KRS 18A.0751 provides that initial probationary periods in excess of six (6) months be established by administrative regulation. This regulation is to implement these statutory provisions.

Section 1. Initial Probationary Periods for Specific Job Classifications. The following job classifications shall require an initial probationary period in excess of six (6) months, as specified:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2408	MVE Trainee	12 months
2410	MVE Officer Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

Section 2. Other Provisions. (1) Except for the length of the initial probationary period, the provisions of 101 KAR 1:320 shall apply to an employee appointed to a job classification specified in Section 1 of this regulation.
(2) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall be required to serve the shorter of the initial probationary periods.

ARTHUR HATTERICK, JR., Secretary
APPROVED BY AGENCY: May 18, 1988
FILED WITH LRC: June 16, 1988 at 2 p.m.

STATEMENT OF EMERGENCY

The Kentucky Retirement Systems, administering agency for the County Employees Retirement System, is required to administer an increase in certain benefits for members for the County Employees Retirement System in accordance with House Bill 371 (1988 Reg. Sess.). The benefits increase will require increased employer contributions. The time required for promulgation of an ordinary administrative regulation, would not permit such regulation to become effective by the time increased employer contributions must be implemented to fund the legislatively mandated benefits increase (HB 371, supra). Therefore an emergency exists. This emergency administrative regulation will be replaced by an ordinary administrative regulation for longer-term implementation of the

requirements of House Bill 371.

WALLACE G. WILKINSON, Governor
BOBBY McKEE, General Manager

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems

105 KAR 1:010E. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
PURSUANT TO: KRS 16.576, 16.640, 61.559, 61.645, 78.780
EFFECTIVE: June 22, 1988
NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545 require the board to determine the employer contribution rate based on an actuarial valuation. KRS 61.552 requires the board to adopt a rate of interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS) and State Police Retirement System (SPRS).

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation earned on or after August 1, 1988 [1986], shall be as follows:

KRS 61.565	State Police Retirement System	18.25%
KRS 61.565	Kentucky Employees Retirement System	7.45%
KRS 61.565	County Employees Retirement System	6.35.[5.75]%
KRS 61.592	Kentucky Employees Retirement System	14%
KRS 61.592	County Employees Retirement System	14%

Section 2. Effective July 15, 1988, the interest rate on a recontribution of refund as provided under KRS 61.552 shall be as follows:
(1) For time elapsed from date of refund eight (8) percent compounded annually. [through June 30, 1982, six (6) percent compounded annually.]
[(2) For time elapsed from July 1, 1982 (or date of refund if after July 1, 1982) through July 31, 1986 seven and one-half (7 1/2) percent compounded annually.]
[(3) For the time elapsed from August 1, 1986 (or date of refund if after August 1, 1986) eight (8) percent compounded annually.]
(2) [(4)] The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board or by court order or by order of the Human Rights Commission shall be at the rate of zero (0) percent, if the refund is recontributed within a reasonable period of time.

Section 3. The legal rate of interest as referenced in Section 7 of regulation 200 KAR 12:010 (a regulation relating to computing back pay after reinstatement) shall be the actuarial assumed interest rate set forth in Section 1 of 105 KAR 1:040.

Section 4. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate between two and one-half (2 1/2) percent and six (6) percent as determined by the board.

Section 5. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to Normal Retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, unless the provisions of subsections (1) through (5) of this section are applicable and result in a higher percentage payable:
(1) A SPRS, CERS Hazardous or KERS Hazardous duty member who is age fifty (50) or older and would attain twenty (20) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factors as follows:

TABLE A

Years Required to Complete 20 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A KERS or CERS nonhazardous member who is age fifty-five (55) or older and would attain thirty (30) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE B

Years Required to Complete 30 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(3) A KERS or CERS nonhazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) with twenty-five (25) or more years of service (at least fifteen (15) of which are current service) shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 30 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%

(4) A KERS or CERS nonhazardous member with less than twenty-five (25) years of service who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on TRS, SPRS, CERS Hazardous or KERS Hazardous Early retirement eligibility, and would have attained thirty (30) or more years of service (fifteen (15) of which would be current service) on or before reaching his 65th birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table B based on the number of years required to complete thirty (30) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

(5) A SPRS, CERS Hazardous or KERS Hazardous member who dies prior to age fifty (50) and would have attained twenty (20) or more years of service (fifteen (15) of which would be current service) on or before reaching his 55th birthday, if employment were continued, shall have benefits payable as determined from Table E based on the number of years required to complete twenty (20) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

TABLE E

Years Required to Complete 20 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE G

Early Age	Normal Retirement Age 65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factors.

(6) Benefits paid in the event of death prior to retirement pursuant to subsection (1) through (5) of this section, shall be reduced as required by KRS 61.640 and as determined in "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors" incorporated herein by reference in this regulation.

[(7) The provisions of this section shall

become effective for members retiring on August 1, 1986 and thereafter.]

BOBBY J. McKEE, General Manager
APPROVED BY AGENCY: May 27, 1988
FILED WITH LRC: June 22, 1988 at 9 a.m.

STATEMENT OF EMERGENCY
302 KAR 20:056E

In order to maximize utilization of existing state funds while providing financial awards to Kentucky livestock owners who must eradicate cattle infected with brucellosis (per 302 KAR 20:056) the proposed amendment needs to be implemented at once. By reducing the state payments, the United States Department of Agriculture will match the amount, thus providing a total greater payment than the original state award. Enactment of the proposed amendment will be a tremendous aid in the effort to make Kentucky a brucellosis free state. Thus a state of emergency exists which makes it necessary for the proposed amendment to be enacted at once.

WALLACE G. WILKINSON, Governor
WARD E. "BUTCH" BURNETTE, Commissioner

DEPARTMENT OF AGRICULTURE

302 KAR 20:056E. Qualifications and eligibility requirements on state brucellosis indemnity payments for negative exposed cattle.

RELATES TO: KRS 257.020, 257.030, 257.110, 257.120, 257.140
PURSUANT TO: KRS 257.030, 257.110, 257.120, 257.140
EFFECTIVE: June 27, 1988
NECESSITY AND FUNCTION: The regulation is necessary to explain the conditions under which a cattle herd owner may collect state indemnity which is available only for sero negative exposed adult breeding cattle and heifer calves from within a brucellosis infected herd which are sent directly to slaughter.

Section 1. General Conditions for Eligibility. (1) The state veterinarian shall determine the eligibility of cattle (genus Bos) and bison for the payment of state indemnity funds.

(2) State indemnity funds, if available, shall be paid only for the following classes of cattle that are sent directly to slaughter and in the following amounts:

(a) Fifty (50) [Seventy-five (75)] dollars for each adult breeding cow from a brucellosis infected herd that has [have] been exposed to the disease and branded with a "B" brand but that has been tested negative to an approved brucellosis blood test.

(b) Thirty (30) [Fifty (50)] dollars for each heifer cow from a brucellosis infected herd that has been exposed to the disease. For purposes of this section a heifer cow shall mean a female bovine or bison that has never calved.

(3) In order to be eligible, any animal on which indemnity is requested must have been in Kentucky for at least six (6) months prior to the time of the test which shall determine eligibility for state indemnity and if tested eligible must have been negative to an approved brucellosis test upon entry into Kentucky.

(4) Any animal on which a state indemnity claim is made must be properly tagged and branded within fifteen (15) days of signing of a required state depopulation agreement, sold for slaughter within fifteen (15) days of branding, and proof of slaughter obtained from meat inspection. Home slaughter by the original owner for his home consumption is allowed but proof of slaughter must be supplied. The fifteen (15) day requirement for branding, tagging and slaughter may be extended by the state veterinarian upon written request and for good cause shown.

(5) In order to be eligible for state indemnity funds pursuant to this regulation a written depopulation agreement shall be signed by the owner seeking state indemnity. Authorization for depopulation and for the receipt of state indemnity shall be approved by the state veterinarian and the amount of indemnity is to be mutually agreed upon prior to signing of the agreement.

(6) The following criteria may be considered by the state veterinarian in determining which infected herds qualify for available state indemnity funds:

(a) The percentage of known reactors found in an infected herd;

(b) The clinical evidence of brucellosis infection in the herd;

(c) Culture and isolation of the brucella organism in the herd;

(d) Possibility of spread of brucellosis infection to neighboring herds;

(7) In the alternative, an animal may qualify for the state indemnity provided in this section when the animal is destroyed in compliance with an order of eradication issued pursuant to the authority of 302 KAR 20:058.

(8) In the event that an animal destroyed pursuant to an order of eradication issued under the authority of 302 KAR 20:058 fails to qualify for federal indemnity the state veterinarian may make a supplemental state indemnity payment for the animal. The supplemental indemnity payment may not exceed seventy-five (75) dollars.

Section 2. Exclusions from Eligibility for State Indemnity Payments. Indemnity shall not be paid on the following classes of cattle:

(1) Any test eligible animal that moved into Kentucky without a negative blood test for brucellosis or without an approved health certificate and/or permit when applicable, or in violation of any health requirement for admission or in violation of any law or regulation of the board.

(2) Any animal imported into Kentucky that originated from a known infected or quarantined herd, or determined otherwise to be an exposed animal.

(3) Cattle moving in trade channels in Kentucky which are owned by dealers or traders whether or not said owners are currently licensed by the department.

(4) No state indemnity funds shall be paid to an owner whose cattle are found to be in violation of any state or federal law, regulation, or agreement.

WARD "BUTCH" BURNETTE, Commissioner
APPROVED BY AGENCY: June 22, 1988
FILED WITH LRC: June 27, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
401 KAR 30:010E

Kentucky has authorization to administer the state hazardous waste management program. In response to recent comments from the U.S. Environmental Protection Agency, five regulations were amended to make the state regulatory language identical to the federal language. These changes are necessary to enable the state to receive approval of a program revision application for additional portions of the hazardous waste program. Failure to promulgate these emergency regulations could delay the submission of the Program Revision Application and ultimately jeopardize Kentucky's authorization to administer the hazardous waste management program. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

401 KAR 30:010E. Definitions.

RELATES TO: KRS 224.033, 224.830 through 224.889, 224.994
PURSUANT TO: KRS Chapter 13A, 224.033
EFFECTIVE: July 14, 1988
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 period from the initial receipt of hazardous waste at the facility until the secretary receives certification of final closure.

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

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

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

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

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

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

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

(22) "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) "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) "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) "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) "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) "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) "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) "Contained landfill" see "solid waste site or facility - contained landfill."

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

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

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

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

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

(42) "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) "Disposal facility" see "hazardous waste site or facility - disposal facility."

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

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

(49) "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) "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) "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) "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) "Explosive gas" means methane (CH_4) in 401 KAR 30:030, Section 1(1).

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

(56) "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) "Final closure":

(a) Of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility [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.

(b) Of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with the applicable requirements of 401 KAR 47:040 or 401 KAR 47:050 and the environmental performance standards in 401 KAR 30:030.

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

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

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

(62) "Free liquids" means liquids which

readily separate from the solid portion of a waste under ambient temperature and pressure.

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

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

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

(74) "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) "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) "Industrial furnace" see "hazardous waste site or facility - industrial furnace."

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

(78) "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) "Injection well" see "hazardous waste site or facility - injection well."

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

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

(86) "Lab pack" 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) "Landfarming facility" see "solid waste site or facility - landfarming facility."

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

(89) "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) "Land treatment facility" see "hazardous waste site or facility-land treatment facility."

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

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

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

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

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

(105) "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) "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) "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) "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) "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) "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) "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) "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) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 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) "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) "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) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, and/or dispose of waste.

(117) "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) "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) "Pile" see subsection (63)(g) of this section.

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

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

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

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

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

(131) "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) "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) "Residential landfill" see "solid waste site or facility - residential landfill."

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

(135) "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) "Resource recovery" means the recovery of material or energy from waste.

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

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

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

(140) "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) "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) "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) "Scrap metal" see Section 1 of 401 KAR 31:010.

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

(145) "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) "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) "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) "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) "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) "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) "Spent material" see Section 1 of 401 KAR 31:010.

(152) "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) "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) "Storage facility" see "hazardous waste site or facility - storage facility."

(155) "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) "Surface impoundment" see "hazardous waste site or facility - surface impoundment."

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

(159) "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) "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) "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

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

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

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

(167) "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) "Treatment facility" see "hazardous waste site or facility - treatment facility."

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

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

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

(179) "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.

(180) "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) "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) "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit."

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

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

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

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act
CFR	Code of Federal Regulations
cm	Centimeter
cm^2	Centimeter squared
CO	Carbon monoxide
CO_2	Carbon dioxide
CWA	Clean Water Act
DOT	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.

(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
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
401 KAR 31:020E

KRS 224.864 provides that the state list and criteria shall be identical to the federal list and criteria. The deleted provision was adopted verbatim from a federal regulation which required EPA to list a hazardous waste under certain circumstances. Because KRS 224.864 provides that the state list shall be identical with the EPA list, that provision for listing additional wastes is unnecessary at the state level. The proposed amendment ensures that the state and federal lists of hazardous waste will be identical. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

401 KAR 31:020E. Criteria for identifying the characteristics of hazardous waste and criteria for listing.

RELATES TO: KRS 224.864(3), 224.868, 224.876
PURSUANT TO: KRS 13A.210, 224.017, 224.864
EFFECTIVE: July 14, 1988
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 criteria for identifying the characteristics of hazardous waste. It also establishes the criteria for listing a hazardous waste.

Section 1. Criteria for Identifying the Characteristics of Hazardous Waste. The cabinet shall identify and define a characteristic of

hazardous waste in 401 KAR 31:030 only upon determining that:

(1) A waste that exhibits the characteristic may:

(a) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(a) Measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are available to serve generators of waste; or

(b) Reasonably detected by generators of waste through their knowledge of their waste.

Section 2. Criteria for Listing Hazardous Waste. (1) The cabinet shall list a waste as a hazardous waste only upon determining that the waste meets one (1) of the following criteria:

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

(b) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD_{50} toxicity (rat) of less than fifty (50) milligrams per kilogram, an inhalation Lc_{50} toxicity (rat) of less than two (2) milligrams per liter, or a dermal LD_{50} toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated acute hazardous waste.)

[(c) It contains any of the toxic constituents listed in 401 KAR 31:170 unless, after considering any of the following factors, the cabinet concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed:]

[1. The nature of the toxicity presented by the constituent.]

[2. The concentration of the constituent in the waste.]

[3. The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in subparagraph 7 of this paragraph.]

[4. The persistence of the constituent or any toxic degradation product of the constituent.]

[5. The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.]

[6. The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.]

[7. The plausible types of improper management to which the waste could be subjected.]

[8. The quantities of the waste generated at individual generation sites or on a regional or national basis.]

[9. The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.]

[10. Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.]

[11. Such other factors as may be appropriate. Substances will be listed in 401 KAR 31:170 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. (Wastes listed in accordance with these criteria will be designated toxic wastes.)]

(2) The cabinet may list classes or types of waste as hazardous waste if the cabinet has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in KRS 224.005(24)(b).

(3) The cabinet will use the criteria for listing specified in this section to establish the exclusion limits referred to in 401 KAR 31:010, Section 5(3).

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
401 KAR 32:040E

Kentucky has authorization to administer the state hazardous waste management program. In response to recent comments from the U.S. Environmental Protection Agency, five regulations were amended to make the state regulatory language identical to the federal language. These changes are necessary to enable the state to receive approval of a program revision application for additional portions of the hazardous waste program. Failure to promulgate these emergency regulations could delay the submission of the Program Revision Application and ultimately jeopardize Kentucky's authorization to administer the hazardous waste management program. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

401 KAR 32:040E. Recordkeeping and reporting.

RELATES TO: KRS 224.071, 224.830 through 224.877, 224.994
PURSUANT TO: KRS Chapter 13A, 224.033, 224.864
EFFECTIVE: July 14, 1988
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 recordkeeping and reporting standards.

Section 1. Recordkeeping. (1) A generator must keep a copy of each manifest signed in

accordance with Section 4(3) of 401 KAR 32:020 in addition to the signed copy returned from the designated facility which received the waste. Both copies must be retained on record for at least three (3) years from the date the waste was accepted by the initial transporter.

(2) A generator must keep a copy of each annual report and exception report for a period of at least three (3) years from the due date of the report (March 1).

(3) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with Section 2 of 401 KAR 32:010 for at least three (3) years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) A generator must keep a log showing all facility and equipment inspections as required in Section 6 of 401 KAR 35:020.

(5) 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 2. Annual Reporting. (1) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit annual reports on a form approved by the cabinet according to the instructions on the form. The annual report must be submitted to the cabinet no later than March 1 for the preceding calendar year and must, at a minimum, include the following information:

(a) The EPA identification number, name and address of the generator;

(b) The calendar year covered by the report;

(c) [(a)] A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(d) [(b)] 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.

(e) [(c)] The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year.

(f) [(d)] The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States.

(g) [(e)] A description, EPA hazardous waste number (from 401 KAR 31:030), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number for each such off-site facility to which waste was shipped.

(h) [(f)] The certification signed by the generator or authorized representative.

(2) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with provisions of 401 KAR Chapters 34, 35, 36, and 38. Reporting for exports of hazardous waste outside the United States is not required on the annual report form but shall be accomplished by a separate annual report pursuant to 401 KAR 32:050.

(3) Generators must provide a duplicate copy of the report required in Section 2 of this regulation to the county judge/executive of the county or chief executive officer of an urban county government within which the waste site or facility which will receive waste from the generator is located and to the county judge/executive of the county or chief executive officer of an urban-county government within which the generator is located in order that the county judge/executive or chief executive officer may make the report available to the county law enforcement and emergency services for emergency planning purposes.

Section 3. Exception Reporting. (1) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator must submit an exception report to the cabinet if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The exception report must include:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(b) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

Section 4. Additional Reporting. The secretary may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 401 KAR Chapter 31.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
401 KAR 34:090E

Kentucky has authorization to administer the state hazardous waste management program. In response to recent comments from the U.S. Environmental Protection Agency, five regulations were amended to make the state regulatory language identical to the federal language. These changes are necessary to enable the state to receive approval of a program revision application for additional portions of the hazardous waste program. Failure to promulgate these emergency regulations could delay the submission of the Program Revision Application and ultimately jeopardize Kentucky's authorization to administer the hazardous waste management program. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

401 KAR 34:090E. 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
EFFECTIVE: July 14, 1988
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 Closure. (1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 2 through 6 of 401 KAR 34:070 and applicable closure requirements in Section 9 of 401 KAR 34:180, Section 8 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.

(a) The estimate must equal the cost of final closure at the point in the facility's active 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) days prior to the anniversary 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. The adjustment shall be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product 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 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:

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

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

(b) If an owner or operator established a trust fund as specified in Section 3 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:

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

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

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have been if annual payments were made as specified in subsection (3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this regulation 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 person authorized to conduct partial or final closure may request reimbursements for partial or final 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 the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. 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 issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued by a circuit court or other court of competent jurisdiction pursuant to KRS [Chapter] 224.866, 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 n 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 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 the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. 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 at least ninety (90) percent of 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 at least ninety (90) percent of 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 from 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 in accordance with the approved closure plan, 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 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: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
401 KAR 35:070E

Kentucky has authorization to administer the state hazardous waste management program. In response to recent comments from the U.S. Environmental Protection Agency, five regulations were amended to make the state regulatory language identical to the federal language. These changes are necessary to enable the state to receive approval of a program revision application for additional portions of the hazardous waste program. Failure to promulgate these emergency regulations could delay the submission of the Program Revision Application and ultimately jeopardize Kentucky's authorization to administer the hazardous waste management program. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

401 KAR 35:070E. 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
EFFECTIVE: July 14, 1988
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 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 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 constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground 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. 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

(c) 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

(d) 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); and

(g) 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.

(3) Amendment of plan. The owner or operator may amend the 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.

(4) Notification of partial closure and final closure.

(a) The owner or operator must submit the 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.

(c) The owner or operator must submit his closure plan to the director no later than fifteen (15) days after:

1. Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

2. Issuance of a judicial decree or final order under KRS 224.033, 224.081, and 224.867 to cease receiving hazardous wastes or close.

(d) 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 the plan no later than thirty (30) days from 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 must assure that the approved plan is consistent with Sections 2, through 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 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 to begin closure before November 19, 1981, he was required to 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 is later, the owner or operator must treat, remove from the unit or facility, or dispose of on site, all hazardous wastes in accordance with the approved closure plan. The director may approve a longer period if the owner or operator 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 person will recommence operation of the hazardous waste management unit or the facility

within one (1) year; 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 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 closure period if the owner or operator 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 reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one (1) year; 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 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.

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.

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, 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 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.

Section 7. 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. Postclosure Care and Use of Property. (1)(a) Postclosure care for each hazardous waste management unit subject to the requirements of Sections 8 through 11 of this regulation must begin after completion of closure of the unit and continue for thirty (30) years after that date. It must consist of at least the following:

1. 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. Maintenance and monitoring of waste containment systems 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.

(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 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:

(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 the containment system, or

the function of the facility's monitoring systems, unless the director 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. (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. Postclosure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit 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 8 through 11 of this regulation.

(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 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 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 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

2. The function of the monitoring equipment 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

(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.

(4) Amendment of plan. The owner or operator may amend the postclosure plan any time during the active life of the 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.

(5) The owner or operator of a 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. The owner or operator must submit the 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 under KRS Chapter 224 to cease receiving wastes or close.

(6) 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 the plan no later than thirty (30) days from 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 postclosure 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 postclosure plan. The director must ensure that the approved postclosure plan is consistent with Sections 8 through 11 of this regulation. A copy of the modified plan <u>with a detailed statement of reasons for the modifications</u> must be mailed to the owner or operator. If an owner or operator planned to begin closure before November 19, 1981, he was required to submit the postclosure plan by May 19, 1981.

(7) The postclosure plan and length of the postclosure care period may be modified any time prior to 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. 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. Postclosure Notices. (1) No later than sixty (60) days after 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 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 7 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 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 9(7) of this regulation. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8(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. Certification of Completion of Postclosure Care. 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.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
401 KAR 35:090E

Kentucky has authorization to administer the state hazardous waste management program. In response to recent comments from the U.S. Environmental Protection Agency, five regulations were amended to make the state regulatory language identical to the federal language. These changes are necessary to enable the state to receive approval of a program revision application for additional portions of the hazardous waste program. Failure to promulgate these emergency regulations could delay the submission of the Program Revision Application and ultimately jeopardize Kentucky's authorization to administer the hazardous waste management program. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

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

401 KAR 35:090E. Closure financial requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994
PURSUANT TO: KRS 13A.210, 224.033, 224.862, 224.866
EFFECTIVE: July 14, 1988
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 closure financial requirements.

Section 1. Cost Estimate for Facility Closure. (1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 2 through 6 of 401 KAR 35:070 and 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 35:250, and Section 5 of 401 KAR 35:260.
(a) The estimate must equal the cost of final closure at the point in the facility's active 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 35:070; 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 (1)(e) of 401 KAR 35:080). 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 by the sale of hazardous wastes, facility structures or equipment, land, or other facility assets at the time of partial or final closures.

(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) days prior to the anniversary 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 7(3) of this regulation. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent 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 a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than thirty (30) days after the director has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (2) of this section.

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

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

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

Section 2. Financial Assurance for Facility Closure. An owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in Sections 3 through 8 of this regulation.

Section 3. Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by establishing a closure trust fund which conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the director. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The trust agreement must be executed on the form provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement must be accompanied by a formal certification of 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 twenty (20) years beginning with October 8, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

(a) The first payment must be made by October 8, 1982, except as provided in subsection (5) of this section. The first payment must be at least equal to the current closure cost estimate (see Section 1 of this regulation), except as provided in Section 9 of this regulation, divided by the number of years in the pay-in period.

(b) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

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

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

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have been if annual payments were made as specified in subsection (3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this regulation, his first payment must be at least the amount that the fund would have contained if the trust fund were established initially and annual payments made according to specifications of subsection (3) of this section.

(6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost

estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.

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

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (7) and (8) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final 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. No later than sixty (60) days after receiving bills for partial or final closure activities, the director will instruct the trustees to make reimbursements in those amounts as the director specifies in writing, if the director determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. 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 11 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 to the owner or operator 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 11 of this regulation.

Section 4. Surety Bond Guaranteeing Payment into a Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the director. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond must be executed on the form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this regulation must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund must meet the requirements specified in Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Until the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current closure cost estimates;

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

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

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

(a) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin final closure issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued 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 9 of this regulation.

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

(8) Under the terms of the bond, the surety may cancel the bond by sending a notice of cancellation by certified mail to the owner or operator and to the director. Cancellation

cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by return receipt.

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

Section 5. Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of this regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the director. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter of credit must be identical to the wording specified in Section 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. This standby trust fund must meet the requirements of the trust fund specified in Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating the Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current closure cost estimates;

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

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

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name, and address of the facility, and the amounts of funds assured for closure of the facility by the letter of credit (see Section 1 of 401 KAR 34:152 for an example).

(5) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued for at least the amount of the current closure cost estimate except as provided in Section 9 of this regulation.

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

(8) Following a final administrative determination pursuant to KRS 224.033 that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the director may draw on the letter of credit.

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

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 6. Closure Insurance. (1) An owner or operator may satisfy the requirements of this regulation by obtaining closure insurance which conforms to the requirements of this section and by submitting a certificate of such insurance to the director. By October 8, 1982, the owner or operator must submit to the director a letter from the insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this section to the owner or operator. By January 8, 1983, the owner or operator must submit the certificate of insurance to the director or establish other financial assurance as specified in this regulation. Each insurance policy providing primary coverage must be issued by an insurer who is licensed to transact the business of insurance in the Commonwealth of Kentucky except as KRS 304.11-030 provides otherwise. Each insurance policy providing excess coverage must be issued by an insurer who is licensed to transact the business of insurance in a state.

(2) The certificate of insurance must be executed on a form provided by the cabinet

containing wording identical to the wording specified in 401 KAR 34:156.

(3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in Section 9 of this regulation. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

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

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the director. 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 the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. 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 reimbursement of such amounts as he deems prudent until he determines, in accordance with Section 11 of this regulation, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the director does not instruct the insurer to make such reimbursements, he will provide to the owner or operator 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) Interim status is terminated or revoked; or

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

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

(e) The premium due is paid.

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

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 7. Financial Test and Corporate Guarantee for Closure. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of either paragraph of this subsection:

(a) The owner or operator must have:

1. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and 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 at least ninety (90) percent of

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 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 from the owner's and operator's chief financial officer (see 40 CFR 144.0(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) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to October 8, 1982 and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by October 8, 1982, a letter to the director. This letter from the chief financial officer must:

(a) Request the extension;

(b) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(c) Specify for each facility to be covered by the test the EPA identification number, name, address and current closure and postclosure estimates to be covered by the test;

(d) Specify the date ending the owner's or operator's last complete fiscal year before October 8, 1982;

(e) Specify the date, no later than ninety (90) days after the end of such fiscal year, when he will submit the documents specified in subsection (3) of this section; and

(f) Certify that the year-end financial statements of the owner or operator for such fiscal year will be submitted by an independent certified accountant.

(5) After the initial submission of items specified in subsection (3) of this section, the owner or operator must send updated information to the director within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must send notice to the director of intent to establish alternate financial assurance as specified in this regulation. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide alternate financial assurance within 120 days after the end of such fiscal year.

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

(8) The director may disallow use of this test on the basis on qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this regulation within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (3) of this section when:

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation;

(b) The director releases the owner or operator from the requirements of this regulation by terminating the financial requirements in accordance with Section 11 of this regulation.

(10) An owner or operator may meet the

requirements of this regulation by obtaining a written guarantee, hereafter referred to as the "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (1) through (8) of this section and must comply with the terms of the corporate guarantee. The corporate guarantee must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165. The corporate guarantee must accompany the items sent to the director as specified in subsection (3) of this section. The terms of the corporate guarantee must provide that:

(a) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plans and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Section 3 of this regulation in the name of the owner or operator.

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

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

Section 8. Cash Account and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of this regulation by submitting to the director a bond guaranteeing compliance with KRS Chapter 224 and regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement. The bank or financial institution holding the cash account or certificate(s) of deposit in escrow must be regulated and examined by a federal or state agency.

(2) The bond must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168. The escrow agreement for the cash account or certificate(s) of deposit must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.

(3) The cabinet must be the beneficiary of the escrow agreement for the cash account or certificate(s) of deposit. The director must be empowered to draw upon the funds if the owner or operator fails to perform closure or 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 9 of this regulation.

(5) After each interest period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual evaluation of the cash accounts or the certificate(s) of deposit. If the value of the cash accounts or the certificate(s) of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, must either deposit an amount into the cash account or the certificate(s) of deposit so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(6) If the value of the cash account or the certificate(s) of deposit is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.

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

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

(9) After beginning final closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. Within sixty (60) days after receiving bills for closure activities, the director will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director will instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Section 11 of this regulation, that the owner or operator is no longer required to maintain financial assurance for closure.

Section 9. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this regulation by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, insurance, certificate(s) of deposit and cash accounts. The mechanisms must be as specified in Sections 3, 4, 5, 6, and 8, respectively, of this regulation, except that it is the combination of mechanisms rather than each single mechanism which must provide financial assurance for an amount at least equal to the

current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The director may use any or all of the mechanisms to provide for closure of the facility.

Section 10. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this regulation to meet the requirements of this regulation for more than one (1) facility. Evidence of financial assurance submitted to the director must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Section 11. Release of the Owner or Operator from the Requirements of this Regulation. Within sixty (60) days after receiving certifications from the owner or operator and an independent professional engineer who is registered in Kentucky that final closure has been completed in accordance with the approved closure plan, 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 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: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:010E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:010E. Definitions.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth definitions.

Section 1. Definitions. (1) "Juvenile holding facility" means county facility and correctional or detention facilities, including correctional facilities defined in KRS 600.020, operated by and under the supervision of any county, regional facility authority, city or urban county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the facility and juvenile holding facility.

(3) "Facility staff" means staff certified by the Justice Cabinet who are involved in the supervision, custody, care or treatment of juveniles in the facility.

(4) "Juvenile" means any person under the age of eighteen (18) years confined in the facility pursuant to KRS Chapter 600.

(5) "Cabinet" means the Corrections Cabinet.

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to juveniles in the facility.

(7) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(8) "Juvenile living area" means a group of rooms or cells which provide housing for the juvenile population.

(9) "Holding area" means an area used to hold one (1) or more juveniles temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(10) "Dormitory" is an area equipped for housing not less than three (3) juveniles or more than fifteen (15) juveniles.

(11) "Dayroom" means a secure area with controlled access from the juvenile living area, to which juveniles may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(12) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(13) "Sallyport" is a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the facility intake area.

(14) "Penal type" means furnishings approved by the Corrections Cabinet.

(15) "Volunteers" means persons who donate their time and effort to enhance the activities

of the program. They are selected on the basis of their skills or personal qualities to provide services in recreation, counseling, education, religious activities, etc.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:020E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:020E. Administration; management.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to be followed for the administration and management of facilities.

Section 1. Policy and Procedure - Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Corrections Cabinet.
(2) The written policy and procedures manual shall be made available to employees.
(3) The operations manual shall include but not be limited to the following aspects of the facility's operation:
(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and hygiene.
(f) Medical services.
(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Juvenile programs.
(k) Juvenile services.
(l) Admission and release.
(m) Rules and discipline.
(n) Volunteers.
(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Corrections Cabinet.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.
(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer when the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the facility staff and other county officials.

Section 3. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the facility to the public, to government agencies, and to the media. The public and juveniles shall have access to the procedures.
(2) Representatives of the media shall have access to the facility, consistent with the preservation of juvenile's privacy and the maintenance of order and security in the facility.
(3) All official statements to the news media, relating to facility administration policy, shall be made by the jailer only or his designee.
(a) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the juvenile; and
(b) Private citizens shall only be provided with information supplied to the media.
(4) No information shall be released that is detrimental to another juvenile.

Section 4. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.
(1) Facility information and juvenile records shall be retained in written form or within computer records.
(2) Facility information and juvenile records shall be stored in a secure manner so that they are protected from theft, tampering, and destruction. Written guidelines shall specify the length of time a juvenile record shall be maintained after an juvenile's release from custody and the conditions under which archives are maintained.
(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the facility record. Extraordinary or unusual occurrences shall include but not be limited to:
(a) Death of an juvenile.
(b) Attempted suicide or suicide.
(c) Serious injury, whether accidental or self-inflicted.
(d) Attempted escape or escape from confinement.
(e) Fire.
(f) Riot.
(g) Battery, whether by a staff member or juvenile.
(h) Sexual assaults.

(i) Occurrence of contagious or infectious disease, or illness within the facility.
(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 645 or juveniles known to be or suspected to be mentally ill or mentally retarded.
(4) All facilities shall keep a log of daily activity within the facility.
(5) Each facility shall maintain records on the types and hours of training completed by each employee and shall include verification of Justice Cabinet certification. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 5. Juvenile Records. (1) The information required by 501 KAR 9:120 for admission and release shall be retained for each juvenile. Other information related in each juvenile's facility record shall include but not be limited to:
(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Program involvement.
(f) Probation officer or case worker assigned.
(g) Unusual occurrences and in the case of death of a juvenile, disposition of the juvenile's property and remains.
(2) Medical records shall be maintained as required by 501 KAR 9:090.
(3) The jailer shall ensure that juvenile records are safeguarded in accordance with relevant federal and state laws and regulations.
(4) The jailer shall require that juveniles sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the juvenile's record. This form shall include but not be limited to:
(a) Name of person, agency or organization requesting information.
(b) Name of facility releasing information.
(c) Specific information to be disclosed.
(d) Purpose of the information.
(e) Date consent form is signed.
(f) Signature of juvenile.
(g) Signature of employee witnessing the juvenile's signature.
(5) Juvenile facility records shall be kept separate from adult facility records and shall be made available for examination only as provided in KRS 610.330. Upon an order of expungement, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.
(6) All facility records maintained on mental inquest detainees held under KRS Chapter 600 shall be kept separate from any other facility records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay in the facility shall be deemed never to have occurred.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:030E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:030E. Fiscal management.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth physical management procedures to be followed in facilities.

Section 1. Budgeting. (1) The jailer, county judge/executive and treasurer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.215.
(2) The jailer shall use the format for budget development on forms prepared by the State and Local Finance Office.
(3) The State and Local Finance Office shall submit budget forms to the jailer by March 1 of each year.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the facility in accordance with KRS 441.235 and 68.020.
(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide juveniles with approved items not supplied by the facility.

Section 4. Audits. The county facility budget shall be audited in accordance with KRS 43.070.

Section 5. Payroll. Facility employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:040E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:040E. Personnel.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth personnel procedures to be followed in facilities.

Section 1. Staffing. (1) Each facility shall provide direct and continuous supervision. At least one (1) certified staff member shall be in the juvenile section of the facility at all times.
(2) When female juveniles are lodged in the facility, female staff shall be made available as needed to perform sensitive procedures to include but not limited to:
(a) Admission.
(b) Searches.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the facility shall be subject to thorough background investigation to include criminal, medical, and employment history.
(2) All security employees of the facility shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the facility shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.

Section 4. Training. All staff shall be trained in a course developed and approved by the Justice Cabinet and shall be certified by the Justice Cabinet.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall ensure that all employees maintain a level of physical fitness that will allow the employees to satisfactorily perform their duties.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.
(2) The written code of ethics shall be incorporated in the facility's policy and procedures manual and shall include but not be limited to the following:
(a) Employees shall not:
1. Exchange personal gifts or favors with juveniles, their family, or friends;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of intoxicants or consume intoxicants while on duty;
4. Violate or disobey established rules, regulations, or lawful orders from a superior;
5. Discriminate against any juvenile on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
6. Employ corporal punishment or unnecessary physical force;
7. Subject juveniles to any form of unwarranted physical or mental abuse;
8. Intentionally demean or humiliate juveniles;
9. Bring any type of weapon or item declared as contraband into the facility without proper authorization;
10. Engage in critical discussion of staff members or juveniles in the presence of juveniles;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the facility, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with juveniles; and
15. Inquire about, disclose, or discuss details of an juvenile's crime other than as may be absolutely necessary in performing official duties.
(b) Employees shall:
1. Comply with all established rules, regulations, and lawful orders from superiors;
2. Treat all juveniles in a fair, impartial manner; and
3. Report all violations of the code of ethics to the jailer.
(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:050E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new

class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:050E. Physical plant.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth standards and procedures to be followed in the design and construction of facilities.

Section 1. Purpose. The purpose of this regulation is to provide minimum standards for the renovation or construction of facilities and for measuring compliance of existing facilities in accordance with KRS 441.011, 441.012, and 441.013, and Kentucky Construction/Renovation Standards.

Section 2. Consultation. The Corrections Cabinet shall provide for any county government which wishes to remodel an existing facility or construct a new facility, a consultant knowledgeable in the design, utilization, and operation of facilities. The consultant shall meet with the appropriate officials of that county and advise them in matters including but not limited to:
(1) Site selection.
(2) Probable need as it relates to capacity and types of juveniles to be housed.
(3) Sources of financing for constructing.
(4) Laws and regulations relating to treatment of juveniles.
(5) Laws and regulations relating to facilities for juveniles.
(6) Sources of revenue for operations of the facility.
(7) Probable cost for operation of the facility.
(8) Potential for shared facilities with adjoining counties.

Section 3. Site Acceptance. No facility shall be built without site acceptance by the Corrections Cabinet. The following criteria shall be considered in site selection including but not limited to:
(1) Size.
(2) Proximity of courts.
(3) Proximity of community resources.
(4) Availability of public transportation.
(5) Environmental health.
(6) Adequate parking.
(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any facility, plans and specifications shall be submitted to the Corrections Cabinet for review and approval as follows:
(1) Programming phase. This submission shall show:
(a) Evaluation of existing facility;
(b) Population analysis;
(c) Space requirements based on population analysis and standards for the facility and site outlined in the Kentucky Minimum Standards for Local Facilities;
(d) Staffing analysis;
(e) Cost analysis;
(f) Financing alternatives, if applicable;
(g) Summary and recommendations; and
(h) This phase is submitted on major renovation or new construction only and for information review purposes.
(2) Schematic phase.
(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;
(b) Scale drawings of the site, locating the building, parking and other facilities - one (1) inch equals fifty (50) feet;
(c) Documentation of site as to:
1. Size;
2. Proximity to courts;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.
(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;
(e) Scale elevation drawings of all exterior walls; and
(f) Schematic cost estimate.
(3) Design development phase.
(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
(b) All necessary construction drawings including construction details;
(c) Specifications for all materials and workmanship;
(d) A proposed contract with general and special conditions;
(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and
(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
(4) Construction document phase.
(a) Revised design development construction drawings following review by all applicable agencies.
(b) Signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the Corrections Cabinet.
(c) Revised design development specifications of material and workmanship following review by all applicable agencies.
(5) Contract administration.
(a) Signed copies of all contracts for construction, financing and bonding;
(b) Signed copies of all construction permits;
(c) Documentation of review by all other applicable state agencies; and

(d) All change orders must be submitted to the Corrections Cabinet for review and approval.

(6) The Corrections Cabinet will review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. No construction shall be started until the construction document phase as required in subsection (5)(d) of this section has been approved.

(7) Depending on the site of the proposed constructions, renovation or addition the Corrections Cabinet may combine two (2) or more phases as outlined above for review and approval.

(8) All changes prior to the approval of final construction documents shall require appropriate modifications to the final construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written and/or graphic addenda, field orders and change orders. In addition a set of accurate as built drawings shall be submitted to Corrections within sixty (60) days of occupancy of the facility.

Section 5. Waiver of Compliance. (1) The Corrections Cabinet may grant a waiver of the implementation of the physical plant standards for an existing facility if the cabinet determines:

(a) That strict compliance will cause unreasonable difficulties;

(b) That a waiver will not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the facility; and

(c) That compliance is to be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the Corrections Cabinet. The written request shall include the following information:

(a) Citation of the specific standard involved;

(b) Identification and description of the specific difficulties involved in meeting strict compliance;

(c) Description of the alternative proposed; and

(d) Provision of sufficient documentation which will demonstrate that the waiver, if granted, will not jeopardize the security, supervision of juveniles, programs, or the safe, healthful, or efficient operation of the facility.

(3) A waiver, if granted by the Corrections Cabinet, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the Cabinet as conditions upon the waiver. No waiver shall be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Each facility shall provide for sight and sound separation of adult and juvenile inmates.

(2) Depending upon its size and intended use, every facility shall include within its walls the following facilities and equipment:

(a) Entrance. Every facility shall have a separate and distinct entrance for juveniles.

(b) Booking area. The purpose is to provide a private and separate area, properly equipped to carry out admission and release procedures. All equipment shall be penal type.

(c) Confinement areas. The purpose of these areas is to provide suitable living conditions for all types of juveniles lodged in the facility. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.

2. Providing ventilation to meet air exchange as required in the state health codes.

3. Providing temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit - eighty-five (85) degrees Fahrenheit).

4. Shall be of approved masonry, concrete or steel construction.

5. All furnishings and equipment shall be penal type and permanently attached.

6. Each confinement area shall have floor drains to service each living area.

7. Be equipped with an approved securable food pass.

8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal type.

(d) All cells and housing areas design features shall include:

1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the juvenile(s) housed in the area.

2. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) penal type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

3. Each cell shall contain:

a. A penal type commode, lavatory and drinking fountain, penal type bunks secured to floor and/or wall, penal type table with two (2) seats, and penal type storage area for personal property.

b. A penal type light fixture with controls nonaccessible to juveniles unless it has staff override.

4. If dorms are used, they must include:

a. Fifty (50) feet per juvenile.

b. One (1) commode/lavatory/drinking fountain per eight (8) juveniles.

c. One (1) shower per fifteen (15) juveniles.

d. Sufficient tables and benches to handle the number of juveniles housed in the dorm.

e. One (1) penal type storage area for personal property per juvenile.

f. One (1) penal type bunk secured to the floor or wall per juvenile.

5. Each dayroom area shall contain:

a. Thirty-five (35) square feet per juvenile.

b. One (1) commode per eight (8) juveniles.

c. One (1) lavatory per eight (8) juveniles.

d. One (1) drinking fountain per fifteen (15) juveniles.

e. One (1) shower per fifteen (15) juveniles.

f. Table and benches per rated capacity with space twenty-four (24) inches wide and twelve

(12) inches deep per juvenile.

(e) The juvenile holding facility shall provide for the following support areas. If these areas are not contained in the juvenile holding facility, they may be shared with the adult section of the facility under the following condition:

1. Policy and procedure shall dictate that access to all common use support areas shall be accomplished in such a way as to prevent sight and sound contact between adult and juvenile inmates.

2. Policy and procedures shall dictate that all common use support areas shall be controlled to prevent contact between adults and juveniles.

(f) Visiting area. This area shall provide for private communication with juveniles and be located in close proximity to the waiting area. All furnishings of this area shall be penal type and permanently attached.

(g) Multipurpose room. The purpose of this area is to provide space for assembly of juveniles for specific program activities.

(h) Outdoor recreation. The purpose of this area is to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per juvenile in an area with a minimum of 385 square feet.

(i) Medical exam room. The purpose of this room is to provide a separate and secure area for medical examinations and rendering medical treatment.

(j) Conference room. The purpose of this room is to provide space for confidential conferences between juveniles and lawyers, probation officers, clergy, etc.

Unless approved by the Corrections Cabinet, these areas shall comply with the requirements of the minimum jail standards.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:060E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:060E. Security; control.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth security procedures to be followed in local facilities.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the facility's operations.

(2) The Corrections Cabinet shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include but not be limited to:

(a) Juvenile rules and regulations;
(b) Staffing;
(c) Searches of juveniles and of secure areas;
(d) Visitation;
(e) Key and weapon control;
(f) Juvenile head counts;
(g) Surveillance checks;
(h) Emergency situations; and
(i) Facility schedule;
(j) Administering medication.

Section 2. Juvenile Supervision. Facility staff shall provide direct and continuous supervision. At least one (1) certified staff member shall be in the juvenile section of the facility at all times. Every hour there shall be an entry into the log reflecting the past hour's activities of each juvenile. No adult prisoner shall be allowed to enter the juvenile holding facility under any circumstances.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to juveniles for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Items considered as contraband or items permitted in the facility shall be clearly defined in the facility rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances as determined by the jailer.

(3) All firearms, weapons, and chemical agents assigned to the facility shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous

supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.
(6) Tools, supplies, and equipment which are hazardous shall be used by juveniles only under the direct supervision of facility personnel.
(7) At no time shall any juvenile be assigned to a position of authority over any other juvenile or given the responsibility of providing juvenile services such as commissary, telephone calls, or delivery of meals.
(8) Juveniles shall never be permitted to perform or assist in any security duties.
(9) Juveniles shall be thoroughly searched whenever entering or leaving the security perimeter.
(10) Written procedures shall be developed for transporting outside the facility.
(11) Each jailer shall develop written policies and procedures governing the use of physical restraints.
(12) No juvenile placed in physical restraints shall be left unattended.
(13) All facilities shall have key-control procedures which shall include but not be limited to:
(a) A key control center which is secure and inaccessible to unauthorized persons at all times.
(b) An accounting procedure for issuing and returning keys.
(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.
(d) A set of duplicate keys to be maintained in a separate, secure place.
(e) No juvenile shall be permitted to handle keys used to operate facility security locks.
(f) Keys operating locks to outside doors or gates shall not be permitted in the confinement area.
(g) Emergency keys and keys to critical security areas shall only be issued in accordance with written procedures established by the jailer.
(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices such as electrical switches or levers.
(i) Locks to outside exits shall be keyed differently from interior locks. Locks to the control room shall be keyed differently from all other locks.
(14) Trusties. At no time shall an adult trusty be permitted in either a program, support, or housing area occupied by juveniles.

Section 4. Daily Facility Log; Special Reports. A daily facility log shall be kept current and reflect all significant occurrences within the facility. Special reports shall include:
(1) Use of force.
(2) Disciplinary actions.
(3) Medical or mental health treatment.
(4) Feeding schedule and menus.
(5) Extraordinary occurrences.
(a) Fires.
(b) Assaults.
(c) Suicide or attempted suicide.
(d) Escape or attempted escape.
(6) Juvenile vandalism.
(a) Destruction of facility property.
(b) Flooding of plumbing fixtures.
(7) Staff roster for each shift.
(8) Telephone log of initial phone call(s).
(9) Visitors log.
(10) Fire planning sessions.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:070E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:070E. Safety; emergency procedures.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth safety and emergency procedures to be followed in local facilities.

Section 1. Policy and Procedure. (1) Each facility shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of juveniles, visitors, and staff. These shall include but not be limited to:
(a) Provision for fire emergency planning sessions for staff at least quarterly.
(b) Written documentation of fire planning sessions.
(c) A fire safety inspection by the Corrections Cabinet at least once a year.
(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.
(e) Smoking restrictions and regulations.
(f) Written evacuation plan coordinated with local fire officials.
(2) Each facility shall have written policy and procedures for emergency situations including but not limited to:
(a) Escapes.
(b) Taking of hostages.
(c) Riots.
(d) Food poisoning.
(e) Civil disturbances in the community.
(f) Natural disasters.

(g) Suicides.
(h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each facility shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.
(2) Each facility shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.
(3) Each facility shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.
(4) In all areas where a juvenile may be confined, each facility shall be provided with an emergency smoke evacuation system activated by smoke detectors and be operated by emergency power.
(5) Each facility shall have an approved fire alarm and smoke detection system.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:080E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:080E. Sanitation; hygiene.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to provide proper sanitation and hygiene in facilities.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests.
(2) The facility shall provide for both solid and liquid waste disposal.
(3) The jailer shall have a written preventative maintenance plan which includes but is not limited to:
(a) A cleaning schedule for various locations and items in the facility.
(b) A schedule for inspections by the jailer.
(c) A schedule for trash and garbage removal.
(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.
(4) The facility shall have fresh and purified air circulating within juvenile living and activity areas.
(5) The facility shall furnish clean sanitized bedding to juveniles except in holding areas and unless it is determined to be detrimental to a particular juvenile. Bedding shall include:
(a) One (1) mattress.
(b) One (1) mattress cover.
(c) One (1) blanket, when conditions require.
(d) One (1) sheet.
(e) One (1) pillow.
(f) One (1) pillowcase.
(6) Juvenile bedding shall be cleaned on a regular basis according to the following schedule:
(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.
(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.
(c) Mattresses and pillows shall be cleaned quarterly.
(7) Each juvenile shall be issued a clean towel upon admission to a juvenile living area. Towels shall be laundered every fourth day.
(8) Clean clothing shall be provided for juveniles at least twice a week.
(9) All floors, toilets, and sinks in the facility shall be washed daily or more often as necessary.
(10) All showers shall be cleaned on at least a weekly basis.
(11) All juveniles assigned to juvenile living areas shall be issued the following hygienic items:
(a) Soap.
(b) Toothbrush.
(c) Toothpaste.
(d) Toilet paper.
(e) Female sanitary supplies (where applicable).
(12) All juveniles shall be permitted to shave daily. If a communal razor is used, it shall be sanitized before each use. No juvenile shall be forced to shave except for medical purposes and under the specific orders of the medical authority.
(13) Hair cutting services or sanitized hair cutting equipment shall be available to all juveniles. Juveniles shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.
(14) All juveniles shall be provided shower facilities within twenty-four (24) hours of admission. Juveniles shall be permitted to shower daily.
(15) All juveniles in the facility shall be provided with hot and cold running water in showers and lavatories.
(16) As required in KRS 441.064, the facility shall be inspected by the Corrections Cabinet biannually.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:090E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:090E. Medical services.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for the proper delivery of medical services in facilities.

Section 1. Procedure Services. (1) The facility's medical services shall be provided by contracting with a Kentucky licensed health care provider.

(2) The medical staff and mental health professionals shall not be restricted by the jailer in the performance of their duties except to adhere to the facility's security requirements.

(3) All health care staff working in the facility shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of such licenses and certificates for health care staff employed by the facility shall be maintained on file within the facility.

(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the facility. This log shall be kept current to the preceding hour.

(5) Juveniles shall not perform any medical functions within the facility.

(6) Juveniles shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the facility.

(7) All medical procedures shall be performed according to written and standing orders issued by the responsible medical authority.

(8) Medical screening shall be performed by the receiving officer on all juveniles upon their admission to the facility and before their placement in juvenile living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.

(b) Medications taken and special health requirements.

(c) Screening of other health problems designated by the medical authority.

(d) Behavioral observation, state of consciousness and mental status.

(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.

(f) Condition of skin and body orifices, including rashes and infestations.

(g) Disposition and referral of juveniles to qualified medical personnel on an emergency basis.

(h) Require that a health appraisal for each juvenile is completed within seven (7) days after arrival at the facility. In the case of a juvenile who has documented evidence a health appraisal is not required except as determined by the designated health authority.

(i) Provide for the prompt notification of juveniles' parents/guardians and the responsible agency in case of serious illness, surgery, injury or death.

(j) Provide that juveniles in need of detoxification for chemical impairment shall not be admitted to the facility, but shall be referred for appropriate medical care.

(9) Sick call conducted by the medical authority shall be available to each juvenile as follows:

(a) Once per week, in facilities with an average daily population for the preceding month of less than fifty (50) juveniles.

(b) Three (3) times per week, in facilities with an average daily population for the preceding month from fifty-one (51) to 200 juveniles.

(c) Five (5) times per week, in facilities with an average daily population for the preceding month of more than 200 juveniles.

(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.

(11) At least one (1) facility staff member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation). (January 1, 1984)

(12) Emergency medical, dental, and psychiatric care shall be available to all juveniles commensurate with the level of such care available to the community.

(13) Medical research shall not be permitted on any juvenile in the facility.

(14) Access to the juvenile's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record is separate from custody and other administrative records of the facility.

(15) All examinations, treatments, and procedures have the informed consent of the parent, guardian, or legal custodian shall apply when required by law.

(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all juveniles who die while in the custody of the jailer.

(17) The jailer shall have written delousing procedures.

(18) All facility staff who administer

medications to juveniles shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(19) The facility shall have first aid kits available at all times.

(20) A juvenile who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the facility shall be moved to another confinement facility which can provide the treatment or may be moved to a hospital.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:100E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:100E. Food services.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for proper food services in local facilities.

Section 1. Procedures. (1) The facility shall comply with the Kentucky Food Service Establishment Act and State Food Service Code (KRS 219.011 through 219.081) and the Kentucky Occupational Safety and Health Standards for General Industry (803 KAR 2:020 and 29 CFR Part 1910).

(2) Juveniles shall be provided a nutritionally adequate diet containing at least 3,000 calories per day.

(3) Juveniles shall receive three (3) meals per day, two (2) of which shall be hot. Not more than fourteen (14) hours shall elapse between any two (2) meals.

(4) The jailer shall provide for religious diets.

(5) The jailer shall provide for medical diets where prescribed by a medical authority.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A nutritionist or dietician shall approve the nutritional value of the facility menu on an annual basis.

(9) A staff member shall directly supervise all food prepared within the facility.

(10) All food shall be served under the direct supervision of a staff member.

(11) The facility shall have sufficient cold and dry food storage facilities.

(12) The jailer or his designee shall inspect the food service area daily.

(13) Food shall not be prepared or stored in juvenile living areas.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:110E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:110E. Classification.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for the classification of juveniles.

Section 1. Procedure. (1) Each facility shall develop an appropriate juvenile classification system, which shall be included in the facility's written policy and procedure manual.

(2) The juvenile classification system shall provide for the separation of the following categories of juveniles:

(a) Male and female juveniles;

(b) Mental inquest detainees and other juveniles;

(c) Mentally ill or mentally retarded juveniles and other juveniles;

(d) Juveniles with a tendency to harm others, be harmed by others, or requiring administrative segregation and other juveniles;

(e) Juveniles with communicable disease and other juveniles.

(3) The juvenile classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:120E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:120E. Admission; release.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each facility shall develop written admission, orientation, and release procedures to be included in the facility's policy and procedure manual.

Section 2. Admission. (1) Any juvenile in need of emergency medical attention shall not be admitted to the facility until a medical examination has been conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the facility staff member on duty.

(2) The facility staff shall assure that each juvenile is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new juvenile admission and shall include but not be limited to the following:

(a) Time and date of commitment;
(b) Name, alias, nickname;
(c) Official charge - cite five (5) digit UOR number;
(d) Authority ordering commitment;
(e) Unit of government to be billed;
(f) Signature and title of arresting or committing officer;
(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Name, relationship, address and phone number of the parent, guardian, or person juvenile resides with at time of admission;
(l) Education and school attended;
(m) Employment, if any;
(n) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Religion;
(o) Marital status;
(p) Social Security number;
(q) Health status (including current medications, known allergies, diet or other special medical needs);
(r) The name of any known person in the facility who might be a threat to the arrestee; and
(s) Mental health history (including past hospitalizations, comprehensive care treatment, current treatment, and medication).

(4) Staff shall insure the notification of family custodian or guardian.

(5) The facility staff shall conduct a search of juveniles and their possessions.

(a) Each juvenile shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow juveniles, staff, and institutional security. Such search shall be conducted in a private area and in a manner which protects the juvenile's dignity to such extent as possible in that particular facility.

(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the juvenile, witnessed by a staff person of the same sex as the juvenile.

(c) When a strip search of a juvenile is conducted, it shall include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the juvenile is carrying contraband there and such search shall only be conducted by medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse) in a private location and under sanitary conditions.

(e) Strip searches are done without specific authorization only upon entry to the facility and at all other times are based on reasonable suspicion.

(6) Each facility shall develop written policies and procedures, specifying the personal property that juveniles may retain in their possession.

(a) Any cash or personal property which is taken from the juvenile upon admission shall be listed by complete description on a receipt form, and securely stored pending the juvenile's release. The receipt shall be signed by the receiving officer and the juvenile and kept for the facility record.

(b) If the juvenile is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the juvenile is able to understand and account

for his actions, he shall sign the receipt.
(c) Personal property shall be released only to a parent or guardian and must have the juvenile's signature of approval and the signature of the parent or guardian.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each juvenile.
(2) The orientation shall provide the juvenile with information regarding his confinement including but not limited to the following:
(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the juvenile's confinement;
(b) Rules of juvenile conduct;
(c) Disciplinary procedures;
(d) Information regarding programs (work, educational and vocational training, counseling, and other social services); and
(e) Procedures for making requests or registering complaints with the facility staff, judiciary, or Corrections Cabinet personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any juvenile from confinement.
(2) When a juvenile is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.
(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the juvenile was released.
(4) Prior to the release or removal of a juvenile, the receiving authority shall sign an authorized release form.
(5) Before the jailer releases a juvenile to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.
(6) Any property, not legally confiscated or retained from the juvenile upon admission shall be returned to the juvenile at the time of release.
(7) Each juvenile shall sign a receipt for property returned at the time of release.
(8) Any complaint regarding property returned must be submitted in writing with specific details within twenty-four (24) hours.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:130E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:130E. Juvenile programs; services.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures for juvenile programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that juvenile programs and services are available and include but are not limited to social services, religious services, recreation, leisure time activities, and library services.
(2) Education programs shall be made available in accordance with the state law.

Section 2. Library Services. Where resources are available in the community, library services may be made available to all juveniles.

Section 3. Religious Programs. Written policy and procedure shall ensure the constitutional rights to juveniles to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the facility.

Section 4. Recreation Programs. (1) Written policy and procedure shall provide all juveniles with the opportunity to participate in an average of one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. Where the security and safety of the facility and the weather permits, there shall be outdoor exercise.
(2) Leisure time and recreation programs shall be scheduled to permit juveniles to participate in, but not be limited to, such activities as board games, arts and crafts, radio and television to relieve idleness and boredom.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:140E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current

time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:140E. Juvenile rights.

RELATES TO: KRS 441.057
PURSUANT TO: KRS 441.057
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to ensure the protection of juvenile rights.

Section 1. Policy and Procedure. (1) Each facility shall have a written statement of juvenile rights which shall include but not be limited to:
(a) Access to courts.
(b) Access to attorney.
(c) Mail.
(d) Telephone.
(e) Grievances.
(f) Search and seizure.
(g) Disciplinary procedure.
(h) Racial segregation.
(i) Medical care.
(j) Mental health care.
(k) Religion.
The statement of juvenile rights shall be posted in a conspicuous place in the booking and juvenile living areas of the facility.
(2) The jailer shall not prohibit a juvenile's right of access to the judicial process.
(3) The jailer shall ensure the right of juveniles to have confidential access to their attorney and their authorized representative.
(4) The jailer shall have a written policy which defines the facility's visitation rules and regulations, which shall include but not be limited to:
(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which must be during the weekend.
(b) At least one (1) visit per week per juvenile shall be allowed except when a juvenile has been assessed a disciplinary penalty for an infraction of rules governing visitation.
(c) Visits shall not be less than fifteen (15) minutes.
(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.
(e) Children, when accompanied by an adult, shall be permitted to visit juveniles.
(5) Attorneys, clergy, and medical personnel shall be permitted to visit juveniles at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.
(6) Visitors shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation.
(7) Juveniles shall not be restricted in regard to whom they may have as a visitor unless the jailer determines that a visitor should be excluded due to the existence of one (1) or more of the following conditions:
(a) The visitor represents a clear and present danger to security.
(b) The visitor has a past history of disruptive conduct at the facility.
(c) The visitor is under the influence of alcohol or drugs.
(d) The visitor refuses to submit to search or show proper identification.
(e) The juvenile refuses the visit.
(8) The jailer shall not listen to visitors' conversations but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the juvenile's personal rights and provides for reasonable security practices consistent with the operation of the facility.
(2) Juveniles shall be allowed to correspond with anyone so long as such correspondence does not violate any state or federal law except that caution shall be taken to protect the juvenile's rights in accordance with court decisions regarding correspondence.
(3) Incoming mail may be inspected for contraband items prior to delivery, unless such mail is received from the courts, attorney of record or public officials; then it may be opened and inspected in the presence of the juvenile.

Section 3. Telephone. (1) Newly admitted juveniles shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of their choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.
(2) The jailer or his designee shall maintain a log of all telephone calls made by an juvenile during the admission procedure. The log shall document the date, time and party contacted.
(3) Written policy and procedure shall permit each juvenile to complete at least one (1) telephone call each week. Any expense incurred for calls shall be borne by the juvenile or the party called.
(4) A minimum of five (5) minutes shall be allotted for each phone call.
(5) Telephone calls shall not be routinely monitored. If calls are monitored, the juvenile shall be notified.
(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Juveniles shall be granted the right to practice their religion within limits necessary to maintain facility order and security.
(2) Juveniles shall be afforded an opportunity to participate in religious services and receive religious counseling within the facility.
(3) Juveniles shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all juveniles provided the security and order of the facility are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written juvenile grievance procedure which shall be available to all juveniles. These procedures shall include provisions for:
(1) Responses, within a reasonable time limit, to all grievance complaints.
(2) Equal access to all juveniles.
(3) Guarantees against reprisal.
(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of a juvenile for contraband shall be done in such a manner as the jailer determines is necessary to insure the safety of juveniles and staff, and security of the facility.
(2) Each search shall be conducted in a private area and in a professional manner which protects the juvenile's dignity to such extent as possible in that particular facility.
(3) All strip searches shall be performed by a staff person of the same sex as the juvenile, and witnessed by a staff person of the same sex as the juvenile.

Section 8. Disciplinary Rights. Each facility shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each juvenile shall be afforded access to necessary medical care.

Section 10. Volunteers. The policy and procedure manual shall establish guidelines for the selection and use of volunteers in the facility.

Section 11. Rules and Discipline. The facility shall adopt written rules of juvenile conduct which specify acts prohibited within the institution and penalties that may be imposed for various degrees of violation; the written rules shall be reviewed annually and updated if necessary.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:150E

HB 452 which contained revisions to the Juvenile Code was passed during the 1988 session and is now in effect. The law requires that the Corrections Cabinet issue administrative regulations for juvenile holding facilities on or before July 1, 1988. The creation of this new class of facility will allow some jails to hold juveniles on a long-term basis. At the current time, there are only three facilities in the state which can hold juveniles long term. The shortage of available facilities has resulted in a serious flaw in the operation of the criminal justice system. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 17, 1988.

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

CORRECTIONS CABINET
Department of Local Facilities

501 KAR 9:150E. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 441
PURSUANT TO: KRS 441.013
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: The Secretary of the Kentucky Corrections Cabinet is authorized by KRS 441.013(3) to hear matters covered by the Order of the Cabinet requesting county facilities, correctional or detention facilities to comply with the minimum standards for local facilities pursuant to KRS 441.011 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Secretary" means the Secretary of the Corrections Cabinet.
(2) "Cabinet" means the Kentucky Corrections Cabinet.
(3) "Standards" means the minimum facility standards for local facilities.
(4) "Hearing officer" means a hearing officer appointed by the secretary pursuant to KRS 441.013.
(5) "Proceeding" means any proceeding before the secretary or before a hearing officer.
(6) "Day" means a calendar day.
(7) "Order" means the order of the secretary requiring the petitioner(s) to comply with the minimum facility standards for local jails as specified.
(8) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the secretary's order.
(9) "Facility" means county facilities and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, city or urban county government.

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.013(3), cases coming before the secretary may be assigned to a hearing officer within the discretion of the secretary for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the secretary.
(2) A recommended order or adjudication by the hearing officer or the initial order of the secretary, if dismissed or disposed of as provided in subsection (1) of this section, or any modification or repeal of the initial order, shall become the final order of the secretary under the provisions of KRS 441.013(3), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.
(3) Prior to the assignment of a case to a hearing officer, the county jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order, request in writing a public hearing before the secretary or his designee on the matters covered by said order to the Secretary of Corrections,

State Office Building, Fifth Floor, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and intervenors and all proof must be presented at the time of hearing. No additional evidence will be permitted thereafter except in unusual circumstances and within the discretion of the secretary or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the secretary.

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing is deemed effective at the time of mailing.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the cabinet and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. (1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period begins to run on the next working day. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next working day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Where service of a pleading or documents is by mail pursuant to Section 2 of this regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and intervenors within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the secretary or his designee. No hearing shall be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 6. Continuance of Hearing. (1) Continuance of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least three (3) days in advance of the time set for the hearing. The request for continuance must include the reasons therefor.

(3) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional continuance may be granted without approval of the secretary.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing must be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The secretary or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the secretary's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

Section 9. Severance. Upon its own motion, or upon motion of any party or intervenor, the secretary or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The secretary or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the secretary or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

Section 11. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the secretary or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the secretary.

Section 16. Prehearing Conference. (1) At any time before a hearing, the secretary or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The secretary or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the secretary or the hearing officer may prescribe, the party, to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the secretary within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the secretary or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the secretary or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervenor fails to comply with an order of the secretary or the hearing officer to permit discovery in accordance with the provisions of these rules, the secretary or the hearing officer may issue appropriate orders.

Section 20. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies will be paid by the requesting party.

Section 21. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 22. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the cabinet; to:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the secretary and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of this decision;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(8) Adjourn the hearing as the needs of justice and good administration require; and

(9) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the cabinet.

Section 23. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 27 of this regulation.

(3) Unless the hearing officer finds it

impractical, a copy of each such exhibit shall be given to the other parties and intervenors.
(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 24. Rules of Evidence. Hearings before the cabinet and its hearing officers insofar as practicable shall be governed by the rules of evidence applicable in the courts of the Commonwealth of Kentucky.

Section 25. Burden of Proof. In all proceedings commenced by the filing of a notice of hearing, the burden of proof shall rest with the cabinet.

Section 26. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.
(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 27. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the secretary disposing of all issues before him.
(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order within ten (10) days of the date of said findings of fact, conclusions of law, and recommended order.
(3) The secretary shall, within forty-five (45) days of the date of the hearing officer's findings of fact, conclusions of law, and recommended order, issue a final order modifying, repealing, or adopting the findings of fact, conclusions of law and recommended order of the hearing officer.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: June 18, 1988
FILED WITH LRC: June 20, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
600 KAR 1:080E

The Federal Highway Administration has ordered the truck diversion on northbound I-471 traffic to be lifted. Therefore, it is necessary to immediately repeal the enacting administrative regulation, 603 KAR 5:200, vehicles prohibited on I-471. This emergency administrative regulation will be replaced by an ordinary regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 15, 1988

WALLACE G. WILKINSON, Governor
MILO D. BRYANT, Secretary

TRANSPORTATION CABINET

600 KAR 1:080E. Repeal of transportation related administrative regulations.

RELATES TO: KRS Chapter 13A
PURSUANT TO: KRS Chapter 13A, 174.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Federal Highway Administration has ordered the truck diversion on northbound I-471 traffic to be lifted. Therefore, it is necessary to repeal the enacting administrative regulation. In addition, the 1988 General Assembly, upholding a Kentucky Supreme Court decision repealed the Supplemental Highway Use Tax. It is necessary to repeal the regulation implementing the SHU Tax. [Effective July 15, 1986, House Bill 706, enacted by the 1986 Kentucky General Assembly, transferred responsibility for removal of abandoned vehicles from the Department of Highways to the Department of State Police. Therefore, Highways' related administrative regulation must be repealed. Effective July 15, 1986, Senate Bill 372, enacted by the 1986 General Assembly repealed KRS 186.076. This statute is the authorizing statute for administrative regulation 605 KAR 1:110. Therefore, the Motor Vehicle Commission's related administrative regulation must be repealed.]

Section 1. The administrative regulation 603 KAR 5:200, Vehicles prohibited on I-471 [603 KAR 3:040, Abandoned vehicles; removal], is hereby repealed.

Section 2. The administrative regulation 601 KAR 9:110, Supplemental highway user's tax; decal [605 KAR 1:110, Motor vehicle auction dealer], is hereby repealed.

MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 27, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
600 KAR 2:020E

House Bill 455 passed by the 1988 General Assembly requires that the Transportation Cabinet implement the provisions of the Act within 15 days of its effective date. The Transportation Cabinet is amending 600 KAR 2:020 as part of the implementation of HB 455. In order that the amendment be effective by July 30, 1988, as required, it is necessary that it be promulgated as both an ordinary and emergency regulation. The ordinary regulation was filed on July 1, 1988.

WALLACE G. WILKINSON, Governor
MILO D. BRYANT, Secretary

TRANSPORTATION CABINET
Department of Highways
Division of Toll Facilities

600 KAR 2:020E. Emergency vehicles and vehicles in processions on the toll roads.

RELATES TO: KRS 175.450, 175.470, 175.520
PURSUANT TO: KRS 174.080, 175.470, 175.520
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Department of

Highways is authorized to charge and collect toll for transit over each turnpike project. KRS 175.520 specifically exempts emergency vehicles from the payment of tolls under certain circumstances. [The department has determined that emergency vehicles operating on the turnpikes toll roads should be exempt from paying tolls during the time of an emergency.] Further, the department has determined that Transportation Cabinet and Kentucky National Guard vehicles should not pay the toll and are exempted by the provisions of this regulation. The administrative regulation also sets forth the manner in which emergency vehicles and vehicles in processions may be processed through a toll collection station.

Section 1. Ambulance Transportation Services. (1) The Transportation Cabinet shall establish a nonpaying toll road identification card account for each ambulance transportation service licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board in accordance with 902 KAR 20:115 which applies for an account. Application shall be on forms prescribed and furnished by the Transportation Cabinet.

(2) During emergency trips on a toll road when the emergency lights of an ambulance are flashing, the toll collector shall pass the ambulance through the least congested lane of a toll collection station without attempting to stop or process the vehicle.

(3) Each ambulance owned by a licensed ambulance transportation service may be issued a nonpaying identification card for use on the toll road during trips not involving an emergency. The identification card may be presented in lieu of a toll payment by the driver of the ambulance at a toll collection station. The identification card shall not be used except for official business.

Section 2. State Police Vehicles. (1) The Transportation Cabinet shall establish a nonpaying toll road identification card account for the Kentucky State Police.

(2) During emergency trips on the toll roads when the emergency lights of a Kentucky State Police vehicle are flashing, the toll collector shall pass the state police vehicle through the least congested lane of traffic without attempting to stop or process the vehicle.

(3) The Kentucky State Police shall be issued nonpaying identification cards for use by their employees on the toll roads during trips not involving an emergency. The identification card may be presented in lieu of toll payment at a toll collection station. The identification card shall not be used except for official business.

Section 3. Local [Emergency] Fire Department Vehicles, Local Police Vehicles, and Other Emergency Vehicles. (1)(a) The Transportation Cabinet shall establish a nonpaying toll road identification card account for each local police and fire department which has jurisdiction in a county served by a toll road and which applies for an account. Application shall be on forms prescribed and furnished by the Transportation Cabinet.

(b) A nonpaying toll road identification card issued to a local police or fire department shall only be valid within its jurisdiction or in a county contiguous to the county of jurisdiction.

(c) The identification card shall not be used except for official business.

(2)(a) [(1)(a)] During emergency trips of fire department, local police or other emergency vehicles on a toll road when the emergency lights of the vehicle are flashing, the toll collector shall pass the emergency vehicle through the least congested lane of traffic without attempting to stop or process the vehicle.

(b) When the fire department, local police, or other agency has been summoned [called out] by the Division of Toll Facilities under emergency conditions, the return passage, although it may not be under emergency conditions, shall also be toll free.

(3) [(2)] During trips on the toll roads not involving an emergency, the operator of the vehicles set forth in this section shall [must] stop at each toll collection station and shall pay the toll as required by 600 KAR 2:010, Toll assessment on turnpikes or if on official business may present a valid nonpaying toll road identification card.

Section 4. Funeral Processions, United States Military Convoys, and Other Processions. Each vehicle in a funeral, United States military, or other type convoy or procession is required to pay the toll at each toll collection station. Arrangements may be made to allow all vehicles in the convoy to pass through the toll collection station using one (1) or more credit cards by contacting the Transportation Cabinet, Division of Toll Facilities, State Office Building, Frankfort, Kentucky 40622, in advance of the convoy date(s). The convoy or procession may request a special procession credit card from the Division of Toll Facilities.

Section 5. The Transportation Cabinet shall establish a nonpaying toll road identification card account for the Kentucky Transportation Cabinet. A Transportation Cabinet employee while in the discharge of his official duties on the toll roads may be issued a nonpaying identification card to be used on the toll road during trips not involving an emergency. The identification card may be presented in lieu of toll payment at a toll collection station. The identification card shall not be used except for official business.

Section 6. The Transportation Cabinet shall establish a nonpaying toll road identification card account(s) for the Kentucky National Guard. The Kentucky National Guard may be issued nonpaying identification cards for use by their employees on the toll roads during trips not involving an emergency. The identification card may be presented in lieu of toll payment at a toll collection station. The identification card shall not be used except for official business.

B. D. HENSON, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: June 27, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
601 KAR 13:020E

Senate Bill 6 passed by the 1988 General Assembly is effective July 15, 1988. Without an amendment to the point system administrative regulation at the same time, there will be much

confusion about the number of points to be imposed on persons convicted of speeding on a limited access highway. Therefore, this regulation is needed on an emergency basis. This emergency regulation will be replaced by an ordinary regulation. The ordinary regulation was filed on July 15, 1988.

WALLACE G. WILKINSON, Governor
MILO D. BRYANT, Secretary

TRANSPORTATION CABINET
Deparment of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:020E. Point system.

RELATES TO: KRS 186.570, 186.572, 189.990(6)
PURSUANT TO: KRS 186.400
EFFECTIVE: July 15, 1988
NECESSITY AND FUNCTION: This regulation specifies the driver licensing [so-called "]point system in which [" whereby each] traffic offense convictions are [is] assigned a certain number of points, according to the seriousness of the offense as determined by either accident-cause statistics or by statute. Certain offenses have proven so dangerous that they[, along with certain license violations,] are made cause for suspension periods rather than point accumulation. The purpose of the point system [this] is to establish a criterion whereby the discretion allowed the Transportation Cabinet in determining the "habitually reckless or negligent driver" or the "serious violator" will not be exercised arbitrarily and capriciously, but each license holder will be treated like every other one, and each will know or can determine his ["]point["] status at any given time.

Section 1. Definitions. "Probation" means that a pending driving privilege suspension period is held in abeyance provided the person attends an approved driver improvement clinic and provided his driving privilege has not been withdrawn in any other jurisdiction.

Section 2. [1.] To assist the Transportation Cabinet in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws in accordance with KRS 186.570 a schedule of penalty points is [hereby] established for the purpose of denying, withdrawing, suspending or revoking that person's driving privilege and operator's license. Value points for the various classifications of moving traffic offenses, or a driving privilege suspension period for certain named offenses, shall be assessed as set out in Sections 3 and 4 [2 and 3] of this regulation for all persons. Points shall be assessed or driving privilege suspensions invoked for conviction, forfeiture of bail, or payment of fine, with or without a court appearance, for the enumerated offenses whether the conviction is received from a court of competent jurisdiction within the Commonwealth of Kentucky or any other jurisdiction, except that out-of-state speeding offenses shall not be considered by the cabinet. Information regarding convictions may be secured from any official source or record available to public or cabinet inspection. Complete records of driving privilege suspensions and point system assessments shall be maintained in the Transportation Cabinet for a period of five (5) years.

Section 3. [2.] Conviction for any one of the following serious violations of the motor vehicle laws shall be cause for suspension of the driving privilege of the person so convicted for the period of time indicated:
Racing.....90 days
Speeding 26 MPH or more over limit.....90 days
Attempting to elude law enforcement officer by use of motor vehicle.....90 days

Section 4. [3.] Conviction for any one of the following moving traffic offenses shall be cause for assessment of the penalty points indicated:
Speeding 15 MPH or less over the limit.....3
(Except [that pursuant to KRS 186.572] when the moving hazardous violation occurred on a limited access highway [or a limited access highway] of four (4) or more lanes in Kentucky on which the speed limit is 55 MPH or higher, no penalty points shall be assessed for a speeding conviction of 10 [15] MPH or less over the limit.)
Speeding 16 MPH or more, but less than 26 MPH, over the limit.....6
Failure to stop for church or school bus.....6
Improper passing.....5
Reckless driving.....4
Driving on wrong side of road.....4
Following too closely.....4
Failure to yield to emergency vehicle.....4
Changing drivers in a moving vehicle.....4
Vehicle not under control.....4
Stop violation (electric signal, railroad crossing, stop sign).....3
Failure to yield.....3
Wrong way on one-way street.....3
Too fast for conditions.....3
Too slow for conditions.....3
Improper start.....3
Improper driving.....3
Careless driving.....3
Failure to yield left lane.....3
Improper lane usage.....3
Failure to illuminate headlights.....3
Failure to dim headlights.....3
Any other moving hazardous violations.....3
Commission of a moving hazardous violation which involves an accident.....6
Combination of two or more moving hazardous violations in any one occurrence.....6

Section 5. [4.] If a person accumulates six (6) or more penalty points within a two (2) year period, the Transportation Cabinet may send a letter to the address shown on his driving history record that shall advise him of the number of penalty points on his driving history record. The letter shall inform the person of the penalties which may be imposed if he were to accumulate twelve (12) points within two (2) years.

Section 6. [5.] (1) If a person accumulates twelve (12) points within a period of two (2) years, the cabinet may suspend the driving privilege of such person for a period of six (6) months for the first such accumulation of twelve (12) points, one (1) year for the second such accumulation of twelve (12) points, and two (2) years for any subsequent accumulation of twelve

(12) points within a two (2) year period.

(2) For any offense for which the suspension of the driving privilege is six (6) months or less for the first offense, the second conviction of a similar offense shall result in a suspension period of not less than one (1) year, and any subsequent conviction for any similar offense not less than two (2) years.

Section 7. If the cabinet suspends the driving privilege of a person more than one (1) time under the provisions of this administrative regulation, the suspension times shall run consecutively.

Section 8. [6.] (1) Any person who accumulates twelve (12) points or more within a period of two (2) years, or who is convicted of any offense that could result in a suspension of his driving privilege under the provisions of this regulation, may be placed on probation in lieu of suspension. The probation period shall be two (2) times the length of time the suspension would have been if imposed.

(2) ["Probation" for the purpose of this regulation means that a pending driving privilege suspension period is held in abeyance provided the person attends an approved driver improvement clinic and provided his driving privilege is not suspended in any other jurisdiction.] If a person on probation receives an additional conviction for a moving traffic offense with or without court appearance, or upon his failure to successfully enroll in and complete the driver improvement clinic, the person shall have his driving privilege in Kentucky suspended for the period of time outlined in Section 6 [5](1) and (2) of this regulation. [If a person has been convicted of driving under the influence of intoxicants in a foreign jurisdiction, probation may include successful completion of the alcohol driver education course in lieu of the driver improvement clinic.]

(3) Once a person has been placed on probation by the cabinet, he shall not be considered for probation again until a lapse of two (2) years from the ending date of the [any previous] probation period granted, whether served or not.

(4) If a [the] person whose driving privilege has been suspended under the provisions of this administrative regulation becomes [is] eligible for probation, the cabinet may waive the remainder of a driving privilege suspension period [after he has served one-half (1/2) of it]. Upon this waiver, the cabinet shall place the driver on probation for two (2) times the amount of time remaining on the suspension period.

Section 9. [7.] Any person who holds a valid operator's license from another licensing jurisdiction and who after establishing residence in Kentucky applies to become a valid license holder may be considered for an operator's license in Kentucky. However, such person's driving privilege shall not be under suspension or revocation by any jurisdiction at the time of his application in Kentucky.

Section 10. [8.] When a conviction report is used by the Transportation Cabinet to impose a driving privilege suspension or probation, it shall never be used for the imposition of an unrelated suspension or probation. It may be used to show that the person's driving privilege has previously been suspended.

Section 11. [9.] No person's driving privilege shall be suspended under any section of this regulation without his first being offered a hearing, unless the [such] hearing offer has been waived.

Section 12. [10.] (1) As soon as the Transportation Cabinet is made aware that a person has committed sufficient offenses that his driving privilege is placed in jeopardy, the cabinet shall establish a time and place for the hearing on the matter. The cabinet shall notify that person of the hearing by first class mail delivered to his last known address as reflected on the person's driving history record.

(2) The person shall appear for the hearing at the established time and place. The hearing shall be conducted by an appointed representative of the Transportation Cabinet. The testimony given at the hearing shall be recorded and such recordings retained by the cabinet for a period of sixty (60) days.

(3) Based upon the evidence and testimony received at the hearing and the person's driving history record, the hearing officer shall determine whether the cabinet may withdraw the person's driving privilege. If he determines that the cabinet may withdraw the person's driving privilege, he may either order suspending the person's driving privilege or grant probation to the person.

(4) If probation is granted, the terms shall be carefully explained to the person. The person shall indicate his understanding and acceptance of those terms by signing a standard form prepared by the Transportation Cabinet.

(5) If probation is not granted the person, the hearing officer shall prepare the order suspending the person's driving privilege at the close of the hearing. The effective date of the suspension shall be included in the order. The hearing officer shall hand the order to the person prior to his departure.

(6) The person may in writing file a grievance with the Transportation Cabinet if he is aggrieved by any action taken by the cabinet under the guidelines of this administrative regulation. The grievance shall state the reasons he believes the Transportation Cabinet has taken erroneous action. In not less than fifteen (15) nor more than thirty (30) days thereafter the aggrieved party may file an action against the Transportation Cabinet in the circuit court of the county in which he resides or in Franklin Circuit Court.

MARJORIE C. KLEE, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 5, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

STATEMENT OF EMERGENCY
705 KAR 5:140E

KRS 163.089 authorizes the Superintendent of Public Instruction to provide medical and accident insurance for students in the state vocational-technical schools and area vocational education centers and requires the State Board of Education to adopt regulations to implement any such insurance program and to set fees and

limits of liability with respect to such. It is necessary too, that this regulation be in effect and that insurance coverage be provided before the beginning of the 1988-89 school year. This emergency regulation shall be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CLAY C. PARKS, Chairman, State Board of Eduation

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education

705 KAR 5:140E. Student medical and accident insurance.

RELATES TO: KRS 163.089
PURSUANT TO: KRS 156.070, 163.089
EFFECTIVE: July 15, 1988
NECESSITY AND FUNCTION: KRS 163.089 authorizes the Superintendent of Public Instruction to provide medical and accident insurance for students enrolled in the state vocational-technical schools and area vocational education centers and requires the State Board of Education to adopt regulations to implement any such insurance program and to set fees and limits of liability with respect to such. This regulation implements such duties.

Section 1. All students enrolled in state vocational-technical schools and area vocational education centers shall have medical and accident insurance coverage during the period of enrollment.

Section 2. The Superintendent of Public Instruction shall enter into a contract with a surety or insurance company or its agent to provide medical and accident insurance coverage for students enrolled in vocational-technical schools and area vocational centers. The coverage limits shall be at least these amounts:
Accident Medical Expense Maximum - $250,000
(Subject to Exclusions and Limitations)

For loss of use of:
Both arms and both legs.....$50,000
Both legs.....$37,500
One arm and one leg on one side of body..$25,000
One arm or one leg.....$12,500

Section 3. The policy will be a full excess policy and will pay the covered expenses incurred which are in excess of those paid or payable by another plan providing medical expense benefits to a maximum of $250,000.

Section 4. The medical and accident coverage shall consist of a single contract applied to the plan of coverage contained in the contract between the Commonwealth and the carrier.

Section 5. The insurance policy shall be attached to the contract to become part of the medical and accident insurance contract after having been signed by an official of the insuring company having the proper corporate authority to sign this type document.

Section 6. Coverage shall take effect on the date requested and continue to the expiration date shown on the application.

Section 7. At the time of enrollment in a state vocational-technical school or an area vocational education center, each student enrolled shall pay a three (3) dollar insurance fee for the enrollment period or for a school year not to exceed one (1) calendar year.

Section 8. The premium will be paid monthly by the Office of Vocational Education to the surety or insurance company or its agent for the number of students enrolled during the previous month in state vocational-technical schools and area vocational centers.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 15, 1988 at noon.

STATEMENT OF EMERGENCY
707 KAR 1:110E

KRS 167.150 requires the State Board of Education to adopt admission policies for the Kentucky School for the Blind (KSB), and 20 U.S.C. §1415 mandates administrative procedural safeguards with respect to complaints in regard to the provision of a free appropriate public education. Recent litigation has challenged at least one admission decision by KSB and the lack of any formal administrative review process. This emergency administrative regulation is necessary in order to put in place an appropriate administrative review mechanism to fulfull any legal requirement which may exist for such, with respect to previous denials of admission requests for the upcoming 1988-89 school year. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CLAY C. PARKS, Chairman, State Board of Eduation

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children

707 KAR 1:110E. Kentucky School for the Blind; admission policies.

RELATES TO: KRS 167.150, 20 U.S.C. §1415
PURSUANT TO: KRS 156.070, 167.150
EFFECTIVE: July 15, 1988
NECESSITY AND FUNCTION: KRS 167.150 authorizes the State Board of Education, upon recommendation of the Superintendent of Public Instruction, to prescribe admission policies for pupils to attend the Kentucky School for the Blind; and 20 U.S.C. §1415 mandates administrative procedural safeguards with respect to complaints in regard to the provision of a free appropriate public education. This regulation implements that function of prescribing admission criteria and providing for any legally required administrative review of admission decisions by KSB.

Section 1. Statement of Purpose. The educational programs at the Kentucky School for the Blind (KSB) are designed to meet the

educational needs of blind and visually impaired [severely visually handicapped and blind] students. Special emphasis is placed on meeting the needs of students in relation to their visual impairments. Specialized materials, techniques, and aids are used to teach academic subjects, as well as courses needed for well-rounded development, including career-vocational education, music, physical education, orientation and mobility, and daily living and recreation and leisure skills. The overall program is planned to develop each child's ability [potential] for living independently. [()]Counseling, off-campus programs, athletic programs, and student organizations[, etc.,] give experiences which help develop the confidence and skills needed to deal with a variety of social situations.[)]

Section 2. Referral Procedures. Inquiries concerning services of KSB for prospective students may come to the school from parents, legal guardians, agency personnel and other interested people; referrals are made through local school districts. Subsequent to the initial referral, determinations regarding placement of the child shall be made in accordance with procedures outlined in 707 KAR 1:003 and 707 KAR 1:051. Available written reports on prospective students are requested for review by KSB's multidisciplinary [Educational] evaluation team prior to scheduling of the initial evaluation of the child. These reports are a part of the intake procedure and may include but are not limited to the following areas:

(1) Educational history to include reports from programs attended previously.

(2) Family history to include medical, developmental, social and behavioral history of the child.

(3) Ophthalmological or optometric evaluation.

(4) Psychological evaluation.

(5) Audiological, speech, language evaluation.

(6) Complete physical examination to include:

(a) Physical development;

(b) Digestive and/or intestinal difficulties, as indicated;

(c) Neurological information;

(d) Seizure history and prognosis;

(e) Medications;

(f) Bowel and bladder difficulties;

(g) Cardiac history and prognosis;

(h) Hereditary problems; and

(i) Orthopedic evaluation as indicated.

Section 3. Eligibility and Criteria for Admission. Admission is determined by the following eligibility criteria:

(1) The primary sensory handicap of the student shall be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.

(2) The student shall be between five (5) and twenty (20) years of age inclusive.

(3) The prospective student shall possess a visual impairment, after correction, which is so severe that the child's educational performance is adversely affected, resulting in the need for the specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program. A concomitant handicapping condition shall not exclude the individual, however, visual impairment must be the primary handicapping condition.

(4) The prospective student shall meet the following criteria as related to intellectual functioning and adaptive behavior:

(a) Be able to adjust socially and psychologically to the school environment, presenting no deficits in social competence which, even with modifications and adaptations, would continue to significantly interfere with either the student's or other students' educational endeavors.

(b) Demonstrate ability for academic and vocational learning from programs available at KSB, as ascertained from a variety of sources, including but not limited to individual intellectual assessment, individual educational assessment of basic skills, behavior observations, assessment of adaptive behaviors, developmental and social history, vocational and prevocational assessments, and medical information. If a prospective student does not demonstrate ability for academic and vocational learning, self-care, and independent functioning as an adult, or if extensive medical care will be required into adulthood, the student will not be deemed eligible for acceptance into KSB.

(c) Exhibit the following basic prerequisite skills: schedule trained in toileting; acceptance of solid foods; ability to spoon feed and drink from a cup; need for minimal assistance in bathing, dressing, and grooming; and expression of his or her needs through speech or other vocalizations or acceptable modes of communication.

(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to KSB.

(6) Children with orthopedic involvement must require no more than minimum assistance in moving about using orthopedic aids, including wheelchairs, braces, and walkers. These children will be evaluated individually to determine their ability to function adequately within KSB.

[Initial Evaluation Procedures. The procedures are as follows:]

[(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.]

[(2) The initial evaluation may include but not be limited to the following assessments, all to be administered in the child's native language or other nondiscriminatory mode:]

[(a) Educational assessments which may include achievement tests, diagnostic tests, and developmental scales;]

[(b) Orientation and mobility skills;]

[(c) Speech, hearing and language development;]

[(d) Daily living skills;]

[(e) Visual functioning;]

[(f) Gross and fine motor skills;]
[(g) Psychological assessment; and]
[(h) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities.]
[(3) A summary conference will be held at the conclusion of the evaluation at which time the preliminary results will be explained to the appropriate individual who accompanies the child for evaluation. A written report will follow within fifteen (15) working days of the evaluation.]
[(4) Following the completion of a written report, a meeting of KSB's Evaluation Team will be held to review the assessment information.]
[(5) The findings of the Evaluation Team will be sent to the parent(s) and local school district for use in the admissions and release committee process.]

Section 4. Initial Evaluation Procedures. The procedures are as follows:
(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.
(2) The individual assessment shall be conducted by a multidisciplinary evaluation team; shall be administered in the child's native language or other nondiscriminatory mode; and shall include, but not necessarily be limited to the following, which may include evaluations provided to KSB by the parents, local school district, or other agency which were conducted within one (1) year prior to the current assessment:
(a) Individual standardized norm-referenced or informal criterion-referenced educational assessment of basic skills;
(b) Orientation and mobility skills assessment;
(c) Speech, hearing and language development assessment;
(d) Daily living skills assessment;
(e) Visual functioning assessment;
(f) Gross and fine motor skills assessment;
(g) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities; and
(3) At the conclusion of the evaluation period, the KSB multidisciplinary evaluation team shall review all assessment information to determine eligibility for placement at KSB according to Section 3 of this regulation.
(4) Once a determination of eligibility has been made by KSB's multidisciplinary evaluation team, written notification of eligibility status shall be sent to the parents, local education agency and referral source within fifteen (15) days. The notification shall include a description of the eligibility criteria, an item by item determination of whether or not the child has met each of the criteria, a description of the basis in the evaluation information for making the determination, and a description of other factors involved in the eligibility determination. If the child is found to be ineligible for services, the notification shall contain:
(a) A statement of the skills needed by the child in order to be considered for eligibility in the future.
(b) A description of the outreach services that will be recommended for the child while being maintained in a local school district program; and
(c) Notice of the parent's right to request a review of the eligibility determination.
[Eligibility and Criteria for Admissions. Admission is determined by the following eligibility criteria:]
[(1) The primary handicap of the student will be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.]
[(2) The student must be between five (5) and twenty (20) years of age inclusive.]
[(3) A child's visual impairment after correction must be such that he or she needs specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program.]
[(4) The prospective student must meet the following criteria as related to intellectual functioning and adaptive behavior:]
[(a) Be able to adjust socially and psychologically to the school environment, presenting no deficits in adaptive behavior which would interfere with either the student's or other students' educational endeavors.]
[(b) On a standardized instrument for the evaluation of intellectual functioning, achieve at least at the trainable mentally handicapped level as defined in 707 KAR 1:057, and benefit from the educational offerings of this school. When it is not possible to determine a child's level of intellectual functioning and level of adaptive behavior during the initial evaluation, the student may be accepted for an extended evaluation time upon the recommendation of KSB Evaluation Team if he or she appears to have the potential to function at an acceptable level or demonstrates the ability to develop basic skills.]
[(c) Exhibit the following basic prerequisite skills or demonstrate the ability to develop these skills: Be schedule trained in toileting, accept solid foods, be able to spoon feed and drink from a cup, need minimal assistance in bathing, dressing, and grooming, express his or her needs through speech or other vocalizations, natural gestures or signs.]
[(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to the residential program. Prospective students also must not require skilled nursing care.]
[(6) Children with orthopedic involvement must require no more than minimum assistance in moving about using orthopedic aids, including wheelchairs and walkers. These children will be evaluated individually to determine their ability to function adequately within the residential program. A request for extended

trial placement may be made if it is not possible to determine a child's ability to function based on existing information.]

Section 5. Placement. If a student is determined to be eligible for placement at [admission to] KSB, and Administrative Admissions and Release Committee (AARC), consisting of parents and representatives of the local school district and KSB, shall convene. Pursuant to 707 KAR 1:051, the AARC shall be responsible for the development, implementation and monitoring and evaluation of the student's individual education program (IEP). [educational placement within the school will be determined by each child's Individualized Education Program as developed by KSB, local school districts, and parents or guardians pursuant to 707 KAR 1:051.]

Section 6. Early Termination. (1) A review for early termination may be initiated by the parents, local school district or the KSB multidisciplinary evaluation team to determine a student's eligibility for continued placement at KSB. Situations which may lead to review of initial eligibility determination may include, but not limited to the following: [Change of Placement. A placement review may be initiated at any time by KSB, local school districts, and parents or guardians to determine if continued placement at KSB is appropriate. Review procedures shall be in accordance with the admission and release committee process as set forth in 707 KAR 1:051. Situations which lead to a review of placement may include but are not limited to the following:]

(a) [(1)] A change of circumstances, e.g., student progress, which makes local school district placement appropriate.

(b) The student fails to meet criteria related to intellectual functioning an adaptive behavior; such as, any of the following:

1. The student's behavior pattern is dangerous to self or others, e.g., continuing destructive, physically or sexually aggressive behavior, and documented evidence indicates efforts to control the behavior through specific behavioral programming or medication have failed.

2. Inability, after systematic implementation and evaluation of the prescribed IEP, to make minimum progress toward behavioral or educational objectives.

[(2) Destructive, physically aggressive, sexually aggressive, or other unacceptable behavior that threatens the safety or well being of the child or others and that cannot be brought under control through the use of behavior modification, personal counseling, or medication.]

[(3) Failure after a reasonable period to make minimum progress towards behavioral or educational objectives (i.e., self-help, language, gross and fine motor, cognitive, social/emotional) that have been established for the child in his or her Individualized Education Program.]

(c) [(4)] Development of significant medical problems as described in Section 3(5) [4] of this regulation.

(2) Once a review for early termination has been completed by the KSB multidisciplinary evaluation team, written notification of eligibility status will be sent to the parents and local school districts according to procedures outlined in Section 4(4) of this regulation.

Section 7. Change of Placement Within the Agency. (1) All changes of placement within the agency's programs shall meet criteria set forth in 707 KAR 1:051, Section 6.

(2) Any changes in placement within the agency's programs shall follow due process procedures to insure that exceptional children and youth and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement including written prior notice requirements as specified in 707 KAR 1:060.

(3) Any change in placement within the agency's programs shall be subject to established admissions and release committee procedures in 707 KAR 1:051, Section 3 and consideration of the least restrictive environment concept.

Section 8. Review of Eligibility Determinations. (1) If a parent of a current or prospective student or a student over the age of eighteen (18) disagrees with the decision of the KSB multidisciplinary evaluation team regarding initial eligibility or early termination, the parent or student may request a review of the eligibility determination.

(2) During the pendency of a review, the student must remain in his or her present educational placement, unless all parties agree otherwise. If the review involves a student seeking initial admission to KSB, the student, with the consent of the parents, shall be provided a program by the LEA until the completion of all the proceedings.

(3) A written request shall be submitted to the Superintendent of Public Instruction within thirty (30) days of receipt of the notification of eligibility status. The request shall include:

(a) The notice of eligibility status;

(b) A letter specifying the areas of disagreement;

(c) The rationale for such; and

(d) Any documentation which the parent or student wishes to be considered.

(4) Upon receipt of the request, the Superintendent of Public Instruction shall:

(a) Notify the superintendent of KSB of the request and direct the superintendent of KSB to submit the following:

1. All evaluation information;

2. All documentation utilized in the eligibility determination;

3. Any pertinent explanation of or justification for the eligibility determination; and

4. Any document or other information which the school wishes to have considered.

(b) Appoint an impartial eligibility review panel. The panel shall consist of a due process hearing officer normally assigned by the Department of Education to hearings under 707 KAR 1:060, a parent of a visually impaired child, and a professional educator with expertise in the category of blind or visually impaired. The panel members shall not be employees of the Department of Education or the involved local school district and shall have no vested interests that conflict with the student's educational interests. It is the responsibility of the Department of Education to select, train and maintain a registry of panel members to serve on the eligibility review

panel. The Department of Education shall be responsible for the provision of appropriate training to those persons to be selected as panel members.

(5) The eligibility review panel shall have the responsibility of conducting a hearing and recommending in writing to the State Board of Education within sixty (60) days of receipt of the initial request for review, one of the following:

(a) Upholding the decision of KSB's multidisciplinary evaluation team;

(b) Reversing the decision; or

(c) Finding that insufficient evidence was presented upon which to base a determination of eligibility. If the panel finds that insufficient evaluative evidence was presented upon which to base a determination of eligibility, the panel may recommend that the State Board of Education order completed evaluation information to be submitted to it.

(6) Any party to the hearing shall be accorded the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; the right to a written or electronic verbatim record of such hearing; and the right to written recommended findings of fact and decisions.

(7) The panel shall render a written decision, based solely on the evidence presented to it, with recommended findings of fact and conclusions regarding the eligibility of the involved student, such to be submitted to the State Board of Education for consideration at its next regular meeting or at a special meeting for such purpose.

(8) The State Board of Education shall consider and render a final written decision on the matter, with said decision to include written findings of fact if the recommendation of the eligibility review panel is not adopted.

(9) The decision of the state board is binding on the parties involved for one (1) calendar year.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 15, 1988 at noon.

STATEMENT OF EMERGENCY
803 KAR 25:080E

KRS Chapter 342, as amended by the 1987 Extraordinary Session of the General Assembly (House Bill 1), mandated the Workers' Compensation Board to promulgate administrative regulations by July 1, 1988, which ensure early intervention, prompt and cost-efficient delivery of rehabilitation services, and vigorous monitoring of qualified rehabilitation providers, facilities and agencies. An administrative regulation to effectuate this mandate was filed with the Legislative Research Commission within the procedures required by KRS Chapter 13A as an ordinary administrative regulation on July 1, 1988 (803 KAR 25:080). Administrative law judges, pursuant to the practice and procedures rules in 803 KAR 25:011, are authorized to order rehabilitation based upon evidence presented requiring such in an emergency manner. The administrative law judges are presently ruling on motions in new claims which may include rehabilitation services to qualified rehabilitation providers, facilities and agencies. In order that rehabilitation providers, facilities and agencies be enabled to adequately qualify to receive such rehabilitation referrals, such providers, facilities and agencies must act immediately to be designated and appropriately listed on various registers as required by the regulations. For these reasons, it is necessary that 803 KAR 25:080 be in force as an emergency administrative regulation. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JUDGE ARMAND ANGELUCCI, Chairman

LABOR CABINET
Department of Workers' Claims
Workers' Compensation Board

803 KAR 25:080E. Workers' compensation rehabilitation procedures.

RELATES TO: KRS Chapter 342
PURSUANT TO: KRS Chapter 13A, 342.260, 342.710
EFFECTIVE: July 13, 1988
NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate the provision of rehabilitation services pursuant to KRS 342.710.

Section 1. Definitions. (1) Rehabilitation services include both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710. The purpose of rehabilitation services is to help the injured employee accomplish reasonable physical rehabilitation goals and return to suitable gainful employment.

(2) Medical rehabilitation services are those medically oriented services beyond basic medical, surgical and hospital treatment which assist an injured employee in reaching physical rehabilitation goals.

(3) Vocational rehabilitation services are those vocationally related services which help an injured employee resume suitable gainful employment.

(4) Suitable gainful employment means employment which will produce substantial income, and which is reasonably attainable taking into consideration the injured employee's age, education, previous employment, place of resident and limitations.

(5) A rehabilitation plan is a written proposal prepared by a qualified rehabilitation provider stating the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the vendors, and a justification for the recommended services. While preparing a rehabilitation plan, the qualified rehabilitation provider shall consider utilization of the employee's transferrable job skills for job placement into suitable gainful employment prior to recommending training.

(6) Qualified rehabilitation provider means an individual who has met the minimum requirements for listing in and is listed in the Registry of Qualified Rehabilitation Providers.
(7) In-house qualified rehabilitation provider means an individual who has met the minimum qualifications for listing in and is listed in the Registry of In-House Qualified Rehabilitation Providers.
(8) Qualified rehabilitation facility or institution means a rehabilitation facility or institution which has met the minimum requirements for listing in and is listed in the Directory of Qualified Rehabilitation Facilities.
(9) Qualified rehabilitation agency means the Office of Vocational Rehabilitation, Department of Education.

Section 2. Responsibilities. (1) The employer/carrier shall provide appropriate rehabilitation services to injured employees in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(2) Injured employees shall be entitled to rehabilitation services to help them accomplish reasonable physical rehabilitation goals and to help them return to suitable gainful employment, and shall be responsible for accepting such services in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(3) It shall be the responsibility of qualified rehabilitation providers, facilities and agencies to provide services within their areas of competencies and to submit such information as is required by the Workers' Compensation Board for registration and monitoring purposes.

Section 3. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) To apply for listing in the Director of Qualified Rehabilitation Facilities, a rehabilitation facility or institution shall submit an application as provided by the Workers' Compensation Board and such supporting documentation as may be required. Rehabilitation facilities shall also provide such information as may be deemed necessary for monitoring purposes. A qualified rehabilitation facility may be either a freestanding facility or a rehabilitation unit in a general, acute care hospital.
(2) Recognizing that injured employees with significant physical rehabilitation problems may benefit most from a broad range of rehabilitation services administered in an organized, goal oriented, team approach, the Workers' Compensation Board endorses rehabilitation programs which have met strict licensure and accreditation standards.
(3) To assure the availability of the broad range of medical rehabilitation and vocational rehabilitation services necessary pursuant to KRS 342.710, and to facilitate vigorous monitoring of rehabilitation facilities, a qualified rehabilitation facility must meet certain licensure and accreditation requirements.
(4) The facility must be licensed through the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, to provide inpatient physical rehabilitation services pursuant to 902 KAR 20:016 or 902 KAR 20:240.
(5) The facility must be accredited through the Commission on Accreditation of Rehabilitation Facilities in the following program areas:
(a) Comprehensive inpatient rehabilitation;
(b) Outpatient medical rehabilitation;
(c) Vocational evaluation.

Section 4. Application for Provisional Listing in the Directory of Qualified Rehabilitation Facilities. (1) In order to permit a period of transition for facilities or institutions which may be affected by this policy, provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Workers' Compensation Board to a facility or institution which meets certain licensure and certification requirements.
(2) The facility must be licensed through the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources to provide inpatient physical rehabilitation services pursuant to 902 KAR 20:016 or 902 KAR 20:240.
(3) The facility must certify to the Workers' Compensation Board in the application process that diligent efforts will be made to obtain accreditation through the Commission on Accreditation of Rehabilitation Facilities in the following program areas within one (1) year from the date of approval as a qualified rehabilitation facility on a provisional basis:
(a) Comprehensive inpatient rehabilitation;
(b) Outpatient medical rehabilitation;
(c) Vocational evaluation.
The Certificate of Qualification issued to a facility on a provisional basis expires one (1) year from the date of approval. However, the Workers' Compensation Board may grant an extension of time upon written request and a determination that diligent efforts have resulted in significant progress toward obtaining the required accredited programs through the Commission on Accreditation of Rehabilitation Facilities.

Section 5. Removal from Directory of Qualified Rehabilitation Facilities. (1) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any licensure requirement shall immediately be removed from the Directory of Qualified Rehabilitation Facilities.
(2) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any accreditation requirement may be granted provisional listing in the Directory of Qualified Rehabilitation Facilities upon application and approval by the Workers' Compensation Board.

Section 6. Registry of Qualified Rehabilitation Providers. (1) To apply for listing in the Registry of Qualified Rehabilitation Providers, an individual shall submit an application as provided by the Workers' Compensation Board and submit such supporting documentation as may be required. Qualified Rehabilitation Providers shall also provide such information as may be required for monitoring purposes.
(2) For those applications received within sixty (60) days of the effective date of this regulation, the minimum qualifications for

rehabilitation nurses are:
(a) Registered nurse with a current Kentucky license; and
(b) Subsequent employment as a rehabilitation nurse.
(3) For those applications received within sixty (60) days of the effective date of this regulation the minimum qualifications for rehabilitation counselors are:
(a) Doctorate or master's degree in rehabilitation counseling, or related to rehabilitation counseling, as most recently defined by the Commission on Rehabilitation Counselor Certification; or
(b) Baccalaureate degree in rehabilitation counseling, or related area; or
(c) Other baccalaureate degree and subsequent experience as a rehabilitation counselor.
(4) For those applications received sixty-one (61) or more days after the effective date of this regulation, the minimum qualifications for rehabilitation nurses are:
(a) Registered nurse with a current Kentucky license; and
(b) Certification as a certified rehabilitation registered nurse or certified insurance rehabilitation specialist within one (1) year after the education and work experience requirements for certification are met, or one (1) year after the date of application, whichever date is later.
(5) For those applications received sixty-one (61) or more days from the effective date of this regulation, the minimum qualifications for rehabilitation counselors are:
(a) Doctorate or master's degree in rehabilitation counseling, or related to rehabilitation counseling, as most recently defined by the Commission on Rehabilitation Counselor Certification; or
(b) Baccalaureate degree in rehabilitation counseling, or related area; and
(c) Certification as a certified rehabilitation counselor or certified insurance rehabilitation specialist within one (1) year after the education and work experience requirements for certification are met, or one (1) year after the date of application, whichever date is later.

Section 7. Registry of In-House Qualified Rehabilitation Providers. (1) Nothing in this regulation shall prevent self-insured employers or workers' compensation insurance carriers from referring cases to qualified rehabilitation providers on their staff, contingent upon rehabilitation services being provided in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(2) In-house qualified rehabilitation providers shall be subject to the same qualifications and reporting requirements as rehabilitation nurses and rehabilitation counselors listed in the Registry of Qualified Rehabilitation Providers.
(3) A separate Registry of In-House Qualified Rehabilitation Providers shall be maintained by the Workers' Compensation Board.

Section 8. Continuing Education Requirements. (1) The Workers' Compensation Board may, at its discretion, require qualified rehabilitation providers and in-house qualified rehabilitation providers to attend training sessions sponsored by the Workers' Compensation Board at such times and places as may be deemed necessary.
(2) A qualified rehabilitation provider or in-house qualified rehabilitation provider who, without good cause, fails to attend training sessions required by the Workers' Compensation Board, may be removed from the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers.

Section 9. Requests for Registration Renewal. (1) By July 15th of each year, qualified rehabilitation providers, and in-house qualified rehabilitation providers who want to continue in those roles shall submit a letter to the Workers' Compensation Board requesting registration renewal. The letter shall also list all pertinent continuing education by title, location, dates, and provider which was completed the previous twelve (12) month period ending June 30. The letter shall also list by name, address, telephone number, social security number, and Workers' Compensation Board file number all workers' compensation claimants who were served during that same time period.
(2) A qualified rehabilitation provider who, without good cause, fails to submit a request for registration renewal with all required information, may be removed from the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers.

Section 10. Removal from Registry of Qualified Rehabilitation Providers, or Registry of In-House Qualified Rehabilitation Providers. (1) In the event of evidence of a violation of the Workers' Compensation Board's rules and regulations, or receipt of a written complaint against a qualified rehabilitation provider or in-house qualified rehabilitation provider, he shall be notified in writing of the alleged rule violation or nature of the complaint.
(2) Within ten (10) days of receipt of the notice, he shall file a written response.
(3) If it is determined that further investigation is required, a hearing shall be scheduled. After reviewing the evidence, an administrative law judge may issue an order dismissing the complaint, placing the qualified rehabilitation provider, or in-house qualified rehabilitation provider on probation, or revoking his registration.
(4) Any appeal from the order of the administrative law judge shall be governed by procedures applicable to appeals from the order of administrative agencies generally.
(5) A qualified rehabilitation provider or in-house qualified rehabilitation provider may reapply for registration after 180 days from the date of revocation.

Section 11. Provision of Rehabilitation Services. (1) It shall be the responsibility of the employer/carrier to identify injured employees who may benefit from rehabilitation services and to provide appropriate rehabilitation services pursuant to KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(2) In their selection of individuals to whom they must refer injured employees for coordination of medical rehabilitation services and vocational rehabilitation services, the employer/carrier shall be limited to qualified rehabilitation providers listed in the Registry

of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers.

(3) The types of services to be provided by qualified rehabilitation providers include, but are not limited to:

(a) Assessment of current level of medical care and needs;

(b) Discharge planning, follow-up services, and assessment of future rehabilitation needs;

(c) Assessment of need for referral for medical rehabilitation services;

(d) Serving as liaison between physicians, patient, family, employer/carrier, attorney;

(e) Assessment of home modification and vehicle modification requirements;

(f) Arrangements for transfers, attendant care, medical supplies and equipment;

(g) Patient and family education regarding the employee's injury;

(h) Medical clarification and general coordination of medical rehabilitation services;

(i) Vocational evaluation;

(j) Vocational counseling;

(k) Job analysis;

(l) Job modification;

(m) Job placement;

(n) Referral for diagnostic vocational and psychological testing;

(o) Determining vocational goals and writing rehabilitation plans outlining services and costs needed to attain that goal;

(p) General coordination of vocational services.

(4) In order to retain control over the costs of rehabilitation, the employer/carrier representative may establish guidelines for services to be provided by qualified rehabilitation providers and may reassign cases from one qualified rehabilitation provider to another at his discretion.

(5) All medical rehabilitation services shall be provided at a qualified rehabilitation facility listed in the Directory of Qualified Rehabilitation Facilities.

Section 12. Referral of Catastrophic Injury Cases. (1) Any case other than catastrophic injury cases may be referred to a qualified rehabilitation provider at any time for routine coordination of medical and vocational services. However, in catastrophic injury cases, the employer/carrier shall refer the injured employee to a rehabilitation nurse listed in the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers within fifteen (15) days of knowledge of such an injury.

(2) Referral of catastrophic injury cases shall be made on a form provided by the Workers' Compensation Board, a copy of which shall be sent to the Workers' Compensation Board by the claim manager.

(3) Catastrophic injury cases include:

(a) Spinal cord injuries;

(b) Amputation of a hand or foot;

(c) Severe brain or closed head injuries;

(d) Blindness;

(e) Second or third degree burns over twenty-five (25) percent or more of total body surface, or third degree burns to twenty-five (25) percent or more of face or hands;

(f) Other injuries or conditions expected to result in need for substantial medical rehabilitation services beyond acute care hospitalization.

(4) Within seven (7) days of receipt of a catastrophic injury case, the rehabilitation nurse shall make an initial report to the claim manager on a form provided by the Workers' Compensation Board, a copy of which shall be sent to the Workers' Compensation Board by the rehabilitation nurse. The initial report shall summarize the current level of medical care and needs, and the long-term medical and physical rehabilitation needs. Copies of subsequent written reports to the claim manager shall be sent to the Workers' Compensation Board by the rehabilitation nurse.

(5) The rehabilitation nurse shall submit a final report to the employer/carrier on a form provided by the Workers' Compensation Board, a copy of which the rehabilitation nurse shall send to the Workers' Compensation Board, which shall summarize the types of services provided and the total charges billed to the employer/carrier. The rehabilitation nurse shall not bill for time or expenses related to completing and submitting forms and reports required by the Workers' Compensation Board.

Section 13. Referral of Ninety (90) Day Lost Time Cases. (1) In all cases in which an injured employee has not been referred to a qualified rehabilitation provider at an earlier date, then within seven (7) days after an injured employee has ninety (90) days of temporary total disability, the employer/carrier shall submit a report to the Workers' Compensation Board on a form supplied by the Workers' Compensation Board which will indicate:

(a) The name, address and telephone number of the qualified rehabilitation provider to whom the case has been assigned; or

(b) States that, following maximum medical improvement, the injured employee will be able to resume his usual customary employment or other suitable gainful employment; or

(c) States the injured employee is so seriously impaired as to be unable to benefit from vocational rehabilitation services; or

(d) States the injured employee voluntarily elects not to be referred to a qualified rehabilitation provider due to retirement plans; or

(e) Other (explain).

(2) The assertion of the employer/carrier of the injured employee's ability to return to work following maximum medical improvement, or inability to benefit from vocational rehabilitation services due to the severity of his impairment, shall be supported by an attached statement from the employee's treating or examining physician.

Section 14. Referral of Other Cases. (1) If in addition to catastrophic injury cases and ninety (90) day lost time cases, the employer/carrier elects to voluntarily refer other cases for coordination of medical or vocational services or for medical clarification, such cases shall be referred only to qualified rehabilitation providers.

(2) The employer/carrier shall make such referrals on a form provided by the Workers' Compensation Board and shall submit a copy to the Workers' Compensation Board within seven (7) days of case assignment.

Section 15. Limitations on Duties of Qualified

Rehabilitation Providers. (1) On any case to which an individual is assigned as a qualified rehabilitation provider, he shall be prohibited from performing any claims investigation or claims adjusting functions such as, scheduling medical, vocational, or rehabilitation evaluations for the purpose of securing adverse testimony or discussing settlements.

(2) Qualified rehabilitation providers shall not interpret workers' compensation law for injured employees other than to explain the role of qualified rehabilitation providers and to discuss rehabilitation services and procedures pursuant to KRS 342.710 and administrative regulations for workers' compensation rehabilitation procedures.

(3) Absent the written permission of the physician, chiropractor, osteopath, psychologist, or other medical personnel and the injured employee, the qualified rehabilitation provider shall not be present in the examination area or treatment area during examination or treatment of the injured employee.

Section 16. Supplemental Report by the Employer/Carrier. (1) In the event an injured employee previously designated by the employer/carrier as likely to return to suitable gainful employment following maximum medical improvement has not done so within 180 days of temporary total disability, the employer/carrier shall within seven (7) days thereafter submit a supplemental report to the Workers' Compensation Board stating the name and address of the qualified rehabilitation provider to whom the employee has been referred, or a statement from the employee's treating physician describing the employee's current condition and likelihood of returning to suitable gainful employment.

(2) For those employees still designated as likely to return to suitable gainful employment following maximum medical improvement, subsequent supplemental reports shall be submitted by the employer/carrier every ninety (90) days thereafter.

Section 17. Submission of Rehabilitation Plan by Qualified Rehabilitation Provider. (1) If the qualified rehabilitation provider determines the injured employee is unlikely to return to suitable gainful employment without the intervention of vocational rehabilitation services, he shall submit a rehabilitation plan to the employer/carrier listing the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the vendors, and a justification for the recommended services.

(2) Within thirty (30) days of receipt of the referral, the qualified rehabilitation provider shall submit a rehabilitation plan to the employer/carrier on a form provided by the Workers' Compensation Board, and the qualified rehabilitation provider shall send a copy to the Workers' Compensation Board.

(3) The rehabilitation plan, and the copy to the Workers' Compensation Board, shall be accompanied by copies of medical, psychological, and vocational evaluation reports on which the vocational goal is based. Labor market information documenting a reasonable chance for successful placement shall be included. The medical and psychological reports shall expressly state the permanent physical and psychological restrictions under which the employee is placed.

(4) If additional services not listed on the original rehabilitation plan become necessary, the qualified rehabilitation provider shall submit rehabilitation plan amendments to the employer/carrier representative for his approval. Rehabilitation plan amendments shall have the same format and requirements as the original rehabilitation plan, including submission of copies to the Workers' Compensation Board.

(5) Medical, surgical, hospital treatment, medical rehabilitation services, supplies and appliances normally required for the cure or relief of the effects of occupational injuries and diseases shall not be included in rehabilitation plans or rehabilitation plan amendments.

(6) Rehabilitation plans and rehabilitation plan amendments shall include any specific diagnostic medical, psychological, and vocational testing and evaluation necessary to determine a vocational goal, and any specific vocational rehabilitation service needed to attain that goal, such as counseling, job placement, job analysis, job modification, training, and related costs. Rehabilitation plans and rehabilitation plan amendments shall be signed by the qualified rehabilitation provider proposing the services, by the injured employee, and by the employer/carrier representative authorizing the services.

(7) Copies of all rehabilitation plans and rehabilitation plan amendments shall be supplied to the injured employee by the qualified rehabilitation provider.

Section 18. Submission of Progress Reports by Qualified Rehabilitation Provider. (1) In the event a rehabilitation plan cannot be developed within thirty (30) days, then in lieu of the rehabilitation plan, the qualified rehabilitation provider shall submit a progress report to the employer/carrier, on a form provided by the Workers' Compensation Board, summarizing activities, problems, and progress, a copy of which the qualified rehabilitation provider shall send to the Workers' Compensation Board.

(2) Such progress reports shall be submitted every thirty (30) days until a rehabilitation plan is submitted and every sixty (60) days thereafter until the injured employee returns to work, or until vocational rehabilitation services are discontinued.

(3) Copies of all progress reports shall be supplied to the employee by the qualified rehabilitation provider.

Section 19. Submission of Final Report by Qualified Rehabilitation Provider. (1) The qualified rehabilitation provider shall submit a final report to the employer/carrier on a form provided by the Workers' Compensation Board, a copy of which shall be sent by the qualified rehabilitation provider to the Workers' Compensation Board, which shall include a description of the job to which the injured employee has returned, his rate of pay, the name and address of the employer, or the reason vocational rehabilitation services were discontinued, and such other information as may be required.

(2) The final report shall include the total costs of vocational rehabilitation services by

category and vendor, such as: tuition, books, fees, room, board, and transportation, and any other categories required by the Workers' Compensation Board. The final report shall also include a summary of the services provided by the qualified rehabilitation provider and the total charges billed to the employer/carrier by the qualified rehabilitation provider.

(3) The final report shall be submitted within thirty (30) days of case closure and final billing. The qualified rehabilitation provider shall not bill for time or expenses related to completing and submitting forms and reports required by the Workers' Compensation Board. A copy of the final report shall be provided to the employee by the qualified rehabilitation provider.

Section 20. Written Request for Rehabilitation Services. (1) In the event the employer/carrier fails to refer an injured employee for rehabilitation services pursuant to KRS 342.710 and the administrative regulations for workers' compensation rehabilitation procedures, the injured employee, or anyone on his behalf, may file a written request for rehabilitation services.

(2) If the dispute cannot be resolved voluntarily, interlocutory relief may be sought by filing a Form 101 or Form 102.

Section 21. Dispute Resolution. (1) Any dispute involving the provision or acceptance of rehabilitation services that cannot be resolved without a formal hearing process shall be resolved according to the procedures in KRS 342.710(3).

(2) In the event a dispute regarding rehabilitation arises prior to the filing of an application for adjustment of claim, the aggrieved party may file a Form 101 or Form 102 to seek interlocutory relief.

Section 22. Forms. Forms R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R13, and R14 are hereby adopted by reference.

ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: July 12, 1988
FILED WITH LRC: July 13, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
806 KAR 4:010E

This emergency administrative regulation prescribes the fees of the Department of Insurance. Pursuant to KRS 304.2-400, all fees of the Department of Insurance received under KRS 304.4-010 are credited to the Insurance Regulatory Insurance Trust Fund is used to defray the expenses of the Department of Insurance in carrying out its administrative and regulatory powers under the Kentucky Insurance Code. Effective July 15, 1988, Section 25 of HB 552 amends KRS 304.4-010 to provide that the services for which the Department of Insurance shall charge fees and the amounts of those fees shall be prescribed by the Commissioner of Insurance. Therefore, an emergency administrative regulation under KRS 13A.190 is necessary to provide a fee schedule pending the adoption of a final regulation by the Commissioner of Insurance. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1988.

WALLACE G. WILKINSON, Governor
THEODORE T. COLLEY, Secretary
LEROY MORGAN, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 4:010E. Fees of the Department of Insurance.

RELATES TO: KRS 304.4-010
STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010
EFFECTIVE: July 15, 1988
NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This regulation prescribes these services for which the Department of Insurance will charge fees and the amounts of those fees.

Section 1. The commissioner shall collect in advance fees as follows:

(1) Annual statement.
(a) Filing each year, $100.
(b) Filing additional or supplemental statement in the same year, $100.
(2) Filing charter documents.
(a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, $100.
(b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, $50.
(3) Certificate of authority.
(a) Issuance of original certificate, $500.
(b) Amending, to add a line, $50.
(c) Renewal, each year, $100.
(4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, $200.
(5) Self insurer.
(a) Application to become self insurer under subtitle 39, $200.
(b) Notification of self-insurance program under subtitle 32, $50.
(6) Agent licenses, foreign and alien insurers.
(a) Agent license, per insurer represented, biennial, $40.
(b) Temporary license as agent, $20.
(c) Nonresident agent, per insurer represented, biennial, $50.
(d) Resident corporate or partnership agent, per insurer represented, biennial, $100.
(e) Nonresident corporate or partnership agent, per insurer represented, biennial, $120.
(7) Surplus lines broker or managing general agent, biennial, $100.
(8) Solicitor license, biennial, $40.
(9) Adjuster license, biennial, $50.
(a) Temporary license as apprentice adjuster, $25.
(b) Administrator's license, biennial, $50.
(10) Consultant license, biennial, $100.
(11) Agent licenses for fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan

organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.
(a) Residents, $40.
(b) Nonresidents, $50.
(12) Filing agent and solicitor continuing education courses for approval, $5 per hour of continuing education credit; minimum of $10.
(13) Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.
(a) Residents, $40.
(b) Nonresidents, $50.
(14) Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, $50.
(15) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), $500.
(16) Advisory organizations.
(a) Application for license, $500.
(b) Annual renewal, $100.
(17) Rate and form filings.
(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, $100.
(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, $100.
(c) Other rate and form filings, $5.
(18) Insurance premium finance companies.
(a) Application for license, $500.
(b) Annual renewal, $100.
(19) Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.
(20) Miscellaneous services.
(a) Filing other documents, each, $5.
(b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for above, each, $5.
(c) For copies of any document on file with the commissioner, per page, fifty (50) cents.
(d) Copy of annual statements, per page, $1.
(e) Computer printouts or computer printouts of mailing labels, per page, $2.

Section 2. The biennial renewal fees specified in Section 1(6), (7), (8), (9), (10), and (11) of this regulation are payable as follows:
(1) Licensees for life, health, life and health insurers, or fraternal benefit societies shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and
(2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, or multiple line insurers shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

Section 3. When a statute or regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this regulation.

Section 4. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

STATEMENT OF EMERGENCY
806 KAR 13:110E

This emergency administrative regulation prescribes the rate standards which must be met by property and casualty insurance rate filings subject to the "flex rating" provisions of KRS 304.13-051. 1988 Ky. Acts c. 225, Section 9, amends KRS 304.13-051 effective July 15, 1988, to require prior approval by the Commissioner of Insurance before any property and casualty insurance rate increase or decrease of more than 25% may take effect. However, the General Assembly did not provide any standards to be met by such rate filings. Therefore, an emergency administrative regulation under KRS 13A.190 is necessary to provide rate standards for property and casualty insurance rate filings reflecting an increase or decrease of more than 25% pending the adoption of a final regulation by the Commissioner of Insurance. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1988.

WALLACE G. WILKINSON, Governor
THEODORE T. COLLEY, Secretary
LEROY MORGAN, Commissioner

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 13:110E. Rate standards for property and casualty insurance "flex rating".

RELATES TO: KRS 304.13-051
STATUTORY AUTHORITY: KRS 304.2-110
EFFECTIVE: July 15, 1988
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation prescribes the rate standards which must be met by property and casualty insurance rate filings subject to the "flex rating" provisions of KRS 304.13-051.

Section 1. Property and casualty insurance rates subject to prior approval by the Commissioner of Insurance under KRS 304.13-051(5)(b) shall be made in accordance with the following provisions:
(1) Manual, minimum, class rates, rating schedules, or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;
(2) Rates shall not be excessive, inadequate, or unfairly discriminatory; and
(3) Due consideration shall be given:
(a) To past and prospective loss experience within and outside this state;
(b) To conflaguration and catastrophe hazards;
(c) To a reasonable margin for underwriting profit and contingency;
(d) To dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) To past and prospective expenses, both countrywide and those specially applicable to this state;

(f) To all other relevant factors within and outside this state; and

(g) In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during a period of not less than the most recent three (3) year period for which such experience is available;

(4) The systems of expense provisions included in the rates for use by insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable; and

(5) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks which may have a probable effect upon losses or expenses.

Section 2. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 15, 1988 at 9 a.m.

STATEMENT OF EMERGENCY
901 KAR 5:110E

Emergency regulation 901 KAR 5:110E is necessary in order to implement HB 14 which requires the cabinet to compile a list of communicable diseases which require blood and body fluid precautions. An ordinary administrative regulation cannot suffice because the statute goes into effect July 15, 1988. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KAR Chapter 13A.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services
Vital Statistics Branch

901 KAR 5:110E. Blood and body fluid precautions.

RELATES TO: KRS Chapter 213
PURSUANT TO: KRS 13A.070, 194.040, 211.090, 213.110
EFFECTIVE: July 13, 1988
NECESSITY AND FUNCTION: KRS 213.110 requires the Cabinet for Human Resources to compile a list of communicable diseases which require blood and body fluid precautions. The purpose of this regulation is to list such diseases.

Section 1. Diseases Requiring Blood and Body Fluid Precautions. The following diseases and conditions are hereby declared by the Cabinet for Human Resources to require blood and body fluid precautions:

(1) Abscess;
(2) Acquired immunodeficiency syndrome (AIDS);
(3) Adenovirus infection;
(4) Amebiasis;
(5) Anthrax;
(6) Babesiosis;
(7) Bartonellosis;
(8) Bronchiolitis;
(9) Bronchitis;
(10) Brucellosis;
(11) Cellulitis;
(12) Chicken pox;
(13) Chlamydial infection;
(14) Cholera;
(15) Colorado tick fever;
(16) Conjunctivitis;
(17) Coronavirus disease;
(18) Coxsackie virus disease;
(19) Creutzfeldt-Jakob disease;
(20) Cytomegalovirus infection;
(21) Decubitus ulcer;
(22) Dengue fever;
(23) Diarrhea of unknown or infectious etiology;
(24) Diptheria;
(25) Echovirus disease;
(26) Endometritis;
(27) Enterocolitis;
(28) Enteroviral infection;
(29) Epstein-Barr virus infection, including infectious mononucleosis;
(30) Erythema infectiosum (fifth disease);
(31) Fever of unknown origin;
(32) Furunculosis;
(33) Gas gangrene;
(34) Gastroenteritis;
(35) Giardiasis;
(36) Hand, foot and mouth disease;
(37) Hemorrhagic fever (for example, Ebola, Marburg, Crimean-Congo and Lassa fevers);
(38) Viral hepatitis (acute hepatitis A; acute and chronic hepatitis B, delta hepatitis, and non-A non-B hepatitis);
(39) Herpangina;
(40) Herpes simplex disease;
(41) Herpes zoster disease (varicella shingles);
(42) Human immunodeficiency virus (HIV) infection;
(43) Influenza;
(44) Kala-azar (visceral leishmaniasis);
(45) Keratoconjunctivitis;
(46) Legionellosis;
(47) Leptospirosis;
(48) Lyme disease;
(49) Malaria;
(50) Measles (rubeola);
(51) Melioidosis;
(52) Meningitis;
(53) Meningococcal disease;
(54) Mumps;
(55) Mycoplasmal pneumonia;
(56) Norwalk agent infection;
(57) Orf virus disease;
(58) Parainfluenza virus infection;
(59) Pertussis;
(60) Pharyngitis;
(61) Plague;
(62) Pleurodynia (epidemic myalgia);
(63) Pneumonia;
(64) Poliomyelitis;
(65) Psittacosis (ornithosis);

(66) Q fever;
(67) Rabies;
(68) Rat-bite fever;
(69) Relapsing fever;
(70) Respiratory syncytial virus (RSV) infection;
(71) Rocky Mountain spotted fever and other rickettsial fevers;
(72) Rotavirus infection;
(73) Rubella;
(74) Salmonellosis;
(75) Septicemia;
(76) Shigellosis;
(77) Staphylococcal disease;
(78) Streptococcal disease;
(79) Syphilis (venereal and nonvenereal);
(80) Toxic shock syndrome;
(81) Trachoma, acute;
(82) Tuberculosis;
(83) Tularemia;
(84) Typhoid fever;
(85) Typhus;
(86) Vaccinia;
(87) Varicella;
(88) Venezuelan equine encephalitis;
(89) Vibrio infection;
(90) Viral disease, not otherwise specified;
(91) Yaws (early stage);
(92) Yellow fever;
(93) Yersinosis; and
(94) All other communicable diseases.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 21, 1988
FILED WITH LRC: July 13, 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 Mental Health
and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:060E. Licensing procedures, nonmedical alcohol treatment and education centers.

RELATES TO: KRS 222.210 to 222.310
PURSUANT TO: KRS 194.050, 222.230
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish standards for determining what types of facilities [programs] must have a nonmedical alcohol treatment and education center license to operate and the procedures for obtaining and maintaining such a license.

Section 1. Licensing and Approval Procedures. Applications for licensing, or waivers requesting exemptions from licensure standard(s) shall be obtained from and submitted to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40601.
(1) Application for licensure shall be filed by all agencies operating a nonmedical alcohol treatment and education center in the Commonwealth with the following exceptions:
(a) Group meetings organized among alcoholics, recovering alcoholics or alcohol abusers, families and others, held on a nonresidential basis and without professional staff intervention, for the purpose of discussing problems related to use of alcohol where no fee is involved.
(b) Transportation Cabinet, Alcohol Driver Education, pursuant to: KRS Chapter 189A and 601 KAR 13:050.
(c) Programs conducted in a facility established and maintained by a licensed hospital; nursing homes; and department, agency or institution of the federal government or the Commonwealth.
(d) All chemical dependency treatment services and facilities licensed under 902 KAR 20:160.
(2) The Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation shall conduct all licensure surveys to determine whether an agency's nonmedical alcohol treatment and education center is in compliance with the applicable licensure standards.
(3) The cabinet shall notify the applicant agency for a nonmedical alcohol treatment and education center license of any pending licensure action taken, and shall provide written reports citing observed deficiencies as they relate to the standards. A copy of this report shall be forwarded to the applicant agency. Upon receipt of this report the applicant agency must submit an acceptable plan of correction for cited deficiencies to the cabinet within ten (10) days.
(4) Licensure is not transferable. Both the license holder and the new operator shall be responsible to notify the cabinet when the agency possessing the nonmedical alcohol treatment and education center license changes ownership or control or undergoes a major change in its capacity or in the category(ies) of programs offered, with disclosure of all factors involved in the change. If it is the decision of the cabinet that a reapplication is in order the applicant shall apply within twenty (20) days of notification by the cabinet. Failure to comply with these provisions shall result in loss of license.
(5) The cabinet shall be notified in writing prior to the merger of a the agency possessing a nonmedical alcohol treatment and education center license with another agency and an immediate request for licensure be filed with the cabinet. The merged agency's nonmedical alcohol program(s) shall be surveyed within one (1) year of such notification. For the purposes of licensure, a merged agency shall be a legal entity with a single governing body, a single

administration, a single staff, and, where applicable, a single set of bylaws, rules and regulations.

(6) The cabinet shall publish on an annual basis a list of licensed nonmedical alcohol treatment and education centers identifying types of programs and their locations and shall make it available to the public upon request.

(7) Licenses granted to agencies deemed responsible and suitable to carry out nonmedical alcohol treatment and education center programs shall meet applicable standards and requirements for a period not exceeding one (1) year and renewable for a like period, and subject to revocation for cause.

(8)(a) A nonmedical alcohol treatment and education center license shall be issued by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation to an agency for each facility operated by the agency that meets the required standards for operating a detoxification, residential treatment, residential transitional treatment, outpatient, day/night intensive outpatient treatment or education program. In the event that an agency operates an education program at multiple facilities only a single nonmedical alcohol treatment and education center license shall be issued to the applicant agency for the education program. [that meets the required program standards. Such a license shall identify the location of the facility and the year of issuance of the license and the individual facility(ies) providing alcohol detoxification, alcohol residential, alcohol residential transitional, alcohol outpatient, alcohol day/night intensive outpatient treatment or alcohol education programs for which they have been approved. Each agency licensed shall receive a certificate of licensure indicating its approved status.]

(b) A nonmedical alcohol treatment and education center license shall identify the location of the facility being licensed, the year of issuance of the license, and whether a detoxification, residential treatment, residential transitional treatment, outpatient or day/night intensive treatment program is being licensed. The agency shall receive a certificate of licensure indicating its approved status.

(c) A nonmedical alcohol treatment and education center license issued for an education program shall identify the location of the facility or facilities being licensed and the year of issuance of the license. The agency that operates the facility or facilities being licensed shall receive a certificate of licensure indicating its approved status.

(d) [(b)] An agency may be provided additional certificates of licensure for its nonmedical alcohol program(s) upon payment of the cost of reproduction. The certificate and all copies shall remain the property of the cabinet and shall be returned to the cabinet if the agency is issued a new certificate of licensure reflecting a change in name or programs for which it is licensed, or if the license is revoked for any cause.

(e) The Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation shall be notified in writing when there is a change in location for every facility operated by an agency licensed as a nonmedical alcohol treatment and education center.

(9) Hearing procedures involving licenses shall be conducted in accordance with KRS 222.230(6).

(10) Applications for a permit to operate a nonmedical alcohol treatment and education center shall be accompanied by a fee of $130 [100] and shall excepting conditional permits, be renewable annually upon expiration and reapplication when accompanied by a renewal fee of sixty-five (65) [fifty (50)] dollars. All licensure fees are to be forwarded to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(11) Exception. An agency possessing a nonmedical alcohol treatment and education center license shall be exempt from paying licensure fees set forth in [licensing procedures standards], subsection (10) [(11)] of this section, when the specific nonmedical alcohol program such as detoxification, residential treatment, residential transitional treatment, outpatient, day/night intensive outpatient treatment and education has already paid licensure fees as a drug abuse treatment and education (DATE) center program in compliance with 902 KAR 3:210.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 3:075E

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 Mental Health
and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:075E. Quality assurance, nonmedical alcohol treatment and education center.

RELATES TO: KRS 222.210 to 222.310
PURSUANT TO: KRS 194.050, 222.230
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that agencies offering nonmedical alcohol treatment and education center programs have minimum policies and procedures for reviewing quality of client care, and assuring staff competency.

Section 1. Quality Assurance. Every program shall have written policies and procedures for assuring the quality of services delivered. These policies and procedures shall address methods for reviewing appropriateness of client care and staff competency. Included in these policies and procedures shall be the following:

(1) There shall be written policies and procedures for periodic review of each service staff's caseload. These policies and procedures must at a minimum address the following:

(a) The quality of services shall be evaluated by members of the staff directly responsible for providing services.

(b) These procedures shall at a minimum have the capability to assess the appropriateness and clinical necessity of admissions as well as the accuracy, completeness and appropriateness of the treatment plan and outcome.

(c) The client care review shall occur at regularly scheduled intervals.

(d) A written record of such review shall be generated identifying inappropriate patterns of service and the recommended action for correcting the problem(s). Such report shall be submitted to an individual with overall responsibility within the agency for the program's treatment services.

(e) Follow-up studies related to the corrective actions taken shall be completed within a reasonable period of time and the findings documented.

(2) There shall be staff development policies which assure that alcohol abuse counseling staff are provided ongoing training and clinical supervision opportunities necessary to support his/her ability to carry out his/her expected job duties.

(3) Each nonmedical alcohol treatment and education center treatment program shall have a designated clinical services supervisor who meets one (1) of the following sets of qualifications. Such qualifications will be documented in the personnel file of the clinical services supervisor.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric/mental health nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his/her employment. If the clinical services supervisor does not have the eighty (80) clock hours or any portion thereof, prior to his/her employment, he/she shall obtain the eighty (80) clock hours within two (2) years from the date of his/her employment. The clinical services supervisor shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in[:

1.] psychology,[;

2.] social work,[;

3.] nursing with specialty in psychiatric/mental health nursing,[;] or

[4.] other mental health counseling program shall be either a certified chemical dependency counselor or have registered as a trainee with the intent to obtain the credential by May of 1991.

Documentation of registration as a trainee is in the form of a certificate from the organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky.

(4) All staff who have primary responsibility for developing and implementing treatment plans for alcohol abuse clients in residential treatment programs, outpatient treatment and day/night intensive outpatient treatment programs shall meet one (1) of the following sets of qualifications. Such qualifications shall be documented in individual staff members personnel file.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric/mental health nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his/her employment. If the employee does not have the eighty (80) clock hours or any portion thereof, prior to his/her employment, he/she shall obtain the eighty (80) clock hours within two (2) years from the date of his/her employment. The employee shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in[:

1.] psychology,[;

2.] social work,[;

3.] nursing with specialty in psychiatric/mental health nursing,[;] or

[4.] other mental health counseling program shall be either a certified chemical dependency counselor or have registered as a trainee his/her intent to obtain the credential. Documentation of registration as a trainee shall be in the form of a certificate from the organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky plus documentation of training and supervision updated annually.

(5) Exception. When the applicant is applying for a nonmedical alcohol treatment and education center license for an education program, compliance with 902 KAR 3:120 shall suffice for meeting all of the standards set forth within this quality assurance section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 3:115E

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 Mental Health
and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:115E. Day/night intensive outpatient treatment.

RELATES TO: KRS 222.210 to 222.310
PURSUANT TO: KRS 194.050, 222.230
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 222.230 empowers the cabinet to promulgate rules and regulations establishing standards for the licensing and approval of facilities offering alcoholism rehabilitation programs. The purpose of this regulation is to establish licensure standards to assure that an agency offering a nonmedical alcohol treatment and education center day/night intensive outpatient treatment program has minimum policies and procedures governing its operation.

Section 1. Day/Night Intensive Outpatient Treatment. In addition to the applicable requirements of the general program operation standards 902 KAR 3:090, the following specific standards shall be met if a day/night intensive outpatient treatment program is offered.

(1) The program shall include, but not be limited to client assessment procedures, crisis intervention, individual and group therapy, family counseling, alcohol information, referral to other community resources, and follow-up.

(2) There shall be a written procedures describing the therapeutic, rehabilitative activities and the schedule of these activities.

(3) There shall be written procedures describing a family treatment component.

(4) There shall be a written individualized treatment plan completed before the sixth client visit.

(5) By the sixth visit each client shall be assigned to a specific staff person who will have primary responsibility for implementing the client's treatment plan.

(6) Staff shall conduct case conferences to review client progress every two (2) weeks. The findings shall be documented in the case record.

(7) Educational services shall be provided for clients which give information about alcohol abuse and its effects, family involvement in the illness, coping and interpersonal relationship skills.

(8) Outpatient treatment programs serving adolescents shall meet day/night intensive outpatient treatment standards set forth in subsections (1) through (7) of this section in addition to the following:

(a) Documentation of attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process.

(b) Provision of treatment, literature, lectures, etc., which shall be age appropriate.

(c) The program shall provide recreational activities which shall be planned to develop constructive leisure time activity skills and shall be documented in each client's treatment plan.

(d) Development of an aftercare plan which shall reflect consideration of aftercare issues unique to adolescents.

(9) Day/night intensive outpatient treatment programs utilizing host families. With the addition of specific standards set forth in the paragraphs below, all rules applying to day/night intensive outpatient treatment programs under subsections (1) through (8) of this section apply to day/night intensive outpatient treatment programs utilizing host families:

(a) A host family shall already have been the recipient of the program's education and/or treatment services prior to serving as a host family.

(b) Day/night intensive outpatient treatment programs utilizing host families shall establish standards for such homes. Such standards shall be approved by the cabinet and include at a minimum the following:

1. All homes shall be inspected initially and at least annually thereafter by the sponsoring program to assure that the physical condition and facilities within the home provide a sanitary and safe environment for the client. All homes shall be reinspected if there is a lapse in time when the home was not being used as a host family.

2. The host family shall provide on-site supervision to ensure care and maintenance of the health, safety and welfare of the client.

3. Provide timely and nutritious meals.

4. The maintenance of regular communication with the sponsoring program and the program shall be notified immediately in the event of an emergency or incident.

5. In the case of an emergency the host family may use physical restraint or seclusion on a client only if absolutely necessary to protect the client from injuring himself or others, but shall not use physical restraint or seclusion as punishment for the convenience of the host family, or as a substitute for activities. When such an incident occurs the sponsoring program shall be notified as soon as possible. The incident shall be documented in the client's record describing the reasons that physical restraint or seclusion was used, the clinical interventions utilized and the final resolution to the situation. All incidences of the alleged use of physical restraint or seclusion by the host family shall be fully investigated by program staff.

6. The sponsoring program shall be informed as soon as possible if the client leaves the host family without permission of the host parents or sponsoring program staff.

(c) The program shall provide all host families a phone number where in the event of an emergency, staff can be reached on a twenty-four (24) hour basis.

(d) A written agreement between the day/night intensive outpatient treatment program and the host family, signed by both parties, shall be executed, stating the responsibilities and liabilities of each party, including the requirements set forth in paragraph (b) of this subsection. The name, address and phone number of the host family shall be included in the agreement.

(e) The sponsoring program shall make available upon request, to designees of the Cabinet for Human Resources, records for each host family home utilized. These records shall contain at a minimum:

1. An agreement between the program director and the head of the host family, signed by both.

2. A copy of the host family home standards established by the sponsoring program.

3. Copies of the completed inspection reports

signed by the sponsoring program inspector and the head of the host family.

(10) Exception. Community mental health center day/night intensive outpatient treatment services licensed under 902 KAR 20:091 are exempt from being licensed as a nonmedical alcohol treatment and education center. [When alcohol abusers are receiving services within the type of program described in 902 KAR 20:091, Section 4, subsection (4)(a), compliance with said regulation shall suffice for meeting day/night intensive outpatient treatment standards set forth in this section.]

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 3:205E

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 Mental Health
and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:205E. Definitions for drug abuse treatment and education (DATE) centers.

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
PURSUANT TO: KRS 194.050, 210.620
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to define terms that are used in regulations adopted by the cabinet regarding facility standards for the operation of drug abuse treatment and education (DATE) center.

Section 1. Definitions. As pertaining to the cabinet's regulations regarding drug abuse treatment and education (DATE) centers unless the content otherwise requires:

(1) "Agency" means a legal entity that operates a drug abuse treatment and education (DATE) center.

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

(3) "Client" means any individual that receives treatment services rendered in a drug abuse treatment and education (DATE) center such as residential rehabilitation or nonresidential day care. Such an individual shall have a medical record that documents the nature of the services they are receiving.

(4) "Communication center or rap house" means a primary prevention program oriented toward youth with the goal of prevention of drug dependency. Such a center may make referrals to appropriate treatment facilities.

(5) "DATE center" means a drug abuse treatment and education center and includes the following: residential rehabilitation center, nonresidential day care center, educational information center and communication center or rap house.

(6) "Day/night intensive outpatient treatment program" means a facility that provides [the process of providing] a structured program of services in an outpatient setting. Services shall be planned to be comprehensive in nature and intensive in the amount of time where client contact is prescribed. The day/night intensive outpatient treatment program shall offer therapeutic, educational and rehabilitative activities to individuals and their families experiencing problems involving drug abuse and dependency. The purpose of a day/night intensive outpatient treatment program shall be to provide a variety of diagnostic and treatment services according to a prescribed plan in an outpatient setting to drug abusers and their families, whose physical and emotional status allows them to function in their natural environment.

(7) "Detoxification program" means a residential facility providing short-term, supervised, nonmedical withdrawal from drug induced intoxication. The purpose of such a detoxification program shall be to provide a supportive setting to help persons recover from acute withdrawal from drugs, wherein the motivation level of drug dependent persons can be raised to promote continued involvement in the recovery process. A detoxification program serves detoxification needs of persons without known serious physical or immediate psychiatric complications requiring medical attention. A detoxification program provides an opportunity to conduct an assessment of the client's need for further care resulting in a referral(s) to appropriate community resources for continued help with problems, for treatment, and for greater utilization of supportive community health agencies.

(8) "Drug" means any substance, not including alcohol, that when ingested into the human body has a psychoactive effect on the central nervous system.

(9) "Education program" means a structured learning process directed at increasing awareness, imparting knowledge, and changing attitudes and behaviors which involves a didactic exchange of information to individuals or groups regarding drug use and abuse. The purpose of an education program shall be to develop or increase competence of individuals, their families, service providers and others to make healthy decisions and help themselves or others in relation to drug abuse problems.

(10) "Educational information center" means an information center facility which offers education and information programs to drug dependent persons, their families, and to the general community, but which engages in no direct treatment. Such a center may make referrals to appropriate treatment facilities.

(11) "Host family" means a family unit other than an individual's natural family that is

utilized by a licensed drug abuse treatment and education (DATE) center program to temporarily house an individual who is receiving nonmedical drug treatment services in his/her program.

(12) "Nonresidential day care center" means a facility offering therapeutic outpatient programs operated by trained professionals and paraprofessionals for treatment of drug dependent persons who are able to live in their own homes in the community.

(13) "Outpatient treatment program" means a facility [the process of] providing nonresidential drug abuse treatment services on both a scheduled and nonscheduled basis. Outpatient treatment offers therapeutic services for the treatment and rehabilitation of individuals with problems involving drug abuse. The purpose of outpatient treatment shall be to provide a variety of diagnostic and primary drug abuse treatment services. These services shall be provided in an outpatient setting according to a prescribed plan for persons abusing drugs and their families, whose physical and emotional status allows them to function in their natural environment.

(14) "Primary prevention program" means a set of planned strategies directed to the general population and specifically identified groups for whom measures can be taken to avoid the onset of drug abuse related problems and to enhance his/her level of health. The purpose of a primary prevention program is to provide individuals with the information and skills necessary to make healthy decisions regarding the use/nonuse of drugs as well as to influence environmental factors such as social policies and norms which will support healthy lifestyles.

(15) "Resident" means a person in a twenty-four (24) hour treatment facility.

(16) "Residential rehabilitation center" means a live-in facility operating twenty-four (24) hours a day, seven (7) days a week, staffed by professional and paraprofessional persons offering therapeutic programs for drug dependent persons. A residential rehabilitation center may include one (1) or more of the following types of twenty-four (24) hour programs: detoxification, residential and residential transitional period.

(17) "Residential transitional program" means a facility providing long-term residential accommodations in a therapeutic group setting for persons recovering from drug abuse and dependency. Programs of this nature shall be designed as a transition for persons recovering from drug abuse and dependency who are attempting social and vocational adjustments prior to returning to family or independent living within the community. Room and board are provided twenty-four (14) hours a day, seven (7) days a week.

(18) "Residential treatment program" means a facility [program] that provides a twenty-four (24) hour, seven (7) days a week structured environment for individuals with drug abuse problems. The program provides the structure necessary for the drug abuser to acquire the tools needed to function independently when returned to his/her natural environment and to maintain an abstinent lifestyle. The purpose of such a residential treatment program shall be to facilitate the rehabilitation of the drug abuser by placing him/her in an organized therapeutic environment in which he may receive diagnostic services, counseling, and peer support. Such programs shall also offer support services to a resident's family members in order to treat the problems of codependency. A residential treatment program enables drug abusers and their family members to change feelings, attitudes, and behavior in the direction of more effective and rewarding patterns of living.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 3:210E

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 Mental Health and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:210E. Licensing procedures, (DATE) centers.

RELATES TO: KRS 210.610 to 210.680, 210.990(3), p. 76, 77, Acts 1988, c. 437, Part II, H., 42., g.
PURSUANT TO: KRS 194.050, 210.620
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish standards for determining what types of facilities [programs] must have a drug abuse treatment and education (DATE) center license to operate and the procedures for obtaining and maintaining such a license.

Section 1. Licensing and Approval Procedures. Applications for licensing, or waivers requesting exemptions from licensure standard(s) shall be obtained from and submitted to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40601.

(1) Application for licensure shall be filed by all agencies operating a drug abuse treatment and education (DATE) center in the Commonwealth with the following exceptions:

(a) Group meetings organized among drug abusers, recovering addicts or drug abusers, families and others, held on a nonresidential basis and without professional staff intervention, for the purpose of discussing problems related to use of drugs where no fee is

involved.

(b) Transportation Cabinet, Alcohol Driver Education, pursuant to: KRS Chapter 189A and 601 KAR 13:050.

(c) Programs conducted in a facility established and maintained by a licensed hospital; nursing homes; and department, agency or institution of the federal government or the Commonwealth.

(d) All chemical dependency treatment services and facilities licensed under 902 KAR 20:160.

(2) The Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation shall conduct all licensure surveys to determine whether an agency's drug abuse treatment and education (DATE) center is in compliance with the applicable licensure standards.

(3) The cabinet shall notify the applicant agency for a drug abuse treatment and education (DATE) center license of any pending licensure action taken, and shall provide written reports citing observed deficiencies as they relate to the standards. A copy of this report shall be forwarded to the applicant agency. Upon receipt of this report the applicant agency must submit an acceptable plan of correction for cited deficiencies to the cabinet within ten (10) days.

(4) Licensure is not transferable. Both the license holder and the new operator shall be responsible to notify the cabinet when the agency possessing the drug abuse treatment and education (DATE) center license changes ownership or control or undergoes a major change in its capacity or in the category(ies) of programs offered, with disclosure of all factors involved in the change. If it is the decision of the cabinet that a reapplication is in order the applicant shall apply within twenty (20) days of notification by the cabinet. Failure to comply with these provisions shall result in loss of license.

(5) The cabinet shall be notified in writing prior to the merger of the agency possessing a drug abuse treatment and education (DATE) center license with another agency and an immediate request for licensure be filed with the cabinet. The merged agency's drug abuse treatment and education (DATE) center shall be surveyed within one (1) year of such notification. For the purposes of licensure, a merged agency shall be a legal entity with a single governing body, a single administration, a single staff, and, where applicable, a single set of bylaws, rules and regulations.

(6) The cabinet shall publish on an annual basis a list of licensed drug abuse treatment and education (DATE) centers identifying types of programs and their locations and shall make it available to the public upon request.

(7) Licenses granted to agencies deemed responsible and suitable to carry out drug abuse treatment and education (DATE) center programs shall meet applicable standards and requirements for a period not exceeding one (1) year and renewable for a like period, and subject to revocation for cause.

(8)(a) A drug abuse treatment and education (DATE) center license shall be issued by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation to an agency for each facility operated by the agency that meets the required standards for operating a residential rehabilitation center, nonresidential day care center, educational information center and communication center. In the event that an agency operates an educational information center or communication center at multiple facilities only a single educational information center or communication center license shall be issued to the applicant agency. [that meets the required program standards. Such a license shall identify the location of the facility and the year of issuance of the license and the type of drug abuse treatment and education (DATE) center licensed such as: residential rehabilitation center, nonresidential day care center, educational information center or communication center for which they have been approved. Each agency licensed shall receive a certificate of licensure indicating its approved status.]

(b) A residential rehabilitation center license shall identify the location of the facility, the year of issuance of the license and what type of residential program is being licensed such as: detoxification, residential treatment or residential transitional treatment. The agency that operates the facility being licensed shall receive a certificate of licensure indicating its approved status.

(c) A nonresidential day care center license shall identify the location of the facility, the year of issuance of the license and what type of nonresidential program is being licensed such as: outpatient treatment or day/night intensive outpatient treatment. The agency that operates the facility being licensed shall receive a certificate of licensure indicating its approved status.

(d) An educational information center or communication center license shall identify the location of the facility or facilities providing that type of program and the year of issuance of the license. The agency that operates the facility or facilities being licensed shall receive a certificate of licensure indicating its approved status.

(e) [(b)] An agency may be provided additional certificates of licensure for its drug abuse treatment and education (DATE) center programs upon payment of the cost of reproduction. The certificate and all copies shall remain the property of the cabinet and shall be returned to the cabinet if the agency is issued a new certificate of licensure reflecting a change in name or programs for which it is licensed, or if the license is revoked for any cause.

(f) The Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation shall be notified in writing when there is a change in location for every facility operated by an agency licensed as a drug abuse treatment and education (DATE) center.

(9) Hearing procedures involving licenses shall be conducted in accordance with KRS 222.230(6).

(10) Licensure fees per drug abuse treatment and education (DATE) center shall be paid in accordance with KRS 210.620, Section 4. This statute requires that applications for a permit to operate a drug abuse treatment and education (DATE) center shall be accompanied by a fee of $130 [100] and shall, excepting conditional permits, be renewable upon expiration and reapplication when accompanied by a renewal fee of sixty-five (65) [fifty (50)] dollars. All licensure fees are to be forwarded to the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation,

275 East Main Street, Frankfort, Kentucky 40621.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 3:225E

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 Mental Health
and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:225E. Quality assurance, (DATE) centers.

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
PURSUANT TO: KRS 194.050, 210.620
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. The purpose of this regulation is to establish licensure standards to assure that agencies offering drug abuse treatment and education (DATE) center programs have minimum policies and procedures for reviewing quality of client care, and assuring staff competency.

Section 1. Quality Assurance. Every program shall have written policies and procedures for assuring the quality of services delivered. These policies and procedures shall address methods for reviewing appropriateness of client care and staff competency. Included in these policies and procedures shall be the following:

(1) There shall be written policies and procedures for periodic review of each service staff's caseload. These policies and procedures must at a minimum address the following:

(a) The quality of services shall be evaluated by members of the staff directly responsible for providing services.

(b) These procedures shall at a minimum have the capability to assess the appropriateness and clinical necessity of admissions as well as the accuracy, completeness and appropriateness of the treatment plan and outcome.

(c) The client care review shall occur at regularly scheduled intervals.

(d) A written record of such reviews shall be generated identifying inappropriate patterns of service and the recommended action for correcting the problem(s). Such report shall be submitted to an individual with overall responsibility within the agency for the program's treatment services.

(e) Follow-up studies related to the corrective actions taken shall be completed within a reasonable period of time and the findings documented.

(2) There shall be staff development policies which assure that drug abuse counseling staff are provided ongoing training and clinical supervision opportunities necessary to support his/her ability to carry out his/her expected job duties.

(3) Each drug abuse treatment and education (DATE) center treatment program shall have a designated clinical services supervisor who meets one (1) of the following sets of qualifications. Such qualifications will be documented in the personnel file of the clinical services supervisor.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric/mental health nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his/her employment. If the clinical services supervisor does not have the eighty (80) clock hours or any portion thereof, prior to his/her employment, he/she shall obtain the eighty (80) clock hours within two (2) years from the date of his/her employment. The clinical services supervisor shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in[:

1.] psychology,[;

2.] social work,[;

3.] nursing with specialty in psychiatric/mental health nursing[;] or

[4.] other mental health counseling program shall be either a certified chemical dependency counselor or have registered as a trainee with the intent to obtain the credential by May of 1991. Documentation of registration as a trainee is in the form of a certificate from the organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky.

(4) All staff who have primary responsibility for developing and implementing treatment plans for drug abuse clients in residential treatment programs, licensed under residential rehabilitation, and all programs licensed under nonresidential day care center shall meet one (1) of the following sets of qualifications. Such qualifications shall be documented in individual staff members personnel file.

(a) A person with a masters degree or greater in psychiatry, psychology, social work, nursing with a specialty in psychiatric/mental health nursing or other mental health program plus eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to his/her employment. If the employee does not have the eighty (80) clock hours or any portion thereof, prior to his/her employment, he/she shall obtain the eighty (80) clock hours within two (2) years from the date of his/her employment. The employee shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment.

(b) A person with less than a masters degree in[:
1.] psychology, [;
2.] social work, [;
3.] nursing with specialty in psychiatric/mental health nursing[;] or
[4.] other mental health counseling program shall be either a certified chemical dependency counselor or have registered as a trainee his/her intent to obtain the credential. Documentation of registration as a trainee shall be in the form of a certificate from the organization recognized by the Cabinet for Human Resources as the official certification body for chemical dependency counselors in Kentucky plus documentation of training and supervision updated annually.
(5) Exception. When the applicant is applying for a drug abuse treatment and education (DATE) center license for an educational information center or communication center or rap house, compliance with 902 KAR 3:255 and 902 KAR 3:260 respectively shall suffice for meeting all of the standards set forth within this quality assurance section.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 3:250E

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 Mental Health
and Mental Retardation Services
Division of Substance Abuse

902 KAR 3:250E. Nonresidential day care centers.

RELATES TO: KRS 210.610 to 210.680, 210.990(3)
PURSUANT TO: KRS 194.050, 210.620
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 194.050 and 210.620 empowers the cabinet to establish guidelines and provide for the systematic evaluation of the effectiveness of drug abuse treatment and education (DATE) centers. the purpose of this regulation is to establish licensure standards to assure that an agency offering a nonresidential day care center has minimum policies and procedures governing the operations of outpatient programs.

Section 1. Outpatient Treatment. In addition to the applicable requirements of the general program operation standards, 902 KAR 3:240, the following specific standards shall be met if an outpatient treatment program is offered:
(1) The program shall include, but not be limited to client assessment procedures, crisis intervention, individual and group therapy, family counseling, drug information, referral to other community resources, and follow-up.
(2) There shall be a written, individualized treatment plan completed before the fourth client visit.
(3) By the fourth visit each client shall be assigned to a specific staff person who will have primary responsibility for implementing the client's treatment plan.
(4) Staff shall conduct case conferences to review client progress every six (6) months and shall update the treatment plan if needed. The findings shall be documented in the client record.
(5) When such a program includes the provision of methadone, the program must also comply with federal regulation 21 CFR 291.505.
(6) Exception. Community mental health center outpatient services licensed under 902 KAR 20:091 are exempt from being licensed as a drug abuse treatment and education (DATE) center program.

Section 2. Day/night Intensive Outpatient Treatment Program. In addition to the applicable requirements of the general program operation standards, 902 KAR 3:240, the following specific standards shall be met if a day/night intensive outpatient treatment program is offered:
(1) The program shall include, but not be limited to client assessment procedures, crisis intervention, individual and group therapy, family counseling, drug information, referral to other community sources, and follow-up.
(2) There shall be a written procedures describing the therapeutic, rehabilitative activities and the schedule of these activities.
(3) There shall be written procedures describing a family treatment component.
(4) There shall be a written individualized treatment plan completed before the sixth client visit.
(5) By the sixth visit each client shall be assigned to a specific staff person who will have primary responsibility for implementing the client's treatment plan.
(6) Staff shall conduct case conferences to review client progress every two (2) weeks. The findings shall be documented in the case record.
(7) Educational services shall be provided for clients which give information about drug abuse and its effects, family involvement in the illness, coping and interpersonal relationship skills.
(8) Outpatient treatment programs serving adolescents shall meet day-night intensive outpatient treatment standards set forth in subsections (1) to (7) of this section in addition to the following:
(a) Documentation of attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process.
(b) Provision of treatment, literature, lectures, etc., which shall be age appropriate.
(c) The program shall provide recreational activities which shall be planned to develop constructive leisure time activity skills and shall be documented in each client's treatment plan.

(d) Development of an aftercare plan which shall reflect consideration of aftercare issues unique to adolescents.

(9) Day/night intensive outpatient treatment programs utilizing host families. With the addition of specific standards set forth in this section, all rules applying to day/night intensive outpatient treatment programs under subsections (1) to (8) of this section apply to day/night intensive outpatient treatment programs utilizing host families:

(a) A host family shall already have been the recipient of the program's education and/or treatment services prior to serving as a host family.

(b) Day/night intensive outpatient treatment programs utilizing host families shall establish standards for such homes. Such standards shall be approved by the cabinet and include at a minimum the following:

1. All homes shall be inspected initially and at least annually thereafter by the sponsoring program to assure that the physical condition and facilities within the home provide a sanitary and safe environment for the client. All homes shall be reinspected if there is a lapse in time when the home was not being used as a host family.

2. The host family shall provide on-site supervision to ensure care and maintenance of the health, safety and welfare of the client.

3. Provide timely and nutritious meals.

4. The maintenance of regular communication with the sponsoring program and the program shall be notified immediately in the event of an emergency or incident.

5. In the case of an emergency the host family may use physical restraint or seclusion on a client only if absolutely necessary to protect the client from injuring himself or others, but shall not use physical restraint or seclusion as punishment for the convenience of the host family, or as a substitute for activities. When such an incident occurs the sponsoring program shall be notified as soon as possible. The incident shall be documented in the client's record describing the reasons that physical restraint or seclusion was used, the clinical interventions utilized and the final resolution to the situation. All incidences of the alleged use of physical restraint or seclusion by the host family shall be fully investigated by program staff.

6. The sponsoring program shall be informed as soon as possible if the client leaves the host family without permission of the host parents or sponsoring program staff.

(c) The program shall provide all host families a phone number where in the event of an emergency, staff can be reached on a twenty-four (24) hour basis.

(d) A written agreement between the day/night intensive outpatient treatment program and the host family, signed by both parties, shall be executed, stating the responsibilities and liabilities of each party, including the requirements set forth in paragraph (b) of this subsection. The name, address and phone number of the host family shall be included in the agreement.

(e) The sponsoring program shall make available upon request, to designees of the Cabinet for Human Resources, records for each host family home utilized. These records shall contain at a minimum:

1. An agreement between the program director and the head of the host family, signed by both.

2. A copy of the host family home standards established by the sponsoring program.

3. Copies of the completed inspection reports signed by the sponsoring program inspector and the head of the host family.

(10) Exception. Community mental health center, day/night intensive outpatient treatment programs licensed under 902 KAR 20:091 are exempt from being licensed as a drug abuse treatment and education (DATE) center. [When drug abusers are receiving services within the type of program described in 902 KAR 20:091, Section 4(4)(a), compliance with said regulation shall suffice for meeting day/night intensive outpatient treatment standards set forth in this section.]

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 9, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 10:081E

Emergency regulation 902 KAR 10:081E is a companion regulation to 902 KAR 10:085E and is necessary to implement the amended requirements of that regulation. Current regulation 902 KAR 10:081 which deals with standards of design and construction for on-site sewage disposal system components must be amended to include new components and design criteria which are allowed in 902 KAR 10:085E. An ordinary administrative regulation cannot be in effect in time to meet the same emergency effective date of 902 KAR 10:085E. Failure to effect concurrent application of both abovementioned emergency regulations will result in confusion and unnecessary cost to the consumer to meet standards which will no longer be required or are being relaxed. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINS, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Food and Sanitation

902 KAR 10:081E. Construction standards for components of on-site sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
EFFECTIVE: July 13, 1988
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 directs the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge. The purpose of this regulation is to establish minimum component standards including design, construction, and materials specifications for on-site sewage disposal systems in Kentucky in order to protect the public health.

Section 1. Citation of Regulation. This regulation may be cited as the "Construction

standards for components of on-site sewage disposal systems."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

[(1) "Aerobic treatment unit" means any sewage treatment unit which utilizes the principle of oxidation in the decomposition of sewage by the introduction of air into the sewage.]

(1) [(2)] "Approved" means that which has been considered acceptable to the cabinet.

(2) [(3)] "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.

(3) "Component" means any device used in the construction, installation or alteration of an on-site sewage disposal system which forms an integral part of that system, and is necessary to its proper operation and maintenance. It includes, but is not limited to:

(a) Sewage pretreatment units, holding tanks, grease traps, pump or dosing tanks, and necessary equipment and appurtenances;

(b) Distribution boxes, alternating valves, filters, and similar devices; and

(c) Piping, fittings, valves, and leaching chambers.

(4) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment unit.

(5) "Gravelless pipe" means large diameter perforated piping designed for use in lateral field trenches without the use of trench rock or gravel fill material. Such pipe includes a mandatory overwrap or encasing of synthetic filter material meeting specific criteria.

(6) "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, and/or food particles.

(7) "Grease trap" means a component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment.

(8) [(5)] "Lateral field" means the area in which [lateral lines are installed or can be used to generally describe] the subsurface soil absorption [portion of the subsurface sewage treatment and disposal] system is installed and is a general term for the system itself.

[(6) "Lateral lines" means approved pipe or other approved materials or devices which receive partially treated effluent from a distribution device and distribute the effluent for further treatment and absorption into the soil beneath the ground surface.]

(9) [(7)] "Low pressure pipe system" means an on-site sewage disposal system consisting of a sewage pretreatment [septic tank(s) or aerobic treatment] unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.

(10) "Leaching chamber" means a specially designed component for use in lateral field trenches or beds, with or without the use of trench rock or gravel fill material, which forms an open bottomed chamber or cavern over the subsurface soil absorption surface, and which interlocks with other such chambers to obtain the necessary absorption surface area.

(11) [(9)] "On-site sewage [treatment and] disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(12) [(8)] "Person" means any individual, firm, association, organization, partnership, business trust, corporation, [or] company or governmental unit.

(13) [(10)] "Secretary" means the Secretary for the Cabinet for Human Resources.

[(11) "Septic tank" means a watertight sewage treatment unit designed and constructed to receive raw sewage, separate solids from liquid, an aerobically digest organic matter, store liquids through a period of detention, and allow the clarified effluent to discharge.]

[(12) "Septic tank system" means a subsurface sewage treatment and disposal system consisting of a septic tank(s), a gravity-fed lateral field, necessary pipe lines, conduits, pump stations, and other appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.]

(14) "Sewage pretreatment unit" means a water-tight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow clarified effluent to discharge to a subsurface soil absorption system. Such pretreatment units fall into three (3) basic categories:

(a) Septic tanks - which rely predominantly on anaerobic bacterial action for treatment;

(b) Aerobic units - which introduce atmospheric air into the sewage to promote treatment by aerobic bacteria; and

(c) Comination units - which provide treatment through both anaerobic and aerobic bacterial action and/or mechanical filtering, ozonation or ultraviolet irradiation.

(15) "Subsurface soil absorption system" means that portion of an on-site sewage disposal system which accepts effluent from a sewage pretreatment unit(s) for further treatment by

microbial, plant and animal life within the soil, as well as treatment by filtration, chemical decomposition and bonding within the soil itself, and consists of:

(a) Devices, components, and piping to transport effluent under pressure or by gravity flow, and distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, etc., separately or in combination, which form or enclose the soil absorption surfaces;

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system; and

(d) Artificial drainage systems, and other necessary site or soil modifications.

Section 3. Approval Procedures. (1) All commercial manufacturers and suppliers of materials, components, and equipment designed or intended for use in the construction of on-site sewage disposal systems shall obtain approval of such materials, components, and equipment from the cabinet prior to their sale or use in Kentucky. Such approval shall be based upon conformance to recognized design, materials, construction, and performance standards of the National Sanitation Foundation (NSF), the American Society for Testing and Materials (ASTM), and the standards set forth in this regulation.

(2) Manufacturers, purveyors and suppliers of materials, components, and equipment shall submit the following information, as applicable, to the cabinet in review and consideration in the approval process:

(a) All applicable plans, specifications, process descriptions, and other relevant data.

(b) Supportive test data from independent laboratories, testing firms, NSF, ASTM, and other approved organizations.

(c) Other pertinent information as requested by the cabinet.

(3) New or experimental materials, components, or equipment shall be submitted for approval as outlined in subsection (2) of this section and the following additional requirements and restrictions shall apply:

(a) Those materials, components, or equipment which consist of modifications to existing approved products shall be considered for approval after demonstration, through independent teting of the modifications, that improved performance, service life, or ease of maintenance and operation results.

(b) Those materials, components, or equipment which involve new or experimental technologies relating to design, construction, or operational process shall be considered for approval on a probationary basis. During the probationary period, it shall be the responsibility of the person seeking approval of such product to contract with an independent testing firm to provide monitoring of the performance of the product in its intended usage. Such monitoring of the product shall include documentation of the site conditions where the product is installed, the waste load generated by the user and its constitution, and other parameters deemed necessary by the cabinet. In the event that the product fails to perform in an acceptable manner, it shall be the responsibility of the person seeking its approval to replace the product with another product which is approved by the cabinet for that particular use.

(c) Any materials, components, or equipment which, in the opinion of the cabinet, meet the requirements for approval after careful study and testing, as required, shall be considered to be approved for use in Kentucky for the specific purpose(s) intended. Such approval shall be made in writing to the person requesting same and shall set forth any conditions or restrictions for the use of the product when deemed necessary by the cabinet. Each product, so approved, shall be listed by the cabinet on an "approved listing of materials, components, and equipment," which shall be updated on a timely basis and distributed to local health departments and other interested parties on request.

Section 4. Septic Tank Pretreatment Units [Standards]. (1) Precast concrete.

(a) All precast concrete septic tanks shall be designed and constructed so as to provide sufficient rigidity and structural strength to prevent damage due to hydrostatic water pressure and support vertical uniform loading of 150 lb./sq. ft. on the top of the tank.

(b) A minimum and product strength of 4,000 pound per square inch shall be used in the construction of the tank.

(c) The top, bottom, ends and sides of the tank shall have a minimum thickness of two and one-half (2 1/2) inches.

(d) The tank shall be reinforced by using a minimum reinforcing of six (6) inch No. 10 gauge welded steel reinforcing wire lapped at least six (6) inches. Other reinforcing methods may be used provided that such other methods can be demonstrated to the satisfaction of the cabinet to be equal, or superior, to the method described herein.

(e) The tank shall be so designed and constructed that all joints, seams, or other openings shall be watertight in use. Asphalt compounds, neoprene gaskets, or other acceptable sealant materials shall be used to insure watertightness.

(f) At least two (2) manholes shall be provided to permit access for maintenance of the tank. Manholes shall have a minimum dimension of ten (10) inches and a maximum of twenty-four (24) inches measured on the bottom edge of the manhole opening into the tank. Manholes shall be located on each end of the tank over the inlet and outlet structures (baffles or tees). The manhole openings shall be beveled so as to adequately seal and support the manhole cover. The manhole cover shall possess sufficient strength to support a uniform load of 150 lb./sq. ft. without damage to the cover or tank and provide a means for removal (handles[, etc.]).

(g) Cast-in-place baffles, at inlet and outlet ends of the tank have a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. For cast-in-place baffles reinforcing wire into and along the tank side walls a minimum of (6) inches for proper anchorage. For tanks using drop-in baffles, a molded in slot or groove with a minimum one (1) inch penetration into the tank side wall shall be provided to retain the baffle. Such slot or groove shall be slightly tapered to produce a secured "wedge fit" baffle. For bolt-on tee-type baffle structures, stainless steel bolts,

washers and nuts shall be used for anchorage. Such bolts shall be cast-in-place in the baffle or tank endwall and securely anchored by attachment to tank or baffle reinforcing material. On those tanks where baffle attachment bolts penetrate through the tank endwall suitable bushings or seals shall be used to render bolt holes watertight. Suitable sealants shall also be used on all baffle edges which contact the tank endwall to prevent short-circuiting of tank contents.

(h) In lieu of concrete baffles, sanitary tees or other baffle devices of corrosion resistant materials (fiberglass, plastic[, or cast iron]) may be used as long as joints are properly sealed, acceptable attachment methods are used, and the specified dimensions above and below the liquid level of the tank are maintained.

(i) Internal dimensions of the tank shall fall within plus or minus one (1) foot of the [recognized] proportional ratios of 2:1 to 3:1, the length being approximately two (2) to three (3) times the width. The minimum liquid depth shall be thirty-four (34) inches with maximum depth of fifty-four (54) inches [depending upon tank capacity]. The inlet and outlet pipe knockouts or holes shall be of sufficient diameter to accept a minimum four (4) inch diameter pipe and shall be so designed as to provide a minimum height difference of three (3) inches for the inlet pipe invert above the outlet pipe invert. Inlet and outlet holes shall be so located on the ends of the tank as to provide a minimum freeboard space of ten (10) inches to one (1) foot between the liquid level and the inside top surface of the tank for scum storage. Both inlet and outlet baffles or tees shall extend above the liquid level of the tank to within at least two (2) inches but not less than one (1) inch of the inside top surface of the tank to contain scum and provide venting space for gases. Baffle designs which extend to the inside top of the tank may be used provided that a slotted vent space of a minimum height of one (1) inch by four (4) inches in width is located at the juncture of the baffle and tank top in the center of the baffle. The inlet tee or baffle shall extend below the liquid level between eight (8) to ten (10) inches, and the outlet baffle or tee shall extend downward to thirty-five (35) to forty (40) percent of the total liquid depth of the tank. When baffles are used, the distance between the outlet baffle and tank endwall shall be between four (4) to six (6) inches, and the distance between the inlet baffle and endwall shall be between six (6) to ten (10) inches.

(j) All tanks offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name, the serial number assigned to the manufacturer's plans and specifications approved by the cabinet, and the liquid or working capacity of the tank. This imprint, stencil, or other marking shall be located to the right of the knockout or hole made for the outlet pipe on the outlet end of the tank.

(2) Constructed on site. Septic tanks constructed on site of cast-in-place concrete, or concrete block[, or brick] shall be constructed to conform with the requirements in subsection (1) of this section except as follows:

(a) Cast-in-place concrete septic tanks shall have a minimum wall thickness of four (4) [six (6)] inches.

(b) Concrete block [or brick] septic tanks shall have a minimum wall thickness of at least eight (8) [six (6)] inches when the design volume is less than 1,000 gallons and a minimum wall thickness of at least ten (10) [eight (8)] inches when the design volume is 1,000 gallons or more. All septic tanks constructed of block [or brick] shall be plastered on the inside with a 1:3 mix (one (1) part cement, three (3) parts sand) of portland cement at least three-eighths (3/8) inch thick or the equivalent using other approved waterproofing material, and provided with acceptable reinforcing within all walls.

(c) The bottom and top of the constructed on site septic tank shall be poured reinforced concrete with a minimum thickness of four (4) inches.

(d) For large capacity (5,000 gallons or more) cast-in-place concrete tanks, maximum liquid depth shall be sixty-six (66) inches.

(3) Prefabricated steel. Prefabricated steel septic tanks shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following:

(a) All prefabricated steel tanks shall be thoroughly coated on all surfaces with a minimum one-eighth (1/8) inch thick coating of liquid asphalt, mastic compound, plastic waterproofing compound, or liquid cured vinyl. Each such septic tank shall be accompanied on site delivery by a one-half (1/2) pint container of the coating material for use in touchup coating of steel surfaces of the tank exposed through damage in shipping and handling. If such volume is insufficient to repair all damaged areas, additional coating material shall be secured by the installer.

(b) Coated steel baffles shall not be used in prefabricated steel tanks. Sanitary tees of approved plastic, fiberglass, or cast iron shall be required.

(4) Molded plastic, fiberglass. Septic tanks of molded plastic, fiberglass, or other such type of materials shall conform to the requirements listed under subsection (1)(a), (e), (f), (h), (i) and (j) of this section, in addition to the following: baffles, if used in lieu of sanitary tees, shall be molded or formed in place so as to be an integral part of the tank. Glued, riveted, or otherwise mechanically attached baffles are not permitted (solvent welding on plastic tanks and resin bonding on fiberglass are acceptable). Such baffles shall be formed of material equal in thickness and rigidity to the tank wall material.

Section 5. Aerobic Pretreatment [Treatment] Units. (1) Precast concrete tank. All precast concrete tank aerobic pretreatment [treatment] units shall comply with the construction requirements of Section 4(1)(a), (b), (c), (d), (e), (f) and (j) of this regulation, in addition to the following:

(a) All cast-in-place baffles, compartment walls, dividers, weirs, and other devices or structural forms shall be a minimum thickness of two (2) inches and be reinforced in the same manner as the tank. Such reinforcing material shall extend into and along the tank side wall a minimum of six (6) inches.

(b) Baffles, compartment walls, dividers, weirs, and other such devices or structural forms that are not cast-in-place or may be of dissimilar materials to the tank shall be of

corrosion resistant materials, of sufficient structural strength and anchorage to the tank to prevent damage or dislodgment in normal operation, and where requiring routine maintenance, readily accessible through tank access manholes.

(c) All manholes providing access to mechanical or electrical components, chlorinating or other treatment devices or filters[, etc.] shall be provided with risers extending to grade to allow ready access for maintenance. Covers for such manholes or risers shall be provided with locks or other devices to prevent entry by unauthorized persons. On units which are intended to be installed flush with grade or above grade, which are designed to have an open top, suitable gridding, decking, or other such barriers to entry to the tank shall meet the 150 lb./sq. ft. support strength requirements and shall be so designed and installed to prevent entry to the tank or contact with its contents by unauthorized persons.

(2) Prefabricated steel. All prefabricated steel tank aerobic pretreatment [treatment] units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f), (j), and (3)(a) of this regulation, subsection (1)(b) and (c) of this section, in addition to the following: coated steel, welded-in-place or mechanically attached baffles, compartment walls, dividers, weirs, and other devices or structural forms shall receive additional corrosion protection materials or coatings when they are exposed directly through splash or immersion on two (2) or more surfaces or sides to tank liquid contents.

(3) Molded plastic, fiberglass. All molded plastic or fiberglass tank aerobic pretreatment [treatment] units shall comply with the construction requirements listed in Section 4(1)(a), (e), (f) and (j) of this regulation, and subsection (1)(b) and (c) of this section, in addition to the following: baffles, compartment walls, dividers, weirs, and other such devices or structural forms, if cast or molded in place, shall be formed of material equal in thickness and rigidity to the tank material.

(4) Piping, mechanical devices and electrical equipment, filtration devices, and other appurtenances.

(a) All internal or external piping or conduits and fittings necessary to the transport of tank sewage contents between tank compartments, mechanical equipment, or other components of the treatment process involved shall be of Schedule 40 PVC or ABS plastic pipe. Mixing of PVC and ABS or other dissimilar plastic pipe or fittings is prohibited.

(b) Mechanical fittings and connections where used to connect PVC or ABS piping to equipment or components shall be corrosion resistant and of a type, design, and construction compatible for use with the type of pipe involved.

(c) Mechanical aerators, stirrers, diffusers, rotating disks, and other devices used to provide direct exposure of atmospheric air to tank sewage contents shall be constructed of corrosion resistant materials and of sufficient structural strength to withstand normal operating stresses without damage or deformation resulting in system malfunction for the designed service life of the device.

(d) Pumps, electrical motors, or other such devices shall be of sealed or submersible design and construction when subject to submersion, splash, or corrosive atmosphere within the aerobic pretreatment [treatment] unit. Such pumps, motors, or other such devices shall be properly sized and designed for the intended use and duty cycle.

(e) Filters, chemical feeders, and other such devices shall be constructed of corrosion resistant materials and possess sufficient strength to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(f) Electrical controls, switches, ozone generators, ultraviolet generators, and other such devices relying upon electrical current for operation shall be designed and constructed as to be water and corrosive vapor proof in all portions of the device where electrical current carrying components are located. All such devices shall be properly grounded and otherwise designed, constructed, installed, and operated in accordance with National Electrical Code requirements.

(g) All fasteners, brackets, clips, hangers, or other such devices used in the anchorage, installation, mounting, or attachment of unit components and equipment both internal or external to the aerobic pretreatment tank shall be designed and constructed of materials possessing sufficient strength and corrosion resistance to withstand normal operational stresses without damage or deformation resulting in system malfunction.

(h) All components of aerobic pretreatment [treatment] units which require routine maintenance shall be installed and located within the unit as to be readily accessible. Such components which require replacement, removal, or dismantling for routine maintenance shall be designed, constructed, and installed so as to facilitate their replacement, removal, or dismantling with simple tools. A maintenance instruction manual using pictures and simple language for identification of unit components, maintenance to be performed, components needing routine replacement, removal or dismantling procedures, maintenance interval, and simple troubleshooting procedures shall be included with all units. Such manual shall be provided to the ultimate operator or user of the unit. When aerobic pretreatment [treatment] units are to be installed by other persons, rather than the manufacturer or his agents, a detailed installation manual shall be supplied outlining proper installation procedures including hookup to an electrical power source, unit start-up procedures, and necessary adjustments or calibrations to be made to meet manufacturer's operating specifications for effluent quality.

Section 6. Dosing and Holding Tanks. (1) All dosing and holding tanks shall comply with the general construction requirements listed in Section 4 of this regulation for septic tanks, based upon the type of material used in their construction, in addition to the following:

(a) Access manholes for dosing or holding tanks shall be extended to grade through the use of suitable risers to permit ease of access for maintenance and[/or] pumping.

(b) Such manholes in dosing and holding tanks shall provide a minimum opening of eighteen (18) inches by eighteen (18) inches into the tank. Manhole riser lids or covers shall be designed

and constructed so as to be watertight and, through the use of locks, locking devices, or other means, prevent access to the tank by unauthorized persons.

(c) All dosing or holding tanks, due to their frequently empty or partially filled condition, shall be designed or installed (using suitable anchoring devices or antiflotation devices) to prevent flotation or vertical shifting due to ground water pressure.

(2) All dosing and holding tank equipment, controls, and appurtenances shall comply, where applicable, with the requirements of Section 5(4)(a), (b), (d), (f), (g) and (h) of this regulation, in addition to the following:

(a) High water alarms, including an audible or visible alarm system within the structure served by the dosing or holding tank, shall be installed in such tanks and calibrated to activate [sound] an alarm whenever the tank liquid level reaches eighty-five (85) percent of capacity. Such alarms shall be connected to a separate electrical circuit, and visible systems shall be located in an area of high pedestrian traffic.

(b) When pumps are used for dosing effluent into the lateral field [system] or are used for lifting effluent to a lateral field [system] above the elevation of the dosing tank, electrically [or mechanically] operated mercury float switch controls shall be provided to permit automatic operation of such pumps. Manually operated pump controls are not permitted. When pumps are used, they shall be installed in an elevated position in respect to the tank bottom, by placement on stands designed for such purpose, concrete blocks, or through the use of suitable hangers to allow for sludge storage space and prolong service life of the pumps. Elevation distance from the tank bottom shall be a minimum of eight (8) inches.

(c) In lieu of pumps, automatic dosing siphons may be used for lateral field dosing where a suitable downhill gradient exists from the elevation of the siphon to the lateral field [system].

Section 7. Grease Traps. (1) All grease traps shall comply with the general construction requirements listed in Section 4 of this regulation for septic tanks, based upon the type of material used in their construction, in addition to the following:

(a) Inlet baffle, sanitary tee or baffle device shall extend two (2) to no more than four (4) inches below the liquid level of the trap;

(b) Outlet baffle, sanitary tee or baffle device shall extend downward to eighty (80) percent of the total liquid depth of the trap;

(c) The minimum liquid depth shall be twenty-four (24) inches with a maximum depth of forty-eight (48) inches;

(d) Grease traps are exempted from the 2:1 to 3:1 length to width ratio requirements in Section 4 of this regulation; and

(e) A manhole or manholes shall be provided on each grease trap to allow free access for servicing all areas of the trap. Such manhole(s) shall have a minimum dimension of eighteen (18) inches measured at the bottom edge of the manhole opening into the trap, and manhole risers shall be used to extend the manhole(s) to grade.

Section 8. [7.] Distribution Devices. (1) Precast concrete.

(a) All precast concrete distribution boxes shall be designed and constructed to provide sufficient strength and structural integrity to withstand a vertical uniform load of 150 lb./sq. ft. on the top of the box.

(b) A minimum end product strength of 4,000 pounds per square inch shall be used in the construction of the box and lid.

(c) A minimum wall thickness of one and one-half (1 1/2) inches shall be used in the construction of distribution box bottoms, side walls, and lids and shall be reinforced by a minimum No. 10 gauge six (6) inch by six (6) inch welded steel reinforcing wire, or equivalents, as approved by the cabinet.

(d) Distribution box lids or covers shall meet the requirements of paragraph (a) of this subsection and shall be provided with suitable handles for removal.

(e) Knockouts or holes for inlet and outlet piping shall be of sufficient diameter to accept four (4) inch diameter piping but no more than five (5) inches in diameter at the inside surface of the box.

(f) All distribution devices offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name and the serial number assigned to the manufacturer's plans and specifications approved by the cabinet. This imprint, stencil, or other marking shall be located on the inlet end of the device. Low pressure pipe manifolds shall meet the identification requirements for plastic piping in Section 9 [8] of this regulation.

(2) Molded plastic and fiberglass. Molded plastic or fiberglass distribution boxes shall be designed and constructed to meet the requirements listed in subsection (1)(a), (d), (e) and (f) of this section.

(3) Equal flow and level type design standards.

(a) Outlet holes or knockouts in equal flow and level boxes shall be spaced a minimum of seven (7) inches on centers to permit access for application of waterproofing sealants around lateral piping and the external surface of the box side wall or endwall. When plastic or neoprene connectors are cast into the box, this requirement may be waived. Outlet holes or knockouts shall be located a minimum distance of six (6) inches on centers, on a single plane, above the inside bottom surface of the box and a minimum of three (3) inches on centers from adjacent side walls in the outlet portion of the box. At the inlet portion of equal flow boxes [the box] a minimum distance of eight (8) inches on centers shall be maintained between outlet holes and the side wall or endwall to allow for the placement of a baffle to retard incoming effluent velocity.

(b) Centerline of the inlet hole or knockout shall be a minimum distance of one and one-half (1 1/2) inches to a maximum of three (3) inches above the centerline of the outlets.

(c) [Provision shall be made on] All equal flow boxes shall be provided with [for the insertion of] a baffle on the inlet end of the box. [Such provision may take the form of] A double flange, molded or cast-in slot, or other acceptable means to retain the baffle in place shall be provided. Baffle material and construction shall be equal to that used in the box itself. Baffles and their mounts or retainers shall be so designed as to provide a

passageway for [reduced velocity] effluent between the box bottom and bottom edge of the baffle of no more than two (2) inches in height. The baffle shall extend to one (1) inch above the top of the inlet.

(d) Equal flow boxes shall be designed so as to provide unobstructed access, on removal of the lid or top, for direct, simultaneous viewing of all outlets to facilitate the performance of "water leveling" procedures during installation.

(4) Hillside or drop box type design standards.

(a) Lateral outlet holes or knockouts shall be located a minimum of two and one-half (2 1/2) [four (4)] inches on centers, on a single plane above the inside bottom surface of the box, and a minimum of three (3) inches on centers from adjacent side walls.

(b) Centerline of the inlet hole or knockout shall be a minimum of five (5) inches above the centerline of the lateral outlets and a minimum of one (1) inch [three (3) inches] above the centerline of the supply line outlet going to the next box in series.

(c) Hillside or drop boxes shall be designed so as to provide sufficient separation distance (twelve (12) inches or greater recommended) between the inlet side wall and supply line outlet side wall to minimize the risk of short-circuiting of effluent under heavy flow conditions or on steep hillsides where gradient induced flow velocity is created. In lieu of this requirement, box designs offsetting the vertical centerlines of inlets and supply line outlets or other acceptable means, may be employed.

(5) Plastic low pressure pipe manifolds. All plastic pipe, fittings, and connectors used in low pressure pipe supply lines and manifolds shall be of Schedule 40 PVC or ABS construction and materials.

(6) Alternating valves and devices design standards.

(a) Alternating valves and devices shall meet the general design and construction standards listed in subsection (1)(a) and (d) of this section, and if constructed of precast concrete, subsection (1)(b) and (c) of this section as well.

(b) All alternating valves and devices shall be designed and constructed to provide a positive seal to each outlet when in a closed position. The valving device shall be constructed of corrosion resistant materials and of sufficient strength to withstand normal operational stresses without damage or deformation resulting in valve malfunction.

(c) All alternating valves and devices shall be fitted with risers and watertight lids or covers, extending to grade, which will permit unobstructed access for maintenance, inspection, and operation.

Section 9. [8.] Piping, Fittings, and Connectors. (1) Nonperforated pipe - gravity flow usage.

(a) All nonperforated piping used for gravity flow carriage of effluent between septic tanks in series, septic tanks or other pretreatment [treatment] units and distribution [and/]or alternating devices, and for two (2) feet into lateral trenches or beds from distribution devices shall be at least SDR 35 ASTM-D3034 and D3033 for PVC and ASTM-D2751 for ABS. 1,500 lb. crush ASTM-F810 for polyethylene may be used between distribution devices and lateral trenches or beds.

(b) All such nonperforated piping shall be of a minimum internal diameter of four (4) inches, except that such piping used between distribution devices and lateral trenches or beds may be reduced to a minimum internal diameter of two (2) inches with the use of approved reducer coupler fittings.

(c) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the SDR 35 ASTM D3034, D3033, or D2751, 1,500 lb. crush ASTM-F810 designation, and the type of pipe material (PVC, ABS, or polyethylene).

(2) Nonperforated pipe - pressure usage.

(a) All nonperforated piping used for pressurized carriage of effluent between dosing or pumping and distribution [and/]or alternating devices shall be of at least 160 psi PVC or ABS.

(b) 160 psi polyethylene pipe or equivalent may be used in all applications listed above in lieu of PVC or ABS piping, except in the construction of any portion of a low pressure pipe (LPP) system where PVC or ABS pipe shall be required.

(c) Each standard section of pipe as supplied by the manufacturer, or in the case of polyethylene or equivalent piping rolls at not greater than ten (10) foot intervals, shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the 160 psi designation, and the type of pipe material.

(d) All such pipe used on an individual low pressure pipe (LPP) system installation shall be of the same type of material - mixing of PVC, ABS, polyethylene, or other equivalent piping is prohibited.

(3) Perforated pipe - gravity flow usage.

(a) All perforated pipe used for gravity flow carriage and distribution of effluent within lateral trenches, beds, mounds, or other such applications shall meet 1,500 lb. crush ASTM-F810 standards for rigid piping and ASTM-F405 for corrugated semirigid piping.

(b) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the type of pipe material, and showing the product meets applicable ASTM standards and a bearing load of 1,500 lbs., per foot. In addition, a painted or other clearly marked line or spot shall be marked on each section to denote the top of the pipe.

(c) All such gravity flow usage perforated pipe shall have a minimum internal diameter of two (2) inches.

(d) On two (2) inch or three (3) inch diameter pipe: if one (1) row of holes is use, it shall be located directly opposite the top marking on the pipe and holes shall be a minimum one-fourth (1/4) [three-eighths (3/8)] inch in diameter; if two (2) rows of holes are used, they shall be one-quarter (1/4) inch to five-sixteenths (5/16) inch in diameter, and evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. Spacing of holes longitudinally shall be between [eight (8) to] twelve (12) inches to five (5) feet on centers.

(e) All four (4) inch diameter or greater pipe shall have at least two (2) rows of holes five-sixteenths (5/16) to one-half (1/2) inch in diameter, evenly spaced and placed within an arc of 120 degrees on the bottom of the pipe. If three (3) holes are used, the center row shall

be directly opposite the top marking. Spacing of holes longitudinally shall be between three (3) to twelve (12) inches on centers.

(4) Perforated pipe - gravelless pipe design.

(a) All eight (8) and ten (10) inch I.D. corrugated polyethylene pipe used in gravelless pipe lateral fields shall meet the requirements of ASTM F667.

(b) Each standard section of pipe as supplied by the manufacturer shall be plainly marked, embossed, or engraved showing the manufacturer's name or hallmark, the type of pipe material, and showing the product meets ASTM F667. In addition, a painted or other clearly marked line shall be placed on each section to denote the top of the pipe.

(c) All gravelless piping shall be encased, at the point of manufacturer, with a spun bonded nylon filter wrap, or equivalent, meeting or exceeding the performance criteria below:

Physical Properties	Nominal Values	Minimum Values
Weight, oz./sq.yd. (ASTM D3776-79)	0.85	0.75
Thickness, Mils (ASTM D1777-64/1975)	5.4	4.4
Fiber size, denier per Filament (dpf)	4.7	4.1
Grab Strength, lbs. (ASTM D1682-64/1975)		
Machine direction	26	19
Transverse direction	18	11
Burst strength, psi (ASTM D231-62/1975)	36	26
Air permeability,cfm/sq.ft. (ASTM D737-75/1980)	700	500
Water flow rate	500 gpm/sq.ft. @ 3" Head	
Specific gravity	1.0 - 1.3	
Temperature resistance (ASTM D648)	425°F	
Surface reaction to water	Hydrophilic	
Fiber length	Continuous	

(d) Gravelless pipe hole placement and diameter shall be as follows: holes shall be cleanly drilled and be placed in two (2) rows spaced 120 degrees apart along the bottom half of the pipe and 120 degrees from the top stripe to either row. Hole size shall be between five-sixteenths (5/16) inch to one-half (1/2) inch in diameter, and holes shall be placed only in corrugation "valleys," not on the crown or in the corrugation sidewall.

(e) All gravelless piping and encasing filter wrap shall be further encased, at the point of manufacture, within a plastic shipping and storage bag of sufficient burst strength, tear resistance and opacity, to prevent physical damage and ultraviolet radiation deterioration of the filter wrap.

(f) The manufacturer shall also make available suitable wide-width plastic tape for sealing of pipe section and fitting joints.

(5) [(4)] Perforated pipe - pressure usage, low pressure pipe systems (LPP).

(a) Pipe used for pressure carriage and distribution of effluent within lateral trenches, beds, mounds, or other low pressure pipe (LPP) applications shall be of at least 160 psi PVC or ABS construction. Deep hub water line type pipe shall be used.

(b) Pipe shall meet the requirements listed under subsection (2)(c) and (d) of this section.

(c) Minimum pipe internal diameter shall be determined on a case-by-case basis, based upon system size, configuration, and other factors necessary in the design of a low pressure pipe system. In no case shall the internal diameter be less than one (1) inch.

(d) Pipe perforations shall run in a straight line along the bottom of the pipe. Where preperforated pipe is unavailable, perforations shall be hand-drilled, and deburred. Hole diameters and hole spacing shall be determined on a case-by-case basis relative to design requirements of the low pressure pipe system. Hole sizes may range from five [three] thirty-seconds (5[3]/32) to one-fourth (1/4) inch in diameter, and hole spacing form three (3) to eight (8) [five (5)] feet depending on design requirements.

(7) [(5)] Fittings and connectors.

(a) Piping elbows, tees, wyes, reducers, end caps, plugs, connectors, and other such fittings shall be designed and constructed for the intended use.

(b) Fittings and connectors shall be formed of materials compatible with the piping to which they are joined and meet the same standards as that piping. Mixing of different pipe and fitting materials except when expressly designed and constructed for such purpose is prohibited.

(c) Joints formed between fittings, connectors, and/or piping shall be rigid and watertight and shall be made by the methods (solvent welding, chemical fusion, mechanical compression, etc.) applicable to the materials joined.

Section 10. Leaching Chambers. (1) All leaching chambers shall comply with the general construction requirements listed in Section 4 of this regulation for septic tanks, based upon the type of material used in their construction, in addition to the following:

(a) Metal leaching chambers are prohibited;

(b) All leaching chambers shall be designed and constructed to support vertical uniform loading of 600 lb./sq.ft. on the top of the chamber without damage or permanent deformation;

(c) All leaching chambers shall be designed and constructed to provide ports, slots, holes or other similar openings on sidewalls to allow air movement and effluent access to lateral field trench or bed sidewall absorption surfaces;

(d) All leaching chambers shall be designed and constructed to be interlocking to allow serial installation of chambers, and be provided with acceptable end plates, caps or other necessary fittings and connectors;

(e) All leaching chambers shall be provided with at least one (1) inspection port of a minimum internal dimension of six (6) inches centrally located in the top of the chamber; and

(f) All such chambers offered for sale or use in Kentucky shall bear, by imprint, stencil, or other acceptable means of marking, the manufacturer's name and the serial number assigned to the manufacturer's plans and specifications approved by the cabinet. This imprint, stencil, or other marking shall be located beside the observation port.

Section 11. [9.] Trench Fill and Barrier Material. (1) Trench fill material.

(a) River gravel or crushed dolomitic limestone shall be used for bedding and trench fill material for conventional gravity flow

lateral lines. Foreign matter, dust, and fines shall be removed. Such material shall be of sufficient hardness to attain a three (3) on the Moh's Scale (material hard enough to scratch a copper penny without crumbling or powdering shall be considered acceptable). Such material shall conform to the sizing standards and specifications of the Kentucky Transportation Cabinet for No. 2, No. 23, and No. 4 coarse aggregates, except that other grades may be used if they are in conformance with the general requirements of this paragraph and are acceptable to the cabinet. A size range of three-quarters (3/4) inch to two and one-half (2 1/2) inches in rough diameter shall be used, and material shall be graded for uniformity in size.

(b) Other materials such as blast furnace slag may be considered for usage if such materials can meet or exceed all of the requirements of paragraph (a) of this subsection.

(c) Pea gravel of a minimum one-fourth (1/4) inch diameter shall be used for bedding and trench fill material for low pressure pipe systems. River gravel or crushed limestone may also be used if washed and screened to a uniform size range of three-fourths (3/4) inch to one and one-half (1 1/2) inch.

(d) Graded sands used for the construction of mound systems or filter units shall be sized according to the design requirements of the system or unit involved.

(e) Crushed rock, gravel, pea gravel, sand, or other such materials meeting the requirements of this section for use as trench fill, lateral bedding material, mound fill, or filter material may be used, as applicable, in the construction of curtain, vertical, and underdrain ground water drainage systems.

(2) Trench barrier material.

(a) Straw[, hay, grass clippings,] or synthetic filter fabrics shall be used in all lateral trenches, beds, mounds, subsurface sand filters, or ground water drainage systems to provide a barrier to the entrance of soil backfill into the rock, gravel, pea gravel, or sand fill in such trenches, beds, mounds, filters, or drainage systems.

(b) Other similar materials may be considered for such usage provided that they can be demonstrated to perform in an equivalent manner with the above and do not restrict air movement within the trench, bed, mound, filter, or drainage system.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 13, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 10:085E

Emergency regulation 902 KAR 10:085E is necessary in order to implement the provisions of HB 910 by amending the current on-site sewage disposal systems regulation to specify when percolation tests will be required. In order to eliminate unncessary duplication other timely and necessary amendments to this regulation have been included. An ordinary administrative regulation cannot be in effect in time to meet effective date of July 15, 1988, for HB 910. Failure to meet that deadline will result in unnecessary costs to consumers for percolation tests and for meeting other standards which will no longer be required. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINS, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Food and Sanitation

902 KAR 10:085E. Kentucky on-site sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)
PURSUANT TO: KRS 194.050, 211.090(3), 211.180(3)
EFFECTIVE: July 13, 1988
NECESSITY AND FUNCTION: KRS 211.350 to 211.380 and 211.990(2) direct the cabinet to regulate the construction, installation, or alteration of any on-site sewage disposal system, except for systems with a surface discharge. This regulation establishes uniform standards for on-site sewage disposal systems. The function of this regulation is to assure the construction, installation, or alteration of on-site sewage disposal systems in such a manner as to protect public health and the environment.

Section 1. Citation of Regulation. This regulation may be cited as the "Kentucky On-site Sewage Disposal Systems Regulation."

Section 2. Definitions. As used in this regulation the following terms shall have the meanings set forth below:

[(1) "Alternative system" means any approved subsurface sewage disposal system other than a standard septic tank and lateral field system.]

(1) [(2)] "Approved" means that which has been considered acceptable to the cabinet.

(2) [(3)] "Areas subject to frequent flooding" means those areas inundated at a one (1) year or less frequency, for a period of time exceeding seven (7) consecutive days.

(3) [(4)] "Artificial drainage systems" means a manmade system of surface ditching or berming to divert surface water run-off; or curtain or vertical drains for interception and diversion of lateral groundwater flow; or underdrains for lowering the level of high water tables.

(4) [(5)] "Blackwater" means liquid and solid human body waste and the carriage waters generated through toilet usage. It also includes wastes resulting from a garbage disposal.

(5) [(6)] "Cabinet" means the Cabinet for Human Resources and includes its authorized agents.

(6) [(7)] "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(7) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357.

(8) "Clay" means a soil separate consisting of particles less than 0.002 mm in equivalent diameter.

(9) "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment [treatment] unit.

(10) "Gravelless pipe" means large diameter perforated piping designed for use in lateral

field trenches without the use of trench rock or gravel fill material. Such pipe includes a mandatory overwrap or encasing of synthetic filter material meeting specific criteria.

(11) [(10)] "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, and/or food particles.

(12) [(11)] "Grease trap" means an on-site sewage disposal system component designed to separate grease and its constituents from the wastewater stream, provide for storage of separated grease, and discharge the remaining wastewater for treatment.

(13) [(12)] "Greywater" means wastewater generated by water-using fixtures and appliances, excluding the toilet and the garbage disposal.

(14) [(13)] "Landscape position" means the location of the proposed on-site sewage disposal system installation area on a site relative to the surrounding topographic relief of the land surface. Different landscape positions are defined as follows:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge.

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to steepen and fall downward.

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes.

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation.

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile.

(f) Terrace: a naturally occurring elevated shelf of level to slightly sloping character adjacent to streams and drainageways.

(g) Plain: level to slightly sloping or undulating areas in wide valleys.

(h) Flood plain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods.

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets.

(j) Drainageway: a naturally occurring depressional area in the landscape with slight to steeply sloping sides which causes accumulation of surface and groundwater and channels it to surface or subsurface drainage outlets.

(k) [(j)] Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile which promotes dispersal of surface and groundwater.

(l) [(k)] Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile which causes accumulation of surface and groundwater.

(15) [(14)] "Lateral field" means the area in which [lateral lines are installed, or can be used to generally describe] the subsurface soil absorption [portion of the on-site sewage disposal] system is installed and is a general term for the system itself.

(16) "Low pressure pipe system" means an on-site sewage disposal system consisting of a sewage pretreatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, and lateral lines, and necessary control devices and appurtenances.

(17) "Leaching chamber" means a specially designed component for use in lateral field trenches or beds, with or without the use of trench rock or gravel fill material, which forms an open bottomed chamber or cavern over the subsurface soil absorption surface, and which interlocks with other such chambers to obtain the necessary absorption surface area.

[(15) "Lateral lines" means approved pipe or other approved materials or devices which receive partially treated effluent from a distribution device and further distribute the effluent for absorption into the soil beneath the ground surface.]

(18) [(16)] "Mottling" means spots or blotches of different color or shades of color interspersed with the dominant color of soil.

(19) [(17)] "On-site sewage disposal system" means a complete system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil absorption system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil absorption system, or connection to a municipal sewer.

(20) [(18)] "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, or loess deposits, from which the soil is being formed.

(21) [(19)] "Perched water table" means a saturated zone as identified by soil mottling, caused by a restrictive horizon and is generally above the natural water table.

(22) [(20)] "Percolation test" means a physical test conducted according to prescribed methods on a parcel of land [to determine relative suitability for an on-site sewage disposal system]. Such test measures the ability of the soil to accept a volume of water over a measured time period, under falling hydraulic head conditions. Results are given as a consistent acceptance rate or equilibrium rate in inches per hour.

(23) [(21)] "Permanent water table" means the zone of soil saturation by groundwater which remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. Such zone is evidenced by soil colors of black (due to high organic content), grays, blues, or olive greens.

(24) [(22)] "Person" means any individual, firm, association, organization, partnership, business trust, corporation, [or] company or governmental unit.

(25) [(23)] "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with this regulation, which is reserved for the installation of an additional lateral fields(s) and is not covered with permanent structures or impervious materials.

(26) [(24)] "Restrictive horizon" means a soil horizon, which due to its cemented, [or] compacted or structural condition, is relatively impervious to the downward movement of water or treated effluent and [. Such horizons] includes: fragipans; hard pans; iron pans; [or] plow pans and platy or massive structural grades.

(27) [(25)] "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock or saprolite, not exhibiting soil properties, and exposed at the surface or overlain by soil.

(28) [(26)] "Sand" means a soil separate consisting of particles between two (2) mm and 0.05 mm in diameter.

(29) [(27)] "Seasonal high water table" means the upper level of a zone of saturation caused by groundwater fluctuation in the soil.

(30) [(28)] "Secretary" means the secretary for the Cabinet for Human Resources.

[(29) "Septic tank system" means an on-site sewage disposal system consisting of a septic tank, or tanks, a gravity-fed lateral field, and other necessary appurtenances required for proper collection, distribution, treatment, disposal, operation, and performance.]

(31) [(30)] "Sewage" means the blackwater and[/or] greywater wastes generated in [a] residential, commercial, or public structures or facilities [facility].

(32) "Sewage pretreatment unit" means a water-tight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow clarified effluent to discharge to a subsurface soil absorption system. Such pretreatment units fall into three (3) basic categories:

(a) Septic tanks - which rely predominantly on anaerobic bacterial action for treatment;

(b) Aerobic units - which introduce atmospheric air into the sewage to promote treatment by aerobic bacteria; and

(c) Comination units - which provide treatment through both anaerobic and aerobic bacterial action and/or mechanical filtering, ozonation or ultraviolet irradiation.

(33) [(31)] "Silt" means a soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.

(34) [(32)] "Site" means the area or parcel of land on which structures or other facilities generating sewage and the on-site sewage disposal system(s) serving such structures or facilities are to be located.

(35) [(33)] "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet or fractions thereof in a line from a fixed point to another point 100 feet distant. This rise or fall is normally expressed as a percentage of slope.

(36) [(34)] "Soil" means the naturally occurring unconsolidated mineral and organic material of the land surface. It consists of sand, silt and clay minerals, and variable amounts of organic materials.

(37) [(35)] "Soil horizon" means a layer of soil or soil material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence, pH[, etc].

(38) [(36)] "Soil map" means a map showing the distribution of soil types or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

(39) [(37)] "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the kinds, thickness, and the arrangement of the horizons in the profile, and by the texture, structure, consistence, and porosity of each horizon.

(40) [(38)] "Soil series" means a basic unit of soil classification, and consisting of soils which are essentially alike in all major profile characteristics.

(41) [(39)] "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

(42) [(40)] "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

(43) [(41)] "Soil texture" means the relative proportions of sand, silt, and clay in a soil, and may include particles greater than two (2) mm in diameter, such as gravel, cobblestones, flagstones, chert, etc.

(44) "Subdivision" means the separation of a parcel or tract of land into three (3) or more parcels or tracts for the purpose of development into residential, commercial, or public building sites.

(45) [(42)] "Subsoil" means, in general concept, that part of the soil below the A horizon.

(46) "Subsurface soil absorption system" means that portion of an on-site sewage disposal system which accepts effluent from a sewage pretreatment unit(s) for further treatment by microbial, plant and animal life within the soil, as well as treatment by filtration, chemical decomposition and bonding within the soil itself, and consists of:

(a) Devices, components, and piping to transport effluent under pressure or by gravity flow, and distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, artificial marshes, separately or in combination, which form or enclose the soil absorption surfaces;

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system; and

(d) Artificial drainage systems, and other necessary site or soil modifications.

(47) [(43)] "System repair" means minor replacement or reconstruction of [an on-site system or] a component [portion] of an on-site sewage disposal [that] system.

(48) [(44)] "Textural class" means soils grouped on the basis of a specified range in texture.

(49) [(45)] "Topsoil" means:

(a) The layer of soil moved in cultivation; and

(b) The A or Ap horizon, as described in published U.S. Conservation Service soil surveys.

(50) [(46)] "Variance" means a waiver of certain specified requirements of this regulation granted by the cabinet after consideration of documented evidence that the granting of the waiver cannot reasonably be expected to result in the system contaminating groundwater supplies or creating a health hazard through surfacing of effluent, or otherwise creating a public health nuisance.

Section 3. Site Approval [Standards and] Procedures. [(1) Site approval standards.]

[(a) All sites proposed for the installation of an on-site sewage disposal system shall meet the minimum standards listed below:]

[1. An official site evaluation conducted by a certified inspector on the site reveals an overall classification of provisionally suitable based on the requirements of Section 4 of this regulation, and, when required:]

[2. A percolation test conducted in accordance to the requirements of Section 6 of this regulation reveals an average equilibrium percolation rate of at least one-half (1/2) inch per hour.]

[(b) On sites where the on-site sewage disposal system area has been designated through staking off of the perimeter, regrading or placement of any structure on that designated area shall result in the voiding of the site approval and/or the permit, unless special written permission is granted by the local health department.]

[(c) On sites requiring the placement of fill soil before a system can be installed, the following requirements shall apply:]

[1. Original soil surface layer shall be plowed prior to placement of fill.]

[2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this regulation.]

[3. Soil fill material shall be placed in the area to be filled in four (4) to six (6) inch layers, with each successive layer being mixed into the underlying layer by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.]

[4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.]

[5. Depth of soil fill required shall be determined by the local health department on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons.]

(1) [(2)] Individual site approval procedures.

(a) All persons seeking approval of an individual site for the installation of an on-site sewage disposal system shall submit to the local health department an application for a site evaluation on forms provided by the cabinet, pay the required fee as established by the local board of health, and submit a basic site plan drawing showing the following information:

1. Specific address and/or location of the site.

2. Site boundary lines and dimensions of same.

3. Location of existing structures, wells, ponds, streams, easements, roads, drives, [etc.,] if present.

4. Proposed (or existing) location of structure to be served by the system, and proposed system location.

(b) Person(s) seeking approval shall establish with the local health department an appointment time and date for the site evaluation, if they desire to be present during the evaluation for consultation.

(c) If the site evaluation reveals that the applicable requirements of this regulation are met, the area designated for system installation shall be flagged [staked] off by the certified inspector using suitable, readily observable markers. The person seeking approval shall receive a copy of the Site Evaluation Form including the overall evaluation rating, along with instruction relative to site limitations (where found) requiring site or system modifications (or alternative systems). Instructions shall also be included to be presented to the Certified Percolation Tester selected by the person to conduct the percolation test (when required). Such instructions shall include the depth at which the test is to be conducted in the designated area, as well as any additional instructions deemed necessary by the Certified Inspector.

(d) After the site evaluation (and percolation test, when required) has been conducted and found acceptable by the cabinet, a permit to construct or install an on-site sewage disposal system shall be obtained prior to construction of any portion of that system. An application for a construction permit shall be submitted and accompanied by a detailed drawing of the proposed system, including all necessary specifications, and required permit fees. Such permits shall be issued only by a certified inspector and only to a certified installer or homeowner as provided in 902 KAR 10:110, and shall expire one (1) year from date of issuance unless an extension is granted by the cabinet.

(2) Subdivision approval procedures - tentative.

(a) All persons seeking tentative approval for new subdivisions developed after the effective date of this regulation shall submit to the local health department the following information:

1. Specific location of the site including a detailed site location map;

2. A preliminary land plan of the property to be developed, showing proposed lots and dimensions of same, topography with ten (10) foot contour intervals, and all proposed or existing wells, ponds, streams, easements, roads, streets, or existing structures; on a minimum 1:100 scale;

3. A detailed overlay for the plan delineating areas of soils with differing characteristics as found on the property, along with descriptive information of those characteristics as per Section 4(4) through (7) of this regulation, prepared by an approved consultant;

4. A statement, supported by official agency

documentation, that municipal sewer system service is unavailable or economically infeasible to provide; and

5. Any other relevant information deemed necessary for site evaluation.

(b) After review of the above information, and any site visits or evaluation deemed necessary, the local health department may issue a tentative approval of the proposed subdivision for on-site sewage disposal system usage. Such approval shall be granted only insofar as to the general feasibility of on-site sewage disposal system usage for the subdivision as a whole, or for specific tracts or areas within the subdivision, and shall not be construed as an approval of any specific lot or site for system installation.

(c) Except where required by local health department regulation, securing tentative approval shall not be construed as a prerequisite to final approval, in that any person seeking approval for a subdivision may elect to initially apply for official site evaluations as outlined in subsection (1)(a) and (b) of this section on a lot-by-lot basis. Local health departments may adopt more specific requirements for subdivision approval, within their respective jurisdictions, which are not in conflict with these regulations.

(3) Subdivision approval procedures - final.

(a) All persons seeking final approval for subdivisions developed after the effective date of this regulation, and for all existing subdivisions of record shall follow the procedures for approval outlined in subsection (1)(a) and (b) of this section, in that each individual lot or site shall stand on its own merit as to approval or disapproval or type, size or design of the system to be installed.

(b) Whenever either tentative or final site evaluation reveals that individual lot or site on-site sewage disposal systems are infeasible or unapprovable due to site and/or soil characteristics, the person(s) seeking approval shall be directed to submit a proposal for a cluster system (or systems) where feasible, or pursue other alternatives under the authority of the Division of Water, Natural Resources and Environmental Protection Cabinet. When cluster system(s) are proposed, legal documents relative to ownership, operation and maintenance of such systems in perpetuity shall also be submitted.

Section 4. Site Evaluation Standards. (1) A certified inspector shall evaluate each proposed site. Based upon the factors contained in subsections (2) through (8) of this section, an official site evaluation form shall be completed classifying each factor as SUITABLE (S), PROVISIONALLY SUITABLE (PS), or UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes under fifteen (15) percent shall be considered SUITABLE with respect to topography.

(b) Uniform slopes between fifteen (15) percent and thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography. Slopes within this range may require installation of curtain or vertical drains upslope from the lateral field [system to remove all excess water that might be moving laterally through the soil during wet periods of the year]. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except when a thorough study of the soil characteristics indicates that a subsurface soil absorption [lateral field] system will function satisfactorily and sufficient ground area is available to properly install such a system. Slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE when:

1. The slope can be terraced or otherwise graded and the lateral field [lines] located in naturally occurring soil [so as to maintain] a minimum ten (10) foot horizontal distance from the [trench and the] top edge of the fill embankment; or

2. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

3. Surface water run-off is diverted around the lateral field [system so that there will be no scouring or erosion of the soil over the field];

4. If necessary, groundwater flow is intercepted and diverted through curtain or vertical drains [to prevent such water from running into or saturating the lateral field system]; and

5. There is sufficient ground area available to install the on-site sewage disposal system with these modifications.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, side slopes, and level plains shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder slopes, side slopes, foot slopes, toe slopes, [and] natural drainageways and terraces may be considered PROVISIONALLY SUITABLE when:

1. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;

2. Surface water run-off is diverted around the lateral field [system so that there will be no scouring or erosion of the soil over the field]; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains [to prevent such water from running into or saturating the lateral field system].

(d) If the provisions above listed in paragraph (c) of this subsection cannot be met the landscape position shall be classified UNSUITABLE.

(e) Areas closer than fifty (50) feet to the rim [center] of a [depression or] sinkhole, or areas subject to frequent flooding shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics (morphology). Soil borings shall be taken in the area to be used for subsurface soil absorption systems. At least four (4) such borings shall be taken to a depth of forty-two (42) inches or as required to determine the soil characteristics. Backhoe pits may be required when a more direct observation of soil horizons is deemed necessary for proper evaluation. Backhoe pits shall be required on all individual sites where the presence of stony or rocky soils precludes auger use, and on all

sites which have been strip mined, filled or otherwise disrupted. Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to absorb effluent. The important soil characteristics which shall be evaluated by the certified inspector are as follows:

(a) Texture. The texture of the different horizons of soils may be classified into four (4) general groups.

1. SOIL GROUP I - sandy texture soils contain more than seventy (70) percent sand-sized particles in the soil mass. These soils do not have enough clay to be cohesive. Sandy soils have favorable sewage application rates, but may have a low filtering capacity leading to malfunction due to contamination of groundwater. The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

2. SOIL GROUP II - coarse loamy texture soils contain more than thirty (30) percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

3. SOIL GROUP III - fine loamy texture soils contain less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

4. SOIL GROUP IV - clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay. There are two (2) major types of clays: the 1:1 clays shall generally be considered PROVISIONALLY SUITABLE as to texture; and the 2:1 and mixed mineralogy clays, which shall be considered UNSUITABLE as to texture.

5. The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing when conducted in accordance with ASTM (American Society for Testing and Materials) C-136 and D-422 standard for sieve and hydrometer analyses, at the property owner's expense.

(b) Structure is usually not important in soil Groups I and II, and these types of soils shall generally be considered SUITABLE as to structure. The four (4) [three (3)] kinds of soil structure that are most significant in movement of sewage effluent through Groups III and IV soils are described as follows:

1. Block-like soil structure - block-like soil structure in Group III and IV soils shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as slates or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure.

2. Prismatic soil structure - prismatic structure is generally found in fragipans or other restrictive horizons and shall be considered UNSUITABLE.

3. [2.] Platy soil structure - if Group III and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE.

4. [3.] Absence of soil structure - soils in Groups II, III, or IV which are massive and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by the following procedures:

1. Comparison of moist soil samples collected from each soil horizon, to a minimum depth of forty-two (42) inches, to standard Munsell notation soil color charts to establish color hue, value and chroma; and

2. Observation of soil profile for evidence of low chroma (chroma 2 or less) soil horizons, and mottling characterized as to abundance, size and contrast; and

3. Observation of soil profile for evidence of freestanding groundwater.

(b) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of forty-two (42) inches or greater shall be considered SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(c) Soils exhibiting uniform colors of greater than chroma 2 with no mottling or free groundwater at a depth of less than forty-two (42) inches but greater than twenty-four (24) [thirty (30)] inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than twenty-four (24) [thirty (30)] inches may be classified as PROVISIONALLY SUITABLE, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE; and

3. Curtain drain, vertical drain, or underdrain systems are installed to intercept lateral groundwater movement, or to lower and maintain the free groundwater level to a depth of greater than twenty-four (24) [thirty (30)] inches.

(e) Soils exhibiting uniform colors less than chroma 2 and/or mottling, or free groundwater at a depth of less than twenty-four (24) [thirty (30)] inches which cannot meet the criteria listed in paragraph (d)1 or 2 of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Presence of bedrock or large flagstones ("floaters") shall be determined by probing the site and through direct observation of the soil profile. Soil depth shall be considered the vertical distance from the existing ground surface to solid, fractured or rippable bedrock; or to weathered parent material; or to large flagstones which occupy more than thirty (30) percent of the exposed soil profile.

(b) [(a)] Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(c) [(b)] Soil depths less than forty-two (42) inches, but at least twenty-four (24) [thirty (30)] inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(d) [(c)] Soil depths less than twenty-four (24) [thirty (30)] inches shall be classified UNSUITABLE as to depth.

(e) [(d)] Where special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between [below] the bottom of the lateral field [trench], such soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) Presence of restrictive horizons such as fragipans, iron pans, clay pans, [or] plow pans, or platy or massive structural grades shall be determined by observation of the soil profile for brittle or dense horizons underlying shallow horizons displaying mottling [and/]or concretions of iron or manganese.

(b) Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

(c) Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least twenty-four (24) [thirty (30)] inches, shall be considered PROVISIONALLY SUITABLE.

(d) Soils in which restrictive horizons are at depths less than twenty-four (24) [thirty (30)] inches may be classified PROVISIONALLY SUITABLE, provided that:

1. Special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field [trench bottom] and the restrictive horizon; or

2. The provisions of Section 5(3)(a)2 [1] of this regulation are met.

(e) Soils in which restrictive horizons are at depths less than twenty-four (24) [thirty (30)] inches which cannot meet the above listed provisions in paragraph (d)1 or 2 of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites shall have sufficient usable land area to permit the installation and proper functioning of on-site sewage disposal systems, in addition to the land area to be occupied by existing or proposed structures, or other natural or manmade features of the site which are not compatible with system installation.

(b) For general determination of sufficient usable land area ONLY for the subsurface soil absorption system (lateral field) and NOT including the structure(s) it serves, the pretreatment unit portion of the complete on-site sewage disposal system, or any other site features, the following shall apply for each 100 gallons per day wasteload or fraction thereof:

1. Uniform slope range of zero to no more than fifteen (15) percent in the system area - 1,000 square feet;

2. Uniform slope range from more than fifteen (15) percent to no more than twenty (20) percent in the system area - 1,250 square feet;

3. Uniform slope range from more than twenty (20) percent to no more than twenty-five (25) percent in the system area - 1,500 square feet;

4. For each five (5) percent increase, or fraction thereof over twenty-five (25) percent add an additional 250 square feet;

5. The above figures are based upon space requirements for a conventional trench type lateral field installed in a Group III provisionally suitable soil and does not include any minimum setback distances which may apply on any given site. Group IV soil sites will require more space than indicated, and Groups I-III suitable soil sites will require less, as will most other modified or alternative subsurface soil absorption systems.

(c) [(b)] Sites classified PROVISIONALLY SUITABLE shall have a minimum repair area equal to 100 percent of the land area occupied by the lateral field [portion of the system] set aside in addition to the space required in paragraph (b) [(a)] of this subsection.

(9) Determination of overall site suitability. All of the criteria in subsection (2) through (8) of this section shall be determined to be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification will prevail. However, it is unlikely that all criteria will be classified the same in all situations. Where there is a variation in classification of the several criteria, the following shall be used in making the overall site classification. The lowest of the uncorrectable characteristics will determine the site classification.

(a) If the topography is classified as UNSUITABLE it may be reclassified PROVISIONALLY SUITABLE under the conditions outlined in subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE, and cannot be reclassified as PROVISIONALLY SUITABLE through modification the overall classification will be UNSUITABLE regardless of the other criteria unless the provisions of Section 5(6) of this regulation are met.

(c) When soil depth is classified as UNSUITABLE, it may be reclassified as PROVISIONALLY SUITABLE under the conditions outlined in subsection (6)(e) [(d)] of this section.

Section 5. Site Classification and System Restrictions. (1) Restrictions shall be placed upon the types of on-site sewage systems which will be approved for use due to site limitations and/or daily waste load volume. Such restrictions shall be determined by the following conditions, and the modified or alternative system(s) listed shall be considered as the minimum acceptable system(s).

(2) On sites with an overall evaluation rating of SUITABLE a conventional subsurface soil absorption system [consisting of a septic tank (or tanks), distribution box(es) and lateral field] (twenty four (24) inches deep), shall be permitted.

(3) On sites with an overall rating of PROVISIONALLY SUITABLE (the provisionally suitable rating was originally granted or site modifications were made raising an unsuitable rating to that level) due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-four (24) [Twenty-eight (28)] inches but less than forty-two (42) inches - a shallow (six (6) [ten (10)] - twenty-three (23) inch deep [lateral trenches]) modified conventional trench, gravelless pipe, or low pressure pipe (LPP) system, with a minimum of ten (10) [twelve (12)] inches of fill soil above the trench barrier material and a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive

horizon.

2. Eighteen (18) inches to less than twenty-four (24) inches (for soils with restrictive horizons only) a shallow (six (6) inches to eleven (11) inches deep) modified, conventional trench, gravelless pipe, or low pressure pipe (LPP) system with a minimum of ten (10) inches of fill soil above the trench barrier material; a corresponding minimum separation distance of twelve (12) to seventeen (17) inches between trench bottoms and the restrictive horizon; a two (2) foot increase in minimum spacing between individual trenches; and, a twenty-five (25) foot increase in minimum setback distances downslope of the lateral field. [Twenty-six (26) inches to less than twenty-eight (28) inches - a shallow (eight (8) - ten (10) inch deep lateral trenches) low pressure pipe (LPP) system, with a minimum of twelve (12) inches of fill soil above the trench barrier material.]

3. Eighteen (18) inches to less than twenty-four (24) [twenty-six (26)] inches - (for soils with rock or water tables only) a mound system; or, sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period.

4. Less than eighteen (18) inches - filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after a one (1) year settling period.

[5. Where soils rating SUITABLE or PROVISIONALLY SUITABLE, as to texture, structure, and internal drainage are found beneath a restrictive horizon - a deep (trench bottom at least eight (8) inches below the bottom of the restrictive horizon) conventional system including curtain or vertical drains to intercept perched groundwater over the restricted horizon.]

(b) Soil texture [and/]or structure.

1. Soil Group III - a conventional system.

2. Soil Group IV - a conventional trench system modified by the use of multiple septic tanks in series or an aerobic pretreatment unit, as outlined in Section 8(2) of this regulation. Such systems may also be required to be modified [, a permanent low volume flush water closet(s); and] by the use of alternate lateral fields; by dosing tank and pump or siphon; by dosed alternate lateral fields; by dosed automatic alternating lateral fields; or by the use of a low pressure pipe (LPP) system; by a lagoon and lateral field system; or by other alternative systems approved for such use by the cabinet. Modified conventional trench systems on sites with this soil group shall use equal flow distribution boxes only.

(4) On sites where available space is restricted due to site size or topography:

(a) A conventional system with lateral beds in lieu of trenches or a combination of trenches and beds; or installation of as much linear footage of lateral trench and/or bed as can be installed using hillside or drop distribution with overflow from the last box in series going into a holding tank [(this method cannot be used on sites with soils in Soil Group IV)].

(b) A low pressure pipe (LPP) system.

(c) Installation of permanent low-volume flush water closets or nonwater carriage toilet devices to reduce wasteload. [Such permanent water saving devices shall be required for use on sites with soils in Soil Group IV, however, no reduction of lateral field size is allowed.]

(5) On sites where a PROVISIONALLY SUITABLE rating was initially obtained (or was obtained after site modifications), which may be affected by a combination of site limitations, the on-site system(s), whether conventional, modified, or alternative, which will overcome all limitations involved shall be installed.

(6) Sites originally classified as UNSUITABLE may be used for on-site sewage disposal systems, provided engineering, hydrogeologic, and soil studies indicate to the local health department that a suitable conventional system or a suitable modified or alternate system can reasonably be expected to function satisfactorily. Such sites may be reclassified as PROVISIONALLY SUITABLE upon submission to the local health department of the following:

(a) Adequate substantiating data including a percolation test to indicate that an on-site sewage disposal system can be installed so that the effluent will receive adequate treatment;

(b) Adequate substantiating data to indicate the effluent will not contaminate any drinking water supply, groundwater used for drinking water, or any surface water;

(c) Adequate substantiating data to indicate that the effluent will not be exposed on the ground surface where it could come in contact with people, animals, or vectors.

Section 6. Percolation Testing Standards. (1) Local health departments may require percolation testing, when deemed necessary to confirm site evaluation findings, only on sites where the original, naturally occurring soil horizons have been destroyed, commingled or buried through strip mining, road cutting, filling or other disruptive site modifications in the area proposed for system installation. Such percolation testing results shall be used to determine the relative ability of the commingled fill material to accept effluent. When such a test is deemed necessary it shall be performed in the presence of a certified inspector.

(2) [(1)] All percolation tests shall be performed in accordance with the procedures outlined in this section. Such tests meeting all procedure standards shall be considered "approved."

(3) [(2)] Excavation of test holes.

(a) Test holes shall be located on each site within the staked area designated by the certified inspector.

(b) A minimum of four (4) test holes shall be dug in this area to the depth of the proposed lateral field as specified by the site evaluation.

(c) Test holes shall be located in the designated area so as to provide uniform coverage of the area, with no more than a fifty (50) foot spacing between centers of adjacent test holes.

(d) Test holes shall be six (6) to eight (8) inches in diameter.

(e) After excavation, all holes shall be scarified in the lower twelve (12) inches of the hole to break up smearing and restore absorption surfaces.

(f) All loose soil material shall be removed from test holes to reduce puddling and sealing of soil pores by fine soil materials.

(g) A portion of the excavated materials from the test holes shall be mounded around each hole

to prevent surface water run-off from entering the hole in the event of rainfall during the period preceding and continuing through the conduct of the test.

(4) [(3)] Presoaking of test holes.

(a) In soils which do not exhibit surface or subsurface cracking in dry weather (low shrink-swell potential), the test holes shall be presoaked by filling with water for at least fourteen (14) hours prior to the test.

(b) In soils which exhibit surface or subsurface cracking during dry weather due to moderate to high shrink-swell potential (Soil Group IV), the soil surrounding the test holes shall be saturated at least three (3) days by maintaining at least twelve (12) inches of water in each hole during that period. After completion of the swelling procedure stated above, test holes shall be left for a period of fourteen (14) hours before proceeding with measurement procedures. In lieu of the above procedure, testing for such soils may be conducted using the presoak procedure outlined in paragraph (a) of this subsection, when such tests are conducted during the months of December through April.

(5) [(4)] Conduct of test measurements.

(a) All measurements shall be made from fixed reference points establishing the bottom of the test hole and a point exactly six (6) inches above the bottom. Measurement shall be made using calibrated measuring sticks, calibrated instruments or devices using floats, or other such equipment acceptable to the cabinet.

(b) In test holes containing more than six (6) inches of water remaining after the presoaking/swelling period (assuming significant rainfall has not occurred between the completion of presoak/swelling procedures and the start of test measurement), the water depth shall be recorded and considered as prima facie evidence of an unsatisfactory percolation rate.

(c) In test holes containing six (6) inches or less of water remaining after the presoaking/swelling period, the water shall be adjusted to a six (6) inch depth and testing period.

(d) Water added to test holes for testing purposes shall be free of sediment and foreign material, and shall be added in such a manner that slaking and scouring of test hole surfaces is minimized.

(e) Testing on each hole shall begin by adjusting the water depth as in paragraph (c) of this subsection, followed by measurement of the amount of decrease in water depth at the end of a one (1) hour period from the six (6) inch reference point. Measurements shall be recorded on forms supplied by the cabinet for this purpose. Such measurements shall be recorded to the nearest one-eighth (1/8) inch.

(f) After first hour measurements, all test holes shall be readjusted to the six (6) inch water depth and remeasured and recorded at the end of another one (1) hour period. This process shall be repeated for a total four (4) hour period. The hourly periods for each test hole shall begin at the time the water depth is readjusted to six (6) inches. Actual time at which the test was initiated on each hole shall be recorded.

(g) The fourth hour readings of all test holes shall be averaged and the result recorded on the report form as the equilibrium rate, or consistent rate of acceptance.

(h) For percolation testing in Group I soils the time period between readings shall be reduced to ten (10) minute intervals for at least four (4) successive readings. The percolation rate in inches per hour for all holes shall be calculated from the results thus obtained, and the last reading averaged to obtain the equilibrium rate.

(i) In the event the rate of acceptance in any of the test holes is not consistent, the affected test hole or holes shall continue to be tested until a consistent rate is obtained. The rate(s) thus obtained for the affected hole(s) shall be used in calculating the equilibrium rate. A consistent rate shall be considered to have been obtained when the acceptance rate for an affected test hole remains the same, or decreases no more than one-half (1/2) inch, on two (2) consecutive hourly measurements.

(j) When test holes fail to meet the minimum acceptance rate of one-half (1/2) inch per hour, the area represented by the hole or holes involved shall be removed from consideration for placement of the lateral field system. In the event that the area represented by the failing hole or holes reduces the usable (passing) area to the extent an approved system cannot be installed, or a failing equilibrium rate for all holes is obtained, the site shall be considered unacceptable for a subsurface sewage disposal system, if percolation test findings confirm similar site evaluation findings.

Section 7. Certification to Conduct Percolation Tests and Approval of Consultants. (1) No person shall offer service to conduct percolation tests until they have met the requirements of this section and have been issued certification.

(2) All persons who propose to offer such service shall submit their name, occupation, professional registration number, and address to the cabinet.

(3) Persons eligible for certification shall include:

(a) Engineers;

(b) Land surveyors;

(c) Architects;

(d) Soil scientists;

(e) Registered sanitarians;

(f) Geologists.

(4) To be eligible for recertification the persons listed in subsection (3) of this section shall possess a valid professional registration, license, certificate or other such document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other recognized body within the state of Kentucky. Failure to maintain professional registration shall result in the suspension of certification to conduct percolation tests until such registration is reestablished.

(5) Persons meeting eligibility requirements shall be issued a certification number, which shall be placed on all percolation test report forms, and any additional documents related thereto.

(6) Persons seeking certification may be required to demonstrate their ability to conduct percolation tests in accordance with the standards in Section 6 of this regulation prior to receiving such certification.

(7) All certified persons shall be subject to unannounced monitoring by the cabinet, while

conducting percolation tests, to determine if standards are being met.

(8) When the cabinet finds that improper testing or test reporting practices exist, the certified person involved shall be subject to suspension or permanent revocation of such certification.

(9) Whenever suspension or revocation proceedings are initiated by the cabinet, the certified person shall have the right to request a hearing before the cabinet to present evidence on his behalf as to why the intended action should not be taken.

(10) Whenever the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body(ies) with which the person affected is registered, licensed, or certified, for any further action they deem necessary.

(11) Approval of consultants. The cabinet may, as it deems necessary, grant limited approval to eligible persons to perform tentative site evaluations ONLY for subdivisions proposed for development which intend to utilize on-site sewage disposal systems for sewage disposal.

(a) Persons eligible for approval as consultants shall include:

1. Registered engineers;
2. Registered architects;
3. Soil scientists;
4. Geologists;
5. Former fully certified inspectors who are no longer employed by the cabinet or its agents and whose certification has not been suspended or revoked, but was rescinded upon termination of employment.

(b) The cabinet may require attendance at training seminars and competency testing as a condition of maintaining approved status.

(c) Approval granted under this subsection may be suspended or revoked for cause, and the procedures outlined in subsections (9) and (10) of this section shall apply, as applicable.

Section 8. System Sizing Standards. (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility, based upon the design flow per designated flow unit listed in Table 1 below, times the number of such flow units involved.

(a) When approved permanent low-volume flush water closets using one (1) gallon or less of water per flush cycle are installed exclusively in any residence, commercial facility or other public facility, the daily design waste flow unit for that specific residence or facility may be reduced to the figure given in Column B in Table 1.

(b) When approved permanent nonwater carriage water closet type devices (composting toilets, incinerator toilets, oil carriage toilets, etc.) are installed exclusively in any residence and no other blackwater type wastes are created, the daily design waste flow unit for that specific residence may be reduced to the figure given in Column C in Table 1.

(c) No daily waste flow unit reduction shall be granted for installation of nonpermanent flow reduction devices such as: showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other such devices. [On sites with soils in Soil Group IV,] Use of water saving devices including low-volume flush water closets, may be required by the cabinet when deemed necessary due to site limitations. [, however, no reductions in system sizing shall be granted.]

(d) All on-site sewage systems which receive a design daily waste flow of 2,000 gallons or more (or require more than 1,000 lineal feet of lateral field) shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of a low pressure pipe (LPP) system.

(e) The following businesses or facilities shall not be approved for disposal of waste waters into an on-site sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats except on an experimental basis as provided under Section 8(14) [(12)] of this regulation;
2. Car washes;
3. Livestock slaughterhouses (kill room wastes only);
4. Funeral parlors or mortuaries (embalming wastes only); and
5. Factories (industrial or process wastes only).

Table 1
Design Daily Waste Flow

Source of Sewage	Units	Gallons/Unit/Day Standard	Column B	Column C
Dwelling Units:				
Single Family Residences	Each bedroom	120	96	90
Hotels or Motels	Each room	100 [120	80 96]	
Apartments/ Condominiums/ Townhouses	Each bedroom	120 [180	96 144]	
Rooming Houses	Each bedroom	120	96	
Mobile Home Parks	Space	300 [350]	No reductions	
Commercial/Industrial:				
Retail stores	Each toilet room	200	120	
Malls, Shopping Centers	Each 1,000 sq. ft.	200	120	
Offices	Employee	20	12	
Medical offices (with labs)	Employee	50	40	
		250 additional		
Dental offices (with water rinse units)	Exam chair	250	200	

Dental offices (with suction units)	Exam chair	50	40
Industrial buildings	Employee/ shift (does not include process water or cafeteria)	20	12
(Add for showers)	Employee/ shift	10	No reductions
Construction site	Employee/ shift	20	12
Visitor center	Visitor	5	3
Barber shops	Chair	75	60
Beauty shops	Chair	125	100
Laundromats:			
(Experimental only)	Machine	300	No reductions
Eating and Drinking Establishments:			
Restaurant (does not include bar or lounge)	Meal/seat	15	12
Bar or Lounge	Seat	20	16
Drive-in (no public restrooms)	Established	500	No reductions
Drive-in (with public restrooms)	Car stall	20	16
Food Markets:			
Prepackaged	Store	250 [500]	No reductions
Food Processing	Store	1,000	900
(With eat-in delicatessen)	Meal/Seat	15 Add.	12 Add.
(With carryout delicatessen)	Store	250 Add.	250 Add.
Rabbit, or fish processors (with solid waste separation)	Employee/ Shift	20	12
	per animal or fish processed	0.5	No reduction
Institutional (Includes Food Service):			
Hospitals and surgical centers	Each bed	300	240
Mental	Each bed	100	80
Prison or Jail	Each inmate bed	100	80
Nursing Home, Rest Home	Each resident bed	100	80
Schools and Churches (Includes [Does not include] Food Service):			
Elementary, Day Care, Kindergarten	Student	25	20
High School	Student	35	28
College	Student	35	28
Boarding School	Student	60	48
Churches (without kitchen facilities)	Average attendance/ person	3	2
(with kitchen facilities)	Average attendance/ person	5	4
Recreational:			
Recreational Vehicle Park w/sewers to each space [hookups]	Space	125 [150]	No reductions
With Central Bath only [no hookups]	Space	75	60
Dump station only	Space	25	No reductions
Day Camp (No meals)	Person	15	12
Residential Camp ([does not] includes cafeteria)	Person	60	48
Resorts/ Housekeeping Cabin	Bedroom	120	96
Tent Camping Areas w/ central bath	Space	75	60
Country Clubs (Does not include food service) [No Meals]	Member	15	12
Golf courses	Average Attendance/ Person	10	8
[Meals and showers]	Member	50	40

Swimming Pools	Design Capacity/Person	10	8
Picnic Parks, Sports Facilities, Ball Parks (w/ toilet only)	Average Attendance/ Person	5 [10]	3 [8]
(w/food service)	Average Attendance/ Person	8	6
Movie Theaters	Seat	5	3
Drive-in Theaters ([does not] includes food service)	Space	15	12
Skating Rink/ Dance Hall	Person (based on rated capacity)	10	8
Bowling Alley	Lane	100	80
Transportation:			
Airport, Bus or Rail Depot	Passenger	5	3
Auto Service Station	Each Water Closet or Urinal	250	150

(2) Residential pretreatment units. All septic tanks used in single-family residence on-site sewage disposal systems shall meet the minimum working liquid capacities listed below, based on the number of bedrooms involved. Aerobic units or other types of approved pretreatment units shall be sized according to their rated treatment capacities in gallons per day, based upon the design daily waste flow per design unit given in Table 1. On sites with soils of Soil Group IV, additional pretreatment shall be provided by use of one (1) of the following methods:

(a) Installation of multiple septic tanks in series. The first tank, receiving raw sewage from the residence shall be of the required minimum capacity in Table 2, or of at least 1,000 gallons capacity. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

(b) Installation of an aerobic pretreatment unit. For those aerobic units which do not include an integral trash or primary settling chamber in their construction, such shall be provided by the series installation of a minimum 500 gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit. Where required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable, serial installation of multiple tanks is permitted to obtain the necessary capacity. In such instances the first tank in series shall have a minimum capacity of 1,000 gallons.

Table 2
Minimum Capacity of Pretreatment Units

Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
2 or less	750	1,000
3	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for all septic tanks for commercial and public facility on-site sewage disposal systems shall be determined by multiplying the daily design waste flow per unit times the total number of such units, plus an additional fifty (50) percent of that figure for solids storage. (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Procedures and requirements listed in subsection (2) of this section relative to: sites with soils in Soil Group IV; aerobic and other types of pretreatment units; and use of multiple tanks in series to obtain required capacity; shall also apply to commercial facility system installation.

(c) All commercial or public facilities engaged in the manufacture, processing, preparation, and service of food and food products shall be provided with an approved grease trap. All wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping, and discharge into a grease trap prior to entrance into an on-site sewage disposal system. Minimum liquid capacity of grease traps shall be based upon the total design daily waste flow for the facility served. Grease trap capacity shall be a minimum of 150 gallons for daily waste flows of 4,000 gallons or less; 300 gallons for daily waste flows of 4,001 to 8,000 gallons; and 500 gallons for daily waste flows greater than 8,000 gallons. All grease traps shall be placed outside of the structure served unless special approval is granted by the cabinet. In all instances the grease trap shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. All gravity distribution lateral fields for on-site sewage disposal systems shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow multiplied [divided] by the linear footage requirement per gallon [allowable daily loading rate] found in Table 3 for the specific site soil characteristics, shall determine the minimum linear [square] footage of lateral trench [bottom area] required. [This is converted into the total length of two (2) foot wide trench needed as shown in Table 4.]

Table 3
Application Rates for Gravity Distribution
Lateral Fields Based on Two (2) Foot
Conventional Trench Width

Soil Group	Soil Texture Classes	[Approx. Range] [Percolation] [Rate Inch/Hr.]	Application Rate Gal/ Sq. Ft./Day	Linear Feet Per Gallon
I Sands	Sand	[6 - 12]	1.2	.42
	Loamy Sand	[4 - 5 7/8]	.9	.56
II Coarse Loams	Sandy Loam Loam	[3 - 3 7/8]	.7	.72
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[2 - 2 7/8]	.5	1.0
Fine Loams (with provisionally suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[1 - 1 7/8]	.37	1.35
IV Clays (Kaolinitic or 1:1 with Provisionally Suitable Structure)	Sandy Clay Silty Clay Clay	[1/2 - 7/8]	.27	1.85

[Table 4
Lateral Trench Length Requirements for
Gravity Distribution Systems
Based on Two Foot Trench Width

Application Rate Gallon/Square Foot/Day	Linear Feet per 100 gallons
0.27	185
0.37	135
0.5	100
0.7	71.5
0.9	55.5
1.2	41.3]

(5) Sizing of low pressure piping distribution lateral fields. All low pressure piping (LPP) distribution lateral fields for on-site sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 4 [5], for the specific site soil characteristics, shall determine the minimum square footage of absorption area required. Further system design requirements shall be determined based upon the criteria and specifications given in the North Carolina State University Publication UNC-SG-82-03, "Design and Installation of Low-Pressure Pipe Waste Treatment Systems."

Table 4 [5]
Application Rates for
Low Pressure Pipe (LPP) Lateral Fields

Soil Group	Soil Texture Classes	[Percolation] [Rate Inch/Hr.]	Rate Gal/ Sq.Ft./Day
I Sands	Sand	[6 - 12]	0.5
	Loamy Sand	[4 - 5 7/8]	
II Coarse Loams	Sandy Loam Loam	[3 - 3 7/8]	0.4
III Fine Loams (with suitable structure)	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[2 - 2 7/8]	0.3
Fine Loams (with provisionally suitable structure	Sandy Clay Loam Silt Loam Clay Loam Silty Clay Loam	[1 - 1 7/8]	0.175 [0.2]
IV Clays (Kaolinitic or 1:1 with provisionally suitable structure	Sandy Clay Silty Clay Clay	[1/2 - 7/8]	0.1

(6) Sizing of gravelless pipe systems. Gravelless pipe in eight (8) and ten (10) inch internal diameter sizes only, may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications (except those in Group IV soils where gravelless pipe is permitted only on an experimental basis), linear footage requirements listed in Table 3 shall also apply to gravelless pipe.

(7) [(6)] Sizing of gravity distribution lateral beds. When lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench needed shall be calculated from Tables 1 and [,] 3[, and 4] information. That figure shall be multiplied by the percentage shown on Table 5 [6], for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation

for that particular bed width.

Table 5 [6]
Lateral Bed Length Requirements
for Gravity Distribution Systems
Based on Bed Width

Bed With	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12'	26%

(8) Sizing of leaching chamber systems. Leaching chamber systems may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications and for experimental alternative systems on slopes of no more than ten (10) percent for trench installation and no more than five (5) percent for bed installation. Linear footage requirements for chambers shall be based on nominal internal chamber width as follows:

(a) In trench configuration - for nominal widths of twenty-eight (28) inches to thirty (30) inches, sixty (60) percent of Table 3 required linear footage; for nominal widths of forty-two (42) inches to forty-four (44) inches, forty-five (45) percent of Table 3 required linear footage.

(b) In bed configuration - for all chamber widths eighty-five (85) percent of Table 5 linear footage requirements based on total bed width to nearest foot.

(c) Other chamber designs with nominal widths outside the ranges listed in paragraph (a) of this subsection shall be sized on a case-by-case basis, accordingly.

(9) [(7)] Sizing of gravity distribution alternate lateral fields or beds. When alternate gravity distribution lateral fields or beds are used or required, the individual alternate lateral fields or beds shall each contain one-half (1/2) [two-thirds (2/3)] of the total linear footage required for the system. Such alternate lateral fields or beds shall be alternated in use on a yearly basis through the use of an approved alternating valve or device.

(10) [(8)] Sizing of dosed gravity distribution automatic alternating lateral fields or beds. When dosed automatic alternating lateral fields or beds are used or required, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system. Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral fields or beds with doses of effluent, through the use of two (2) or more dosing siphons or pumps controlled by an automatic alternating device, or by dosing simultaneously.

(11) [(9)] Sizing of combination evapotranspiration/absorption lagoon and lateral field systems. On sites with Group IV soils where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evapotranspiration/absorption lagoon and shallow lateral field system may be considered for installation. Total daily waste flow shall be determined by using Table 1, and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per gallon. Effluent entering the lagoon shall have passed through a properly sized pretreatment unit, and overflow shall be directed to a shallow (six (6) [twelve (12)] inches to eighteen (18) inches depth) lateral field. Such lateral field size shall be calculated by multiplying the total daily waste flow in gallons by .10 [.28] linear feet per gallon.

(12) [(10)] Sizing of mound systems. Mound systems used to overcome site conditions of shallow depth to rock or water tables, or slowly permeable soils shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 "Design Manual, On-site Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems.

(13) [(11)] Sizing of residential laundry waste systems. When, in the cabinet's opinion, improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems, such separation shall be accomplished in the following manner:

(a) Greywater sewer for the washing machine shall be separated from the main house sewer;

(b) Laundry greywater shall discharge into a [shallow (eighteen (18) inch depth)] lateral bed or trench(s) of a minimum of 100 square feet of bottom surface soil absorption area [four (4) feet in width, and twenty-five (25) feet in length] for a two (2) bedroom residence and an additionally fifty (50) square feet [twelve and one-half (12 1/2) feet in length] for each additional bedroom.

[(c) Where available space is limited, other bed and/or trench configurations may be used which provide equivalent square footage of soil absorption area.]

(c) [(d)] On new system installations where laundry waste-flow separation is permitted a fifteen (15) percent reduction in the primary system lateral field requirements shall be allowed only for sites with soils in Soil Groups I-III. On sites with soils in Soil Group IV such separation may be required but no system site reduction will be granted.

(14) [(12)] Sizing of other on-site sewage disposal systems. Other alternative systems not specifically mentioned in this regulation, or experimental systems, shall be sized according to applicable standards on a case-by-case basis by the cabinet. Such sizing shall be based upon site characteristics, effluent characteristics, pretreatment processes, technology involved, and other demonstrable factors.

(15) [(13)] Sizing of dosing tanks [or chambers]. Dosing tanks [or chambers] shall be of sufficient capacity to hold two (2) times the total design daily waste flow calculated from Table 1 for single-family residential structures, and one and one-half (1 1/2) times

[three (3) times the single dose volume] for commercial and public facilities.

(16) [(14)] Use and sizing of holding tanks. Holding tanks shall only be permitted under the following conditions [be of sufficient capacity to contain the total design daily waste flow calculated from Table 1 for the following time periods]:

(a) For single family residences, commercial and public facilities - where written official verification is submitted that [- holding tanks are not recommended for single family residences due to the expense involved in routine pumping. Only those residences used on a limited or seasonal basis for vacation or weekend occupancy, or when] a municipal sewer system will [is to] be available within a maximum two (2) year period; as an addition to a new or existing system due to limited space precluding required full system installation or existing system expansion; and, as per paragraph (c) of this subsection. [, shall be considered for holding tanks. For such uses a ten (10) day storage capacity shall be provided.]

(b) For commercial and [,] public facilities only - where less than 200 gallons per day total wasteflows are involved and no other feasible method of wastewater disposal is available due to site limitations. [seven (7) days.]

(c) For all residential, commercial, and public facilities - when site limitations preclude immediate system installation, the local health department certified inspector may grant usage of a holding tank to allow use of the structure served, during a one (1) year settling period for system area fill soil which will enable an approved system to be installed.

(d) In all situations where holding tanks are permitted, installation of low-volume flush (one (1) gallon or less) water closets shall be mandatory, as shall be the installation of an audible or visible, electrically operated alarm system located within the structure served.

(e) All holding tanks shall be sized to hold a minimum seven (7) day wasteflow and serviced in accordance with KRS 211.970 to 211.990. A copy of a contract with a licensed septic tank cleaning company for servicing the holding tank shall be submitted with the permit application. The owner shall maintain records on all servicing which shall be available for inspection by the cabinet. Local health departments may also require the posting of a reasonable cash performance bond by the owner.

Section 9. System Installation Standards. (1) System layout standards.

(a) All systems shall be designed, laid out, and installed in the flagged [staked] area set aside for such purpose during the site evaluation. Installation of the system in any other area is prohibited without the written consent of the local health department certified inspector.

(b) Layout of the system on the site by the certified installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(c) Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 100 feet. Maximum length for individual lateral trenches in low pressure pipe (LPP) systems shall be seventy (70) [sixty (60)] feet.

(d) Lateral trenches for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers. Lateral trenches for low pressure pipe (LPP) systems shall be spaced a minimum of five (5) feet on centers. Lateral beds or leaching chambers for gravity distribution systems shall be spaced a minimum of eight (8) feet from side wall to side wall. Lateral trench spacing shall be increased two (2) feet on centers on all sites with slopes greater than fifteen (15) percent and less than twenty (20) percent. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet on centers for lateral trenches.

(e) Lateral line spacing in gravity distribution bed systems shall be as follows:

1. For beds of four (4) to six (6) feet in width, one (1) lateral line placed on the centerline of the bed is required;

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines are required, spaced two and one-half (2 1/2) feet from the side walls;

3. For beds eleven (11) feet and wider, the two (2) laterals spaced two and one-half (2 1/2) feet from the side walls shall be used, and additional lateral lines installed five (5) feet on centers, or fraction thereof, from the side wall laterals.

(2) Excavation standards.

(a) Only that heavy equipment necessary to the installation of an on-site sewage disposal system shall be permitted in the flagged [staked] area set aside for that system. Such equipment shall be operated so as to minimize travel over, and compaction of, the system area.

(b) Excavation of the lateral field, bed or other subsurface soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes listed in Soil Group IV. Such restriction shall apply for all system installations taking place during the months of November through May, or anytime immediately after heavy rainfall occurs. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a "wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all nonperforated piping used to conduct effluent to other components through gravity flow means, shall be done only after shooting of grades to assure a positive gradient [minimum of one-eighth (1/8) inch per foot fall] from the outlet of the pretreatment unit through all components to the distribution box(es) or device(s). Such determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d) Excavations for placement of all components except lateral trenches or beds shall be made to the necessary depth for installation and shall be dug level in undisturbed earth. If filling is required to level or raise components to the proper grade, tamped gravel or sand shall be used for such bedding purposes. When installation occurs in stony areas, large stones, flags, boulders, etc., shall be removed from component placement excavations to prevent component damage, and the cavities created by their removal shall be filled with tamped gravel or sand, if they are located on the bottom surface of the excavation.

(e) Excavations for lateral trenches or beds shall be made to the depth specified by the certified inspector based on site evaluation results. Maximum trench or bed depth from grade for a conventional on-site sewage disposal system shall be considered as being twenty-four (24) inches. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems using four (4) inch diameter lateral lines shall be six (6) [ten (10)] inches from grade. Minimum trench depth for low pressure pipe (LPP) systems shall be six (6) [eight (8)] inches from grade. Trench width for low pressure pipe systems shall be a minimum of twelve (12) [eight (8)] inches [to a maximum of eighteen (18) inches]. Minimum trench width for gravelless pipe shall be eighteen (18) inches to a maximum of twenty-four (24) inches. Minimum or maximum trench width shall be as per manufacturer's specifications for leaching chambers.

(f) Lateral trench and bed bottom grades shall be as shown in Table 6 [7] below:

Table 6 [7]
Maximum Grades for Trench and Bed Bottoms

Distribution Method	Type	Maximum Grade inches/100 feet
Hillside or drop box (also serial distribution)	Trench	Level to 2"
Equal Flow Box	Trench	2" to 4"
	Bed	Level to 1" in all directions from center
Gravelless Pipe	Trench	Level
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level
Leaching Chambers (using any of the above methods except low pressure)	Trench layout Bed Layout	2" to 4" Level
(using low pressure pipe)	Trench	Level

(g) Excavations for curtain drains, vertical drains or under drains to intercept and/or lower groundwater tables shall be made to the depth determined by the certified inspector and graded [(where necessary)] to drain to the surface or to a pumped catchment basin.

(h) Excavations for distribution leaders (nonperforated pipe) from the distribution box(es) on gravity distribution systems, shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevation(s) of the trench or bed bottoms. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i) Excavation of evapotranspiration/absorption lagoons shall be done using a bulldozer or similar track type equipment to reduce compaction of the lagoon bottom. Lagoon bottoms shall be uniformly level and shall be constructed to provide a maximum wastewater depth below the overflow outlet of four and one-half (4 1/2) [three (3) to five (5)] feet, and a freeboard of two (2) [or three (3)] feet. Containment berming, dikes, or dams may be of excavated materials, if sufficient clay content exists in the soil to prevent seepage between the berm and the original soil surface after compaction and are "keyed" into the original soil beneath at least one (1) foot at the base. Berms, dikes or dams shall be constructed on a three (3) to one (1) (three (3) feet vertical to one (1) foot horizontal) slope. All lagoons located in areas accessible to children or livestock shall be enclosed within a six (6) foot high chain-link fence or its equivalent with a locked gate.

(3) Component installation standards.

(a) Septic tanks and other pretreatment units, dosing tanks and holding tanks shall be installed level and all connections to the unit which conduct sewage or effluent, and all unit joints or seams, are to be rendered watertight. Manufacturer's instructions on installation, and all connections to the unit (piping and/or electrical), shall be followed by the installer. Units showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged unit. Patching of minor damage which does not affect the structural integrity or watertightness of the unit may be permitted under the supervision of the certified inspector.

(b) It shall be the certified installer's responsibility to provide access to within twelve (12) inches of [at] finished grade to the outlet end manhole on all septic tanks. Such access shall be provided through the use of suitable manhole risers of a minimum eighteen (18) [sufficient] internal dimension to allow removal of the tank manhole lid. Such manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal. Lids or covers of sheet metal, plastic or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal. [Where the septic tank manufacturer has provided a knockout on the top of the tank for installation of a six (6) inch diameter capped riser pipe, such riser pipe may be installed in lieu of the manhole riser.]

(c) Distribution boxes, and alternating valves or devices, shall be installed level, and all piping connections shall be rendered watertight. Such components showing structural damage on delivery, or damaged in placement shall be

replaced with an undamaged component.

(d) Equal flow distribution boxes shall be installed on a stable base to prevent settling. Tamped sand or gravel shall be sufficient for concrete boxes, but plastic or fiberglass boxes shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box side walls at least four (4) inches. Rough leveling of the box may be done using a carpenter's level, however, final leveling shall be done by the "water leveling method" described below:

1. Outlet leader piping shall be extended past the inside side wall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of plastic caps or plugs by solvent welding or cementing. Once attached, the water level is raised to the desired point on the caps or plugs, the level is marked on all caps or plugs, and a knife is used to cut out the upper portion of the cap or plug to the level marked.

2. Additional water is carefully added while closely observing the water as it enters the outlets. If the outlets are properly leveled, all outlet lines will begin to receive water at the same level and time. If one or more lines are receiving water while others remain dry, adjustments to those higher outlets are necessary. Fine adjustment is then made by shaving down the cutouts on the caps or plugs until leveling is achieved.

3. Special leveling devices in the form of caps or inserts designed for this purpose shall be used where available. Other methods may be considered acceptable by the cabinet provided that they can be demonstrated to be of equal or superior performance to the above method.

(e) Approved nonperforated plastic pipe shall be used as leader piping to connect outlets in the distribution box(es) to the perforated lateral lines in gravity distribution systems, and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line.

(f) All leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the first five (5) feet of run from the box to restrict the flow velocity of effluent.

(g) Lateral lines for conventional gravity distribution trenches or beds shall be laid as follows:

1. A six (6) inch deep layer of approved trench rock or other fill material is carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled;

2. Lateral piping is placed and leveled on the trench fill material in the center of the trench (or properly spaced in beds), and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material;

3. Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

4. A two (2) to four (4) inch layer of approved barrier material, [(]straw[, hay, grass clippings),] or a single layer of synthetic filter fabric, is then placed over the trench fill material to prevent entry of backfill soil fines.

(h) Lateral lines for low pressure pipe (LPP) systems shall be laid as follows:

1. At the beginning of each trench and at twenty (20) foot intervals thereafter, barrier walls of undisturbed earth or compacted earth fill at least one (1) foot thick shall be placed from side wall to side wall of the trench to the level to which lateral piping is to be installed;

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled;

3. Lateral piping is laid in place and assembled (may be preassembled), and leveled;

4. Trench earth barrier walls are completed to ground surface and additional pea gravel or other trench fill material is carefully placed over the laterals to a height of two (2) inches over the top of the piping;

5. Other methods of lateral piping and trench rock or pea gravel placement may be approved by the cabinet upon demonstration of equivalent compliance.

6. [5.] A one (1) to two (2) inch layer of approved barrier material, [(]straw[, hay, or grass clippings),] or a single layer of synthetic filter fabric, is then placed over the pea gravel to prevent entry of backfill soil fines.

(i) Lateral lines for gravelless pipe systems shall be installed as follows:

1. Remove plastic shipping and storage bags from pipe; do not remove filter wrap.

2. Lay out gravelless pipe with top stripe UP. Roll fitler wrap back from ends of each section of pipe to allow proper connection of pipe sections and/or reducer connectors or end caps.

3. Join pipe sections together with approved connectors - make sure top stripes are in direct alignment on both sections to be joined, and tape joint with plastic tape supplied by pipe manufacturer to seal joint. Pull filter wrap ends back over joint and tape them together.

4. Fit offset reducer connectors (four (4) inches by eight (8) inches or four (4) inches by ten (10) inches) to inlet ends of joined pipe sections and locate four (4) inch inlet at top of pipe in alignment with top strips; tape joints to seal. Leave filter wrap loose at this time.

5. Fit end caps on other end of joined pipe sections, seal joints with tape, pull filter wrap over end joint and tape in place. Note: on systems for Group IV soils (clays) at least two (2) inspection ports per system must be provided at the end of selected lateral and brought to finished grade.

6. Lay joined lateral pipe sections into trenches with top stripe directly UP. Connect solid smooth wall header piping from distribution box outlets to four (4) inch inlet on offset reducer connector (insert header pipe four (4) inches into connector) and seal joint with tape. Pull filter wrap over end of reducer cap and around four (4) inches header piping and tape in place.

(j) Leaching chambers shall be installed according to manufacturer's specification; however, where such specifications are less restrictive or conflict with these regulations, the regulations shall take precedence, except that reduced backfill cover (no less than six (6) inches) over the leaching chamber may be permitted.

(k) [(i)] Installation of effluent piping to an evapotranspiration/absorption lagoon and

overflow piping to the lateral field system shall be as follows:

1. Nonperforated gravity flow or pressurized piping is laid in an excavated trench into the [center of the] lagoon and anchored [attached] to a poured concrete, three (3) foot square, four (4) inch thick apron. The inlet shall be a tee laid on its side.

2. Overflow piping consists of a supported, vertically oriented tee [inverted elbow] connected to a nonperforated gravity flow plastic pipe which conducts overflow to the distribution box(es) of the lateral field. The overflow should be located at a point within the lagoon that is the furthest distance from the inlet apron. The upper leg of the tee shall be screened and the lower leg extended downward to within three and one-half (3 1/2) feet of the lagoon bottom.

3. All submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars with a minimum extension of twelve (12) inches on all sides of the pipe.

(4) Curtain drain, vertical drain, underdrain installation standards.

(a) Curtain drains and underdrains shall be installed according to the following procedures:

1. After excavation of drain trenches to the required depth (by backhoe or trencher) the perforated plastic drainage pipe may be laid in the trench. Depending on trench width and depth it may be necessary to bed the pipe in small gravel or pea gravel to provide lateral and vertical support to pipe side walls to prevent collapse of the pipe.

2. After bedding and grading the pipe to drain, regular trench rock fill material (for trenches twelve (12) inches or wider) or pea gravel (for trenches narrower than twelve (12) inches) shall be added to the trench to a point four (4) inches [above distinct soil mottles and/or grey, blue, olive or similar soil colors indicating the highest point of water table elevation, or six (6) inches] from grade [above a fragipan, iron pan or clay pan to prevent their reforming].

3. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used when more permeable soil horizons exist below a restrictive horizon [(fragipans, iron pans, clay pan)], and shall be installed according to the following procedures:

1. After excavation of the drain trenches to the required depth the trenches are filled with crushed rock or pea gravel as in curtain drains above, to the points listed in paragraph (a)2 of this subsection, as applicable. Drainage piping is unnecessary in vertical drains since drainage is encouraged downward through the restrictive horizon to more permeable soils.

2. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(5) Filling, backfilling and finish grading standards.

(a) On sites requiring the placement of fill soil before any on-site sewage disposal system can be installed, the following requirements shall apply:

1. Surface vegetation shall be removed and the original soil surface layer shall be tilled to a depth of two (2) inches prior to placement of fill.

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this regulation.

3. Soil fill material shall be placed in the area to be filled by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.

4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.

5. Depth of soil fill required shall be determined by the local health department on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons, bedrock, or water tables.

(b) [(a)] Backfilling around and over septic tanks and other pretreatment units, dosing tanks, holding tanks, [dosing chambers,] distribution boxes, low pressure pipe manifolds, alternating valves and devices and nonperforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers. While the filling and tamping process is being carried out, care shall be taken to prevent shifting, tilting, misalignment or damage of system components or damage to watertight joints, seams or connections. The location of all such components shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(c) [(b)] When manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed. Soil for backfilling gravelless pipe trenches shall be loose and friable. Soil aggrgates (clods or clumps) shall be no larger than one-half (1/2) inch in any dimension for backfil in contact with the pipe and filter wrap to assure proper operation. Use of large clods or clumps of soil for backfill is prohibited. If soil excavated from trenches will not meet this criteria, suitable backfill soil shall be obtained elsewhere.

(d) [(c)] Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling. Backfilling over lateral beds shall be accomplished through the use of lightweight wheeled or crawler type tractors to minimize compaction, and shall be left mounded four (4) to six (6) inches above grade to allow for settling.

(e) Backfilling shall not be done until after the system has been inspected and approved to that point of construction by a certified inspector.

(f) On sites where additional fill soil is required over the lateral field due to shallow depth of installation, the following procedures shall apply:

1. The requirements of paragraph (a)1 through 3 of this subsection;

2. Fill shall be extended on all sides of the lateral field to a minimum distance of ten (10) feet, except on sloping sites where the fill on each end of the system shall expand outward to a minimum of fifteen (15) feet at the lowest point

downslope, and the fill at the downslope side of the system shall be increased to a minimum of fifteen (15) feet beyond the system;

3. Minimum depth of fill shall be as required by the certified inspector, but may not be less than ten (10) inches over the trench rock fill material, or top of the gravelless pipe (for leaching chambers six (6) inches minimum) and that depth shall extend over the entire lateral field to a point at least two (2) feet beyond the sidewall of any trench, bed or chamber, at which point the remainder of the fill may be tapered to original grade out to the minimum distances specified in subparagraph 2 of this paragraph.

(g) [(d)] Finish grading over the on-site sewage system shall be performed in such a manner as to minimize compaction through the use of lightweight equipment. Such grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field. Final grading over staked or flagged system components shall be accomplished manually, or with lightweight equipment using extreme care to prevent damage to or misalignment of components.

(h) [(e)] Finish grading work which removes soil from the system area, or which results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(i) [(f)] Finish grading on other areas of the site shall be done in such a manner as to divert surface water run-off from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. When site conditions are such that normal grading procedures cannot divert all such run-off, diversion ditches, swales, berms, or other such diversion drainage means shall be constructed to divert run-off away from the system.

Section 10. System Setback Restrictions. (1) Minimum setback distances shall be required for installation of on-site sewage disposal systems from structures, water supplies, roads, streams, bodies of water, and other structural or topographic features [etc.], as listed in Table 7 [8] below:

Table 7 [8]
Minimum Setback Distances
for On-site Disposal Sewage Systems

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit (or Holding Tank)	Minimum Distance (Ft.) from Side wall of Lateral Trench, [or] Bed, or Lagoon
Property lines	5	5 (50 for lagoons)
Building foundations	10	10
Basements	10	20
Basements (Downslope from system)		30 (5-15% Slope) 40 (15-25% Slope) 50 (25% and Higher)
Wells	50	70
Cisterns	50	70
Cisterns (Upslope from system with bottom at higher elevation than system)	10	10
Natural Lakes or Impoundments (Shoreline)	25	50
Streams	25	25
Springs (Upslope from system)	25	50
(Upslope with curtain interceptor drain)	10	20
(Downslope from system)	50	70
Drainage Ditches, Road cutbanks (Downslope)	10	25
Underdrain system	10	10
Curtain or vertical drain	10	10 (Upslope and Sides) 25 (Downslope)
Sinkholes (Rim [Center of depression])	50	50
Buried Water Lines or Utility Lines	10	10
Utility Easements	10	10
Driveways, parking lots, or paved areas	10	5
Livestock pens, feed lots, corrals, etc.	10	10

Section 11. System Installation Inspection. (1) All on-site sewage disposal systems installed, constructed, altered or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as follows:

(a) The certified [initial installation inspection shall be requested by the] installer shall complete an installer's affidavit recording all grade shot readings of all [upon completion of] excavation work certifying by his signature that such work has been performed in compliance with the regulation. In lieu of the installer's affidavit, the certified installer may request an initial inspection be performed by a certified inspector. [and the setting of the pretreatment unit.] Inspection shall consist of shooting of grades in all excavations to determine compliance with this regulation[, and inspection of the pretreatment unit for compliance as to approved type, proper capacity].

[(b) In lieu of the initial inspection the certified inspector may grant approval for continuance of installation work up to the point prior to backfilling provided that the installer assumes responsibility of shooting all grades and recording his readings on a form provided by the cabinet, certifying by his signature that excavation work has been performed in compliance with the regulation.]

(b) [(c)] An [The final] installation inspection shall be conducted by the certified inspector prior to backfilling of the system. The certified installer shall be responsible for requesting this inspection at the discretion of the certified inspector. To facilitate inspection of lateral fields the certified installer shall provide direct access to trench or bed bottoms to allow accurate shooting of

grade and elevation. Such direct access shall be provided through the use of ports, piping, or other methods acceptable to the certified inspector, and at such locations within the lateral field as deemed necessary.

(c) [(d)] The [final] installation inspection shall consist of examination of the following: system components, as to type, size or capacity, approved status, materials, connections; installation as to proper placement, proper grade or level; conduct "water leveling" method on equal flow distribution boxes; testing of dosing devices, low pressure systems and alarm systems; shooting of trench, bed, or lagoon bottom grade and elevation, installation of lateral lines, trench fill material depth, trench barrier material placement; and other necessary examinations and checks to determine compliance with this regulation relative to all site and system modifications required.

(d) [(e)] Systems meeting approval shall be backfilled in accordance with this regulation, and it shall be the certified installer's responsibility to assure proper backfilling. Once backfilling is completed, it shall be the certified installer's responsibility to perform or supervise finish grading. Where additional fill soil over the system is required, once finish grading is completed, the certified installer shall request a final inspection. It shall then be the owner's responsibility to protect the system from damage, disruption, or unnecessary surface water drainage during [final grading and] subsequent occupancy and system usage.

(e) [(f)] Systems not meeting approval shall be reconstructed as needed to meet compliance.

Section 12. Responsibilities. (1) The construction, operation, and maintenance of on-site sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, certified installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors, engaged in the evaluation and determination of measures required to effect compliance with the provisions of this regulation shall in no way be taken as a guarantee that on-site sewage disposal systems approved and permitted will function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or direct which are caused, or which may be caused, by a malfunction of such systems.

Section 13. Prohibited Practices. (1) Certain practices shall be prohibited, and their use shall result in immediate voiding of permits and/or site evaluations as applicable, and are as follows:

(a) Use of unapproved system components in lieu of replacement with approved components;

(b) Use of seepage pits, cesspools, and dry wells;

(c) Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;

(d) Placement of lateral field within less than twelve (12) inches of, or below, the upper limits of a restrictive horizon or water table;

(e) Placement of lateral field within less than twelve (12) inches of, or into bedrock. Dynamiting, ripping, or otherwise removing bedrock to install a lateral field is expressly prohibited;

(f) Cutting, filling, or otherwise altering the original grade and/or soil characteristics of the area upon a site staked or flagged off for system installation, except when such work is a requirement of these regulations;

(g) Allowing any use of the area staked or flagged off for system installation as a material or soil stockpile, vehicle or heavy equipment parking area or roadway, or any other unauthorized use which may damage or alter the soil or site characteristics.

Section 14. [13.] Variances. (1) Any person owning a site where an on-site sewage disposal system is proposed to be installed may request, in writing, to the local board of health, or their designated agents, consideration for the granting of a variance to specific portions of this regulation.

(2) Written requests shall include all pertinent information about the site, the specific portion(s) of the regulation requested to be waivered, the specific reasons for the request, and documented evidence justifying the granting of the variance.

(3) Such requests shall be acted upon as soon as practicable by the local board of health, or their designated agents, and a written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions, shall be presented to the person so applying within five (5) working days of the decision.

(4) Persons requesting variances shall have the right to appear in person with counsel and/or expert professional witnesses before the local board of health, or their designated agents, either to present the request, or to appeal a variance decision.

(5) If such a hearing is requested, the local board of health, or their designated agents, shall set a date and time for the hearing, as soon as practicable, and shall so notify in writing the person requesting same of such date and time. Notification shall be made within five (5) working days of receipt of the request and at least two (2) days prior to the date of the hearing.

(6) Decisions on the granting or denial of variances shall be based upon the evidence presented by the requestee; the evidence presented by the certified inspector(s) involved with the site in question; as well as supportive evidence for either side presented by expert professional witnesses.

(7) Decisions shall be influenced by the requirements of the On-site Sewage Systems Law and these regulations, and by the presence or absence of reasonable assurances, derived from evidence presented, that the granting of such variance will not result in the creation of groundwater contamination or the surfacing of effluent, and creation of a health hazard or public health nuisance.

(8) Variances shall not be granted for the following purposes:

[(a) Use of unapproved system components;]

[(b) Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;]

[(c) Placement of lateral field within twelve (12) inches of, or below the upper limits of a

water table;]

[(d) Placement of lateral field within twelve (12) inches of, or into bedrock;]

(a) [(e)] Waiver of site evaluations or system inspections;

(b) [(f)] Reduction of required system size when modified or alternative systems can be used to provide an equivalent system in the available area on the site;

(c) [(g)] In any instance where site and/or system modifications or alternative systems can overcome site limitations.

(9) Variances granted which may have a direct effect upon the future use or marketability of a site or subdivided parcels of that site, shall be made a permanent record, and filed at the local health department in the county where the site is located.

Section 15. [14.] Exemption. The provisions of this regulation shall not apply to on-site sewage disposal systems in use or for which a valid permit has been issued prior to the effective date of this regulation, unless such system requires future repair or alteration due to malfunction, damage, or increase in waste loading due to a change in usage of the structure(s) served by the system. If such occurs, this regulation shall be enforced only as regards the specific repair or alteration work required.

[Section 15. Effect on Local Regulations. This regulation shall not supersede more stringent regulations of any local governmental body.]

[Section 16. Effective Date. This regulation shall become effective on October 1, 1985.]

C. HERNANDEZ, MD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 13, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 17:010E

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 Health Services

902 KAR 17:010E. State health plan.

RELATES TO: KRS 216B.040(2)(a) [Chapters 194, 216B, Executive Order 86-366]
PURSUANT TO: KRS 194.050, 1986 Acts Chapter 474 [Executive Order 86-366]
EFFECTIVE: July 6, 1988
NECESSITY AND FUNCTION: Pursuant to 1986 Acts Chapter 474 the Statewide Health Coordinating Council is created to prepare and review, as necessary, a state health plan which establishes a health planning policy for the Commonwealth and describes the health services needed to provide for the well being of persons residing in the state. The Cabinet for Human Resources prepares a Preliminary State Health Plan for the Statewide Health Coordinating Council in preparing the state health plan. The plan becomes final upon approval of the governor. [The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet and the Statewide Health Coordinating Council are responsible for development of the state health plan.] The Commission for Health Economics Control in Kentucky utilizes the state health plan in review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth. The function of this regulation is to assist in the inventory of existing health resources and to set planning goals and guidelines.

Section 1. The Kentucky State Health Plan 1988-1990 [1986-1988], was adopted by the Statewide Health Coordinating Council on June 7, 1988. [November 8, 1985, amended on January 22, 1986, January 9, 1987, and December 2, 1987,] and approved by Governor Wallace G. Wilkinson as the document that sets out planning policies and guidelines for use by the Commission for Health Economics Control in Kentucky. A copy of the Kentucky State Health Plan 1988-1990 [1986-1988 as amended on January 22, 1986, January 9, 1987, and December 2, 1987], is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 and is open and available for public inspection during normal business hours.

Section 2. The Review Criteria and Standards Section, pages 175 through 199 [198], of the Kentucky State Health Plan 1988-1990 [1986-1988] is hereby adopted by reference as regulations of the Cabinet for Human Resources as if fully set out herein.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 13, 1988
FILED WITH LRC: July 6, 1988 at 1 p.m.

STATEMENT OF EMERGENCY
902 KAR 50:120E

Emergency regulation 902 KAR 50:120E is necessary in order to protect the public health by regulating producers of raw goat milk offered for sale to consumers with written recommendations from a physician. An ordinary administrative regulation cannot suffice because there is evidence that the law is currently being circumvented by the sale of unregulated raw goat milk. The emergency regulation will be replaced by an ordinary regulation.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 50:120E. Unpasteurized goat milk.

RELATES TO: KRS Chapter 217C
PURSUANT TO: KRS 217C.090
EFFECTIVE: July 15, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 217C.090 to issue administrative regulations allowing, upon written recommendation of a physician, the sale of goat milk which has not been pasteurized. This regulation sets uniform standards for the production, handling, sampling, examination and sale, at the farm, of goat's milk which has not been pasteurized and for the inspection of the goat farm facilities and provides for the issuance, revocation and reinstatement of farm permits.

Section 1. Permits. (1) No person shall sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of any permit to a goat milk producer, the cabinet shall conduct an inspection of the producer's facilities. A producer who is not in compliance with this regulation, shall not be issued a permit and violations shall be given to the producer in writing and/or posted in a conspicuous place at the farm. A permit may be issued whenever the inspection reveals compliance with this regulation.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

(4) The cabinet shall suspend such permit, whenever it has reason to believe that a public health hazard exists; or whenever the permit holder has violated any of the requirements of this regulation or whenever the permit holder has interfered with the cabinet in the performance of its duties: the cabinet shall in all cases except where the milk involved creates, or appears to create, an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the holder a written notice of intent to suspend permit, which notice shall specify with particularity the violation(s) in question and afford the holder such reasonable opportunity to correct such violation(s) as may be agreed to by the parties, or in the absence of agreement, fixed by the cabinet before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet. Upon notification acceptable to the cabinet by any person whose permit has been suspended, or upon application within forty-eight (48) hours by any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the cabinet shall within seventy-two (72) hours proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend. Upon repeated violation(s), the cabinet may revoke such permit following reasonable notice to the permit holder and an opportunity for a hearing.

(5) Any producer whose permit has been suspended may make written application for reinstatement of the permit.

(6) When the permit suspension has been due to violation of quality or temperature standards, the cabinet, within one (1) week after receipt of notification for reinstatement of permit shall conduct an inspection and collect a sample to determine if compliance with this regulation is being met. Whenever the inspection and sample analysis indicate compliance with the regulation, permit reinstatement may be made.

(7) When the permit suspension has been due to the presence of a pathogenic organism in the milk sample, collection and analysis shall continue at the rate of at least two (2) per week for two (2) weeks after conditions of subsection (6) of this section have been met.

Section 2. Sale Restrictions and Volume Control. (1) Unpasteurized goat milk shall be sold from a permitted goat producer only to persons who have written recommendation from a physician.

(2) A written recommendation statement from a physician shall be for a specific individual and shall be kept on file at the producer location and subject to inspection by the cabinet.

(3) Written recommendation statements shall be kept on file by the producer for at least one (1) year.

(4) The producer shall keep on file records stating volume of unpasteurized goat milk sold and date of sales to each person having submitted a written recommendation statement.

(5) All sale of unpasteurized goat milk regulated under this regulation shall be from on-the-farm sales only.

Section 3. Inspection of Goat Farm. (1) Inspection of each goat farm shall be made prior to the issuance of a permit.

(2) Inspection of each goat farm shall be made at least once each two (2) months after the issuance of a permit.

(3) If the violation of any requirement set forth in Section 6 of this regulation be found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. This second inspection shall be used to determine compliance with the requirements of Section 6 of this regulation. Any violation of the same requirement of Section 6 of this regulation on such second inspection shall call for permit suspension in accordance with Section 1(4) of this regulation.

(4) One (1) copy of the inspection report shall be handed to the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the milk house. Said inspection report shall not be defaced and shall be made available to the cabinet upon request. An identical copy of the inspection report shall be filed with the records of the cabinet.

(5) Every goat producer shall, upon request of the department, permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this regulation.

(6) No person shall in an official capacity, obtain any information under the provisions of this regulation (including information as to the quantity, quality, source or disposition of milk or milk products, or results of inspections or

tests thereof) to use such information to his own advantage or to reveal it to any unauthorized person.

Section 4. Sampling Frequency and Required Test. (1) A representative sample of each producer's milk shall be collected at the farm by the cabinet each month and analyzed in an official laboratory for bacteria count, somatic cell count, antibiotics, adulteration with water and temperature.

(2) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory as directed by the cabinet.

(3) Samples of raw milk may be collected for pesticide analysis as directed by the cabinet.

(4) Whenever two (2) of the last four (4) consecutive bacterial counts, somatic cell counts or cooling temperatures, taken on separate days, exceed the limit of the standard, the cabinet shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one (21) days of the sending of such notice, but not before the lapse of three (3) days. Immediate suspension of permit in accordance with Section 1(4) of this regulation and/or court action shall be instituted whenever the standard is violated by three (3) of the last five (5) bacterial counts, cooling temperatures or somatic cell counts.

(5) Whenever an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for antibiotic or pesticide residues and no milk shall be offered for sale until it is shown by a subsequent sample to be free of antibiotic or pesticide residues or below the actionable levels established for such residues.

(6) Whenever pathogenic organisms are found in the milk immediate permit suspension shall occur and no milk shall be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

(7) All samples shall be analyzed in an official or officially designated laboratory. Analytical procedures shall be in compliance with Standard Methods for the Examination of Dairy Products and/or Official Methods of Analysis of the Association of Official Analytical Chemists.

Section 5. Bacterial, Chemical and Temperature Standards. (1) All unpasteurized goat milk shall be produced, handled, stored and packaged to conform with the following standards:

(a) Temperature - cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking and subsequent milkings shall not exceed fifty (50) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits - not to exceed 20,000 per ml.

(c) Somatic cells - not to exceed 100,000 per ml.

(d) Antibiotics - negative.

(e) Coliform - not to exceed ten (10) per ml.

(f) Pathogens - negative.

(g) Pesticides and chemical adulterants - negative.

(2) No process, manipulation or additives shall be applied to the milk other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 6. Sanitation Requirements. (1) Abnormal milk. Goats, which show evidence of the secretion of abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded. Goats treated with, or goats which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the cabinet may be deleterious to human health, shall be milked last or with separate equipment and the milk disposed of as the department may direct.

(2) Milking barn or parlor construction. A milking barn or parlor shall be provided on all farms in which the milking herd shall be housed during milking operations. The areas used for milking purposes shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted or finished in an approved manner, in good repair, ceiling dust tight;

(c) Be provided with natural and/or artificial light, well distributed for day and/or night milking;

(d) Provide sufficient air space and air circulation to prevent condensation and excessive odors;

(e) Not be overcrowded; and

(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed.

(3) Milking barn or parlor cleanliness. The interior shall be kept clean. Floors, walls, ceilings, windows, pipelines, and equipment shall be clean and free of filth and/or litter. Swine and fowl shall be kept out of the milking area.

(4) Goat yard. The goat yard shall be graded and drained and shall have no standing pools of water or accumulations of organic wastes: in loafing or goat housing areas, goat droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the goat's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a firm footing. Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities. A milk house or room of sufficient size shall be provided, in which the cooling, handling, storing, and packaging of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted: except as provided for in subsection (12) of this section. The milk house shall be provided with a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system. The walls and ceilings shall be constructed of smooth material, in good repair, well painted,

or finished in an equally suitable manner. The milk house shall have adequate natural and/or artificial light and be well ventilated. The milk house shall be used for no other purpose than milk house operations; there shall be no direct opening into any barn, stable, or into a room used for domestic purposes: a direct opening between the milk house and milking barn, or parlor is permitted when a tight-fitting self-closing solid door hinged to be single or double acting is provided. Potable water under pressure shall be piped into the milk house. The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities. Bottling and/or packaging may be carried out in the milk room provided it is done in a sanitary manner and by a method which prevents contamination.

(6) Milk house or room cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils and equipment and other milk room equipment shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

(7) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface of contaminate any water supply.

(8) Water supply. Water for milk house and milking operations shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate and of a safe, sanitary quality.

(a) No cross-connection shall exist between a safe water supply and any unsafe or questionable water supply, or any other source of pollution.

(b) The well or other source of water shall be located and constructed in such a manner that neither underground nor surface contamination from any sewerage systems, privy, or other source of pollution can reach such water supply.

(c) New individual water supplies and water supply systems which have been repaired or otherwise become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before any sample for bacteriological testing shall be collected.

(d) All containers and tanks used in the transportation of water shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(e) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure and when any repair or alteration of the water supply system has been made, and at least every year.

(9) Utensils and equipment construction. All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be so constructed as to be easily cleaned. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall have been manufactured, packaged, transported, and handled in a sanitary manner and shall comply with the applicable requirements of subsection (11) of this section. Articles intended for single-service use shall not be reused. Containers for purchasing milk may be provided by the person(s) purchasing the milk, in which case the containers shall not be washed, sanitized or stored at the farm.

(10) Utensils and equipment cleaning. The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

(11) Utensils and equipment sanitation. The product contact surfaces of all multiuse containers, equipment and utensils used in the handling, storage, or transportation of milk shall be sanitized before each use.

(12) Utensils and equipment storage. All containers, utensils and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use: pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers and milk pumps which are designed for mechanical cleaning may be stored in the milking barn or parlor provided this equipment is designed, installed and operated to protect the product and solution-contact surfaces from contamination at all times.

(13) Utensils and equipment handling. After sanitization, all containers, utensils, and equipment shall be handled in such manner as to prevent contamination of any product-contact surface.

(14) Milking flanks, udders, and teats. Milking shall be done in the milking barn or parlor. The flanks, udders, and bellies of all milking goats shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution just prior to milking, and shall be dry before milking. Wet hand milking is prohibited.

(15) Milking surcingles, milk stools, and antikickers. Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

(16) Protection from contamination. The milking area and milk house operations, and equipment, shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination. Handcapping of bottles, containers, or packages may be done whenever volume does not cause this to be impractical and provided protection from contamination is maintained.

(17) Personnel handwashing facilities. Adequate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(18) Personnel cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking,

before performing any milk house function, and immediately after the interruption of any of these activities. Milkers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk shall be cooled to forty-five (45) degrees Fahrenheit (seven (7) degrees Celsius) or less within two (2) hours after milking. The blend temperature after the first milking and subsequent milkings does not exceed fifty (50) degrees Fahrenheit (ten (10) degrees Celsius).

(20) Insect and rodent control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects and rodents and by chemicals used to control such vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

Section 7. Animal Health. (1) All milk shall be from herds which are free from tuberculosis and brucellosis.

(2) Herds shall be tested annually for tuberculosis and any reactors disposed of in accordance with Department of Agriculture requirements.

(3) Herds shall participate in a brucellosis milk ring testing program which is conducted by the Department of Agriculture.

(4) The cabinet shall require such physical, chemical, or bacteriological tests as deemed necessary to prevent the spread of other diseases or the contamination of the milk with pathogenic organisms.

(5) A certificate identifying test results of each animal, signed by a veterinarian shall be submitted to the cabinet for each test required by this section.

(6) Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 8. Milk Which May Be Sold. Goat milk sold at a farm permitted under this regulation shall be limited to milk produced at the particular farm and no milk shall be transferred from one farm to another or delivered from the farm to another place or location for sale.

Section 9. Construction Plan. Properly prepared plans for all milking barns, parlors and milk houses shall be submitted to the cabinet for written approval prior to a permit being issued.

Section 10. Personnel Health. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at the farm in any capacity handling, storage, or sale of milk, containers, equipment and utensils; and no farm operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any owner of a dairy farm on which any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the cabinet immediately.

Section 11. Procedure When Infection is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk the cabinet is authorized to require any or all of the following measures:

(1) The immediate exclusion of that person from milk handling;

(2) The immediate exclusion of the milk supply concerned from distribution and sale;

(3) Adequate medical and bacteriological examination of the person(s), involved in milk production or handling activities.

Section 12. Disclaimer. Milk produced within compliance of the requirements of this regulation does not assure the absence of pathogenic organisms.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 7, 1988
FILED WITH LRC: July 15, 1988 at noon.

STATEMENT OF EMERGENCY

Under KRS Chapter 13A the administrative body is required to implement this regulation in order to have sufficient authority for the declaring of a new maximum weekly benefit rate. Therefore, in order to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1988, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS 13A.100.

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

CABINET FOR HUMAN RESOURCES
Department for Employment Services

903 KAR 5:270E. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
PURSUANT TO: KRS 194.050, 341.380
EFFECTIVE: June 20, 1988
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1988 [1987], and prior to July 1, 1989 [1988]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1987 [1986] was 14,803,553 [14,202,083];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,233,629 [1,183,507];

(3) The "total wages" reported by subject employers for the calendar year of 1987 [1986]

was $22,004,260,410 [20,341,317,154];
(4) The "average weekly wage" for the calendar year of 1987 [1986] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $343.02 [330.53];
(5) Fifty-five (55) percent of the average weekly wage of $343.02 [330.53] for the calendar year of 1987 [1986] was $188.66 [181.79];
(6) However, the "trust fund balance" as of December 31, 1987 [1986], was $251,483,024.34 [151,205,970.56] and KRS 341.380 states that if the trust fund balance on December 31 equals or exceeds $250,000,000. [150,000,000] but is less than $275,000,000 [250,000,000], the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than ten (10) [eight (8)] percent; and
(7) The prior year's maximum weekly benefit rate was $140.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1988 [1987], and prior to the first day of July, 1989 [1988], is determined to be $166 [151].

JAMES P. DANIELS, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 7, 1988
FILED WITH LRC: June 20, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:016E

This emergency administrative regulation raises the amount of AFDC benefits by 5 percent for fiscal year 1989-90 as mandated by House Bill 381 (Section 1). This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

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

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

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233
PURSUANT TO: KRS 205.200(2)
EFFECTIVE: July 1, 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 shall [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 may [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 may [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. For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. 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 may [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 may [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 from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Effective July 1, 1988

Number of Eligible Persons	Monthly Standard
1 child	$155 [147]
2 persons	$188 [179]
3 persons	$218 [207]
4 persons	$272 [259]
5 persons	$319 [303]
6 persons	$360 [342]
7 or more persons	$401 [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 those [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 shall [must] be met during any month for which an education allowance is paid.

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

(b) The caretaker relative shall [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 shall [must] be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall [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 the [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)	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 904, Chapter 2.

[Section 11. Provisions contained in this

regulation shall become effective April 1, 1988 unless otherwise specified.]

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:116E

Emergency regulation 904 KAR 2:116E is necessary in order to implement in a timely manner the Emergency Summer Aid Program. The Cabinet for Human Resources is required to establish by regulation the policies of the cabinet with regard to the Low Income Home Energy Assistance Program. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

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

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

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

RELATES TO: KRS 194.050
PURSUANT TO: KRS 194.050
EFFECTIVE: July 13, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation states [sets forth] the eligibility and benefits criteria for each of three (3) [two (2)] components of energy assistance, subsidy, [and] crisis and emergency summer aid under the Home Energy Assistance Program (HEAP).

Section 1. [2.] Definitions. Terms used in HEAP are defined as follows:
(1) "Principal residence" is the [that] place where a person is living voluntarily and not on a temporary basis; the place he[/she] considers home; the place to which, when absent, he[/she] intends to return; and the [such] place is identifiable from other residences, commercial establishments, or institutions.
(2) "Energy" means [is defined to include] electricity, gas, and any other fuel [such as coal, wood, oil, bottled gas, etc.,] that is used to sustain reasonable living conditions.
(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.
(4) "Economic unit" is one (1) or more persons sharing common living arrangements.
(5) "Subsidy component" is the [that] portion of benefits reserved as energy assistance for heating.
(6) "Crisis component" is the [that] component administered by local organizations under contract with the cabinet to provide heating crisis assistance. [fuel, heaters, blankets and/or sleeping bags, vouchers to purchase these items, or minor repair of the heating system to eligible households who are without heat, or will be without fuel within five (5) days, or receive a notice of disconnection of service, or require a heat system repair to obtain adequate heat.]
(7) "Life threatening situation" under the crisis component means [is defined as] without heat or will be without heat within forty-eight (48) hours and temperatures at a dangerous level for household members. Under the emergency summer aid program it means the life of a household member is threatened due to a medical condition and that loss of life may be prevented by receipt of assistance under this component.
(8) "Emergency summer aid program" is the component administered by local organizations under contract with the cabinet to provide cooling assistance to medically needy households.
(9) An "authorized representative" is the person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. [1.] Application. Each household or authorized representative of the household requesting assistance shall [be required to] complete an application and provide [such] information [as may be deemed] necessary to determine eligibility and benefit amount [in accordance with the procedural requirements prescribed by the cabinet. An "authorized representative" is that person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf]. An application shall not be considered completed until all information needed [necessary] to determine eligibility and benefit amount is received.

Section 3. Eligibility Criteria. (1) A household shall [must] meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:
(a) [For purposes of determining eligibility,] The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall [will] be considered. Income received on an irregular basis shall [will] be prorated.
(b) Gross income for the calendar month preceding the month of application shall [must] be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from [consideration as] income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall [must] spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC,

federal payments or benefits which shall [must] be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$ 504	$ 6,050
2	678	8,140
3	852	10,230
4	1,027	12,320
5	1,201	14,410
6	1,375	16,500

(c) For each household member more than six (6), the above income eligibility limitation for six (6) shall [will] be increased by $174 monthly or $2,090 yearly [for each additional household member].

(d) The household shall [must] have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if the [said] cash is income considered under paragraph (a) of this subsection.

(e) Applicants for the crisis component shall [must] be without heat, [or will] be without fuel within five (5) days, [or] have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat.

(2) Households are eligible to receive benefits under the subsidy component once, [and] under the crisis component not to exceed the maximum amount of benefits and under the emergency summer aid program not to exceed the benefit maximums.

(3) Applicants for the emergency summer aid program shall meet the income and resource criteria under subsection (1)(a) through (d) of this section and have a written statement from a physician or registered nurse that a household member is medically in need of assistance under this component. For life threatening situations, a written statement from a physician attesting to a life threatening situation is required.

Section 4. Benefit Levels. Payment amounts for the subsidy and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit relative to energy costs. In the subsidy component, the highest level of assistance shall [will] be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households under the subsidy component shall [will] be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as follows: [specified in the following benefit scales.]

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Payment Amount Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101

Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Payment Amount Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88

Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Payment Amount Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75

(2) If the cabinet receives [only] a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy component may be reduced proportionately.

(3) Benefits to eligible households under the crisis component shall be in the form of fuel or other energy for heating, heaters, blankets, [and/or] sleeping bags, vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency shall [will] determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 total benefit value for each [per] eligible household.

(4) Benefits under the emergency summer aid program shall be the minimum type and amount needed to alleviate the crisis as follows:

(a) A maximum of two (2) fans per household may be provided not to exceed a total of eight (80) dollars.

(b) An additional payment of up to $100 for energy for cooling may be made if the eligible household is without energy for cooling or has received a disconnection of service notice for their cooling energy.

(c) For households with members in a life threatening situation, up to $350 for each household may be provided in the form of fans, air conditioners, repairs of cooling systems, or energy payments (when without or threatened to be without energy for cooling). If a local administering agency has donated materials for cooling, the delivery and installation of these donated materials may be provided.

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as

follows:

(1) When[ever] feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

(2) When a two (2) party check is not issued under the subsidy component, the recipient shall sign a statement on [as part of] the application prior to receipt of funds affirming that benefits received under HEAP shall be used [utilized] solely for home energy.

(3) Under the subsidy component, at the recipient's discretion, the total benefit may be made in separate authorizations to [facilitate payment to] more than one (1) provider (for example [e.g.], when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall [may] not exceed the maximum for the primary source of energy for heating. The household may [will] decide how to divide payment if more than one (1) provider is used.

(4) For the crisis component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment. Payments under the crisis component shall [will] be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, [and/or] sleeping bags, restoration or continuation of service, or upon repair of the heating system.

(5) For the emergency summer aid program, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the type and amount determined by the contracting agency to be the minimum amount needed.

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

Section 7. Time Standards. Under the subsidy component, the cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days. Under the crisis component and the emergency summer aid program, completed applications shall [will] be processed so [such] that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours. Applicants under the crisis component shall [will] have [no more than] ten (10) working days from the date of application to provide information necessary to complete the application. Applicants under the emergency summer aid program shall have five (5) working days from the date of application to provide information needed to complete the application.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP depending upon the availability of funds:

(1) Applications for the subsidy component shall be accepted from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to [on the basis of] 100 percent disability beginning October 19, 1987 and ending by [no later than] October 30, 1987.

(2) Applications for the crisis component shall be accepted beginning January 11, 1988 and ending by [no later than] April 29, 1988.

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy component shall be terminated by the secretary when actual and projected component expenditures have resulted in utilization of available funds or December 30, 1988[, whichever comes first].

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

(5) Applications for the emergency summer aid program shall be accepted beginning July 11, 1988 and ending by September 15, 1988.

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

(2) Up to $10,512,922 of benefit funds shall be reserved for the crisis component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency [in accordance with the 1980 Census]. Fifteen (15) percent of the funds plus any additional funds made available from the subsidy component or from the Energy Assistance Trust Fund shall be held by the contracting agency as a contingency fund to be allocated to any local administering agency of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 8, 1988, all unobligated allocations may be reallocated [as necessary] by the contracting agency with the concurrence of the Department for Social Insurance.

(3) Up to $5,000,000 of benefit funds [available under Public Law 97-35] shall be reserved for the subsidy component.

(4) Up to $400,000 of the contingency fund under subsection (2) of this section shall be reserved to assure component availability until March 15, 1988 for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each [per] family if the payment shall [will] prevent the removal of a child from a family or if it shall [will] assist in reuniting a child with the family.

(6) Up to $450,000 shall be reserved as benefits under the emergency summer aid program. Seventy (70) percent of these funds shall be allocated to the local administering agencies based upon the 1980 Census poverty levels of the counties served by the local administering agencies. Thirty (30) percent shall be reserved as a contingency fund by the contracting agency and provided as needed to local administering agencies to assist households in a life threatening situation after the local agency allocation is obligated.

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

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

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

(3) HEAP recipients shall not be treated worse [adversely] than households not receiving benefits;

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

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

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 8, 1988
FILED WITH LRC: July 13, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:004E

This emergency administrative regulation shows the update to the medically needy income level resulting from the AFDC payment increase being implemented on July 1, 1988. In addition, the regulation is being amended to show that for pregnant women eligible for Medicaid on the basis of income not in excess of 100 percent of the poverty level, changes of resources will not be taken into consideration. In order to permit recipients immediately to qualify, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation differs from the emergency administrative regulation that was filed on the same subject on April 7, 1988 since that emergency regulation did not update the Medically Needy scale or provide for a change with regard to resources for the specified group of pregnant women. This emergency regulation shall be replaced by an ordinary regulation to be filed with the Regulations Compiler on or about July 1, 1988.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:004E. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $1,700 and $3,400 respectively, effective January 1, 1986; at $1,800 and $3,600 respectively, effective January 1, 1987; at $1,900 and $3,800 respectively, effective January 1, 1988; and at $2,000 and $4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper

limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

Section 2. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,500 [2,400]	$208 [200]
2	3,000 [2,900]	250 [242]
3	3,500 [3,400]	292 [284]
4	4,400 [4,100]	367 [342]
5	5,100 [4,800]	425 [400]
6	5,800 [5,500]	483 [459]

For each additional member, $600 annually or fifty (50) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1988 [December 1, 1987].

Section 4. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(a) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the nonfarm income official poverty guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Available liquid assets for the family may not exceed the usual upper limits specified for the medically needy, and all other resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income and, effective for determinations of eligibility made on or after August 1, 1988, changes of resources that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used

as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party, including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

Section 6. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room and/or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply within fifteen (15) months of the date of the Act, i.e., by July 1, 1987.

Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. Stepparents are responsible for their stepchildren as shown in this section and Section 11 of this regulation. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 3 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the

ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine the spend-down amount.

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care.

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he/she were a single individual due to living apart from his/her spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his/her spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and/or resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his/her parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and/or income are considered in relation to family size of one (1).

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his/her income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his/her basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his/her liability for the cost of care is determined by allowing to the child from his/her own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, must be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (hereinafter referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case the stepparent's or grandparent's gross income is considered available to the spouse or minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his/her federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him/her as dependents for purposes of determining his/her personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his/her dependents in the home.

(2) Determining eligibility of the children. When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, such income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration.

(a) The available income deemed to the spouse or minor parent shall be the lesser of the amount available or the medically needy income level for one (1), as shown in Section 3 of this regulation.

(b) The income of the spouse or minor parent (including the amount deemed) shall be combined with that of the child(ren) and the total compared against the medically needy income level for the appropriate family size. If there is no excess income, the child is eligible. If there is an excess, the excess amount may be spent down in the usual manner.

(3) Determining eligibility of the spouse or minor parent. Available income of the stepparent or grandparent remaining after exclusions/disregards are applied must be considered fully available to the spouse or minor parent. The eligibility of the spouse or minor parent is therefore determined in the same manner as shown in subsection (2) of this section, except that the full amount available (including that portion of the available income, if any, which is in excess of the medically needy income level for one (1)) is deemed to the spouse or minor parent.

(4) When the spouse or minor parent, or both the spouse or minor parent and child(ren) has a spend-down case(s), uncovered incurred medical expenses of all members of the budget unit may be used to meet the spend-down amount(s).

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself/herself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility must be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months.

Section 14. Transferred Resources. When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.

(1) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is for some other reason or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer must be for an amount equal to the fair market value.

(2) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(3) If retention would result in ineligibility, the cabinet will consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:

(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each

month that has elapsed since the transfer, beginning with the month of transfer; except

(b) The reduction provided for in paragraph (a) shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.

(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.

(5) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss.

(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the $500) may be deducted from the uncompensated value excess on a monthly basis.

Section 15. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 16. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 3 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he/she has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 17. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for

cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of HCB services program participants who are eligible under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Usual institutional deeming rules shall be applicable with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his/her spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

Section 19. Implementation. The amendments to this regulation will be effective with regard to determinations of eligibility made on or after July [April] 1, 1988 except as otherwise specified herein.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:008E

This emergency administrative regulation reduces payments to outpatient surgical clinics from 100 percent of reasonable charges to sixty-five (65) percent of usual and customary charges. This is a cost containment measure resulting from a projected Medicaid budget deficit and it is necessary to promulgate this emergency regulation to achieve necessary savings. This emergency regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:008E. Outpatient surgical clinics.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage provisions and method for establishing payment for outpatient surgical clinics.

Section 1. Scope of Coverage. The cabinet shall cover medically necessary services rendered by participating licensed outpatient surgical clinics.

Section 2. Basis for Payment. Freestanding outpatient surgical clinics shall be reimbursed on the basis of sixty-five (65) [100] percent of their usual and customary [reasonable] charge for the procedure performed. [After the first full year of participation by the facility in the program, the facility schedule of charges shall be appropriately indexed for inflation, and the payment shall be the lesser of the actual reasonable charge or the indexed charge.] Hospital based outpatient surgical clinics shall be reimbursed in the same manner as hospital outpatient services as specified in 907 KAR 1:015.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation lowers the base rate add-on for major private pediatric teaching hospitals and provides that out-of-state hospitals will be paid for inpatient services at seventy-five (75) percent of usual and customary charges. This action is

taken for cost containment purposes as the Medicaid program is facing a projected budget deficit and it is necessary to promulgate this emergency administrative regulation to achieve necessary savings. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on April 7, 1988 since that regulatory change increased the upper limits for mental hospitals and clarified agency policy with regard to rehabilitation hospitals. This emergency regulation shall be replaced by an ordinary regulation to be filed with the Regulations Compiler on or about July 1, 1988.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July [April] 1, 1988, which is incorporated herein by reference. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential).

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate and/or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that

amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals will not be peer grouped but will have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature will not be peer grouped or arrayed.

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

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits. For acute care hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data; however the arrays and/or upper limits may be changed as a result of changes of agency policy. The upper limit is established at 120 percent for those acute care hospitals serving a disproportionate number of poor patients (defined as twenty (20) percent or more Medicaid clients as compared to the total number of clients served) and the upper limit is established at 115 percent for those mental hospitals serving a disproportionate number of poor patients (defined as thirty-five (35) percent or more Medicaid clients as compared to the total number of clients served). For the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville, and major pediatric teaching hospitals affiliated thereto, their upper limit shall recognize their status as teaching hospitals traditionally serving a disproportionate number of poor patients, and shall be set at 126 percent of the median of the array for all other hospitals of comparable size (401 beds and up). Such major <u>public</u> pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy, <u>and, effective with regard to payments for services on or after July 1, 1988, such major private pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to one and one-half (1 1/2) percent of the base for each one (1) percent of Medicaid occupancy</u>.

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

(10) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

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

Section 5. Payments to Participating Out-of-state Hospitals. Participating out-of-state hospitals, except those where the other state's Medicaid Program pays on the basis of diagnosis related groupings, shall be reimbursed for covered <u>inpatient</u> services rendered eligible Kentucky Medicaid recipients <u>at the rate of seventy-five (75) percent of usual and customary charges.</u> [at the lower of the rate paid by the other state's Medicaid Program or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size (or total array, in the instance of mental hospitals), except that payments shall not exceed charges. For those participating out-of-state hospitals where the other state's Medicaid Program pays on the basis of diagnosis related groupings, reimbursement for covered services rendered eligible Kentucky Medicaid recipients shall be at the lower of eight (80) percent of the hospital's covered charges or the upper limit for Kentucky hospitals in a peer group for hospitals of comparable size. The operating cost upper limits shall be appropriately adjusted to include capital costs. The appropriate amount to include for capital costs shall be the average allowable per diem capital cost for the peer group (not adjusted for occupancy).] Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.

Section 6. The amendments shown herein shall be effective with regard to payments for services rendered <u>July</u> [April] 1, 1988, and thereafter.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:015E

This emergency administrative regulation reduces payment for hospital outpatient services from seventy (70) percent of charges to sixty-five (65) percent of charges. This is a cost containment measure necessitated by the projected Medicaid budget deficit and it is necessary to promulgate this emergency administrative regulation to achieve necessary savings. This emergency regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:015E. Payments for hospital outpatient services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital outpatient services.

Section 1. Outpatient Hospital Services. In accordance with the provisions of 42 CFR 447.321, the cabinet shall reimburse participating hospitals for outpatient services at the rate of sixty-five (65) [seventy (70)] percent of usual and customary charges billed to the Medical Assistance Program. There is no settlement to the lower of cost or charges, nor may charges or costs be transferred between the inpatient and outpatient service units.

Section 2. The payment provisions shown in Section 1 of this regulation shall be effective for services provided on or after July 1, 1988 [August 3, 1985].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:020E

This emergency administrative regulation provides that both federal and state maximum allowable cost comparisons may be made for drug costs. Although this action is necessary to comply with federal regulations relating to payments for drug costs, it also has a cost containment effect and it is necessary to promulgate this emergency administrative regulation to achieve necessary cost savings to help meet the projected Medicaid budget deficit. This emergency regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:020E. Payment for drugs.

RELATES TO: KRS 205.550, 205.560
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical services. This regulation sets forth the method for determining amounts payable by the department for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacists participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List and provided to eligible recipients is limited to the lowest of:
(a) The maximum allowable cost (MAC) of the drug, if any, whether federal or state or both, plus a dispensing fee; or
(b) The estimated acquisition cost (EAC) of the drug plus a dispensing fee; or
(c) The provider's usual and customary charge to the public for a like product and service.
(2) Reimbursement to skilled nursing and intermediate care facilities for drugs provided to eligible recipients is allowable in accordance with the following:
(a) The Kentucky Medical Assistance Program Outpatient Drug List (with additions and deletions thereto) shall be provided by the program to each participating facility, and for the drugs contained therein, the limits specified in subsection (1) of this section are applicable;
(b) For drugs not on the drug list, the maximum reimbursement shall be the same as set forth in subsection (1)(a) through (c) of this section. EAC's shall be determined in the same manner as for drugs included on the outpatient drug list. SNF/ICF facilities shall not impose an additional charge on medicaid eligible recipients for drugs because of the limitations set forth in Section 1(2) of this regulation;
(c) A packaging cost allowance of not more than six (6) cents per dose may be added to the drug cost (if not already included) for unit dose packaged drugs. The packaging cost (up to six (6) cents, plus the drug cost is added to the dispensing fee to determine the total reimbursement amount for a unit dose packaged prescription;
(d) There shall be no more than two (2) dispensing fees allowed per drug within a thirty (30) day period, except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug will be paid within a thirty (30) day period. Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms. Drug items or other related supplies purchased for routine use and which may be purchased without a prescription, including food supplements, are not reimbursable in SNFs or ICFs under the drug program, though the cost of such drug, supply item or food supplement, is an allowable cost

for the facility with the cost computed in accordance with the state regulation covering medicaid reimbursement for the facility;

(e) Whenever possible, unused drugs paid for by the department shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the department as an offset against allowable ancillary cost; and

(f) Interim payments made to participating facilities for allowable drug costs shall be settled at actual allowable costs computed in accordance with the upper limits shown herein at the end of the facilities' fiscal year.

(3) Reimbursement to hospitals for drugs provided to eligible recipients is on the basis of reasonable cost pursuant to 907 KAR 1:013.

Section 2. Physician Maximum Allowable Cost (MAC) Override. The MAC price limitation in Section 1 of this regulation shall not apply in any case where a physician certifies in his own handwriting that in his medical judgment, a specific covered brand is medically necessary for a particular patient. In such instances, reimbursement shall be based on the lower of the EAC plus a professional dispensing fee or the provider's usual and customary charge to the public for the drug.

Section 3. Dispensing Fees. Effective July 1, 1984, the dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents per prescription for drugs reimbursed through the outpatient drug program, as shown in Section 1(1) of this regulation, where the covered drugs are limited to those contained on the Kentucky Medical Assistance Program Outpatient Drug List. The allowable dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents (except for the additional amount for unit dose packaging as shown in Section 1(2)(c) of this regulation) for drugs reimbursed as part of the covered services of skilled nursing and intermediate care facilities, as shown in Section 1(2) of this regulation.

Section 4. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less.

Section 5. Implementation. The provisions of this regulation as amended shall be effective with regard to services provided on or after July 1, 1988 [October 1, 1985].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:028E

This emergency administrative regulation provides that independent laboratories may provide any laboratory procedure for which they are certified by Medicare. This action, taken in conjunction with the amendment to 907 KAR 1:029, Payment for laboratory services, is a program equalization action necessary in part to comply with federal requirements with regard to payments for laboratory services. It is necessary to implement this emergency regulation to comply with the federal mandate with regard to payments in a timely manner. This emergency regulation shall be replaced by an ordinary administrative regulation filed on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:028E. Other laboratory and x-ray services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to other laboratory and x-ray services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and medically needy.

Section 1. Covered Services. Laboratory services provided by a participating independent laboratory shall be limited to those [the following] procedures for which the laboratory is certified under Medicare when prescribed by a physician or dentist. [:]

[(1) Bilirubin;]
[(2) Bleeding time;]
[(3) Blood culture (definitive);]
[(4) Red blood count;]
[(5) White blood count;]
[(6) Differential;]
[(7) Complete blood count;]
[(8) Cholesterol;]
[(9) Clotting time;]
[(10) Hemoglobin;]
[(11) Hematocrit;]
[(12) Acid phosphatase;]
[(13) Alkaline phosphatase;]
[(14) Potassium;]
[(15) Prothrombin time;]
[(16) RA test (latex agglutinations);]
[(17) Stool (occult blood);]
[(18) Sedimentation rate;]
[(19) Sodium;]
[(20) Glucose (blood);]
[(21) Blood typing;]
[(22) Blood urea nitrogen;]
[(23) Uric acid;]
[(24) SGOT or SGPT (serum transaminase);]
[(25) Stool (ova and parasites);]
[(26) Pap smear;]
[(27) Urine analysis;]
[(28) Pregnancy test;]
[(29) Smears for bacteria, stained;]
[(30) Cultures (throat, urine, etc.);]
[(31) Package of the following twelve (12)

tests when performed on automatic laboratory analyzing machine: cholesterol, calcium, phosphorus, total serum bilirubin, albumin, total protein, uric acid, blood urea nitrogen, glucose, lactic dehydragenase, alkaline phosphatase, and serum transaminase;]
[(32) Dilantin level;]
[(33) Electrolytes;]
[(34) Glucose tolerance (two (2) hour);]
[(35) Glucose tolerance (four (4) hour);]
[(36) Glucose tolerance (six (6) hour);]
[(37) Master chem twenty-four (24);]
[(38) Thyroid profile;]
[(39) Arthritis profile;]
[(40) CPK (creatine phosphokinase);]
[(41) VDRL (venereal disease rule out);]
[(42) Drug abuse screen;]
[(43) Phenobarbital;]
[(44) Any three (3) through six (6) automated tests;]
[(45) Any seven (7) through twelve (12) automated tests;]
[(46) Any thirteen (13) through sixteen (16) automated tests;]
[(47) Any seventeen (17) through eighteen (18) automated tests;]
[(48) Any nineteen (19) or more automated tests;]
[(49) Platelet count;]
[(50) Urine culture;]
[(51) Sensitivity testing;]
[(52) T3;]
[(53) T4;]
[(54) Rubella;]
[(55) Therapeutic drug monitoring;]
[(56) Lithium;]
[(57) Theophylline;]
[(58) Digoxin; and]
[(59) Digitoxin.]

Section 2. The amendments to Section 1 of this regulation shall be effective with regard to services provided on or after July 1, 1988 [January 1, 1987].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:029E

This emergency administrative regulation specifies that independent laboratories, outpatient surgical clinics, renal dialysis centers, and outpatient hospital clinics will be reimbursed for laboratory services on the basis of the allowable payment rates set by Medicare. Taken in conjunction with 907 KAR 1:028, Other laboratory and x-ray services, this is a program equalization action necessary in part to comply with federal requirements with regard to payments for laboratory services. It is necessary to implement this emergency regulation to comply with the federal mandate with regard to payments in a timely manner. This emergency regulation shall be replaced by an ordinary administrative regulation filed on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:029E. Payments for laboratory services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method of determining amounts payable by the cabinet for laboratory services.

Section 1. Laboratory Services. [In accordance with 42 CFR section 447.325,] The cabinet shall reimburse participating independent laboratories, outpatient surgical clinics, renal dialysis centers, and outpatient hospital clinics for covered services rendered on the basis of the allowable payment rates set by Medicare. [following:]
[(1) Reimbursement shall be made on the basis of an established fee schedule.]
[(2) The fee schedule shall not exceed customary fees which are reasonable and within the prevailing charges in the medical service locality for comparable services under comparable circumstances.]

Section 2. The amendments to Section 1 of this regulation shall be effective with regard to services provided on or after July 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:031E

This emergency administrative regulation is amended to provide for limits on owners' compensation and make other minor program improvements. Although not primarily a cost containment regulation, there is a cost containment effect and it is necessary to implement this emergency regulation to help meet the budget deficit facing the Medicaid Program. This emergency regulation shall be replaced by an ordinary administrative regulation to be filed on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:031E. Payments for home health services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human

Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies. The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation and the various policies and guidelines specified in the Home Health Reimbursement Manual, dated July 1, 1988, which is hereby incorporated by reference. Payments made at the interim rate will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates may not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies and new facilities with less than two (2) full facility fiscal years of operations will be reimbursed at full allowable cost but are subject to the Medicare upper limits. Payments for other agencies (except payments for durable medical equipment, as shown in Section 3 of this regulation, and payments for disposable medical supplies, as shown in Section 4 of this regulation) may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that will be subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural will be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) will be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year. [New facilities which are subject to the cost center upper limit will, until the completion of two (2) full years of operation, be subject only to the Medicare upper limits.]

Section 3. Payments for Durable Medical Equipment. The interim payment amount for durable medical equipment shall be determined taking into account Medicaid upper limits on cost for such durable medical equipment, and may include an amount for administrative cost not to exceed twenty (20) percent of the interim payment amount set for the item(s) of durable medical equipment. All participating home health agencies may receive full allowable costs for durable medical equipment, with allowable costs determined taking into account appropriate upper limits.

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid an interim budgeted rate basis, with interim payments not to exceed Medicare upper limits, until a fiscal year end cost report is available, with payments settled back to full allowable costs.

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. [4.] Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement and Contracts. This request must be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report will not extend the forty-five (45) day time limit. The request for appeal must indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report will not be accepted. Upon receipt of the request for review, the division will determine the need for a program/vendor conference and will contact the home health agency to arrange a conference if needed. The conference, if needed, must be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider will be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director will notify the home health agency of the action to be taken by the division within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement and Contracts' decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services which will include one (1) member of the Division of Reimbursement and Contracts, a

representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the commissioner, with such designated member to serve as chairperson. The request for review by the reimbursement review panel must be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement and Contracts. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of a written request for such appeal. The question will be heard by the panel. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider.

Section 8. Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit will take precedence over the Medicare audit.

Section 9. [5.] The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1988 [1987].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:036E

This emergency administrative regulation reduces the upper limit for hospital based skilled nursing facilities from 135 percent to 105 percent of the freestanding upper limit; labor costs will no longer be linked to state employee salary increments; the exception to allowability of interest for working capital and operating costs has been deleted; compensation limits for owners is revised and for nonowner administrators specified; the $7.50 ICF transfer incentive is deleted, along with the bed transfer provisions; the annual upper limit revision is accomplished; and provisions relating to payments for urethral catheters and incontinent care products have been revised. Implementation of this regulation in an emergency manner is required to meet federal requirements with regard to payments to skilled nursing and intermediate care facilities; in addition, this regulation has a cost containment effect and it is necessary to implement on an emergency basis to help meet the budget deficit facing the Medicaid program. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on April 7, 1988 since that change related to facilities considered to be institutions for mental diseases (Section 3(2)) and clarification of the audit function (Section 3(14)). This emergency regulation shall be replaced by an ordinary regulation to be filed on or about July 1, 1988.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing or intermediate care facilities participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

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

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised July [May] 1, 1988) and supplemented by the use of the Title XVIII-A reimbursement principles.

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

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following

reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment may not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1 - June 30) by taking the latest audited cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, and/or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (nonhospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). Publicly operated skilled nursing and intermediate care facilities classified as institutions for mental diseases will not be subject to the administratively set upper limit and component limitations, although such facilities will be included in the arrays for purposes of establishing the applicable upper limits. In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at 105 [135] percent of 102 percent of the median of allowable trended and indexed costs of all other SNFs, however, such upper limit shall not exceed 102 percent of the median of the array of allowable trended and indexed costs of hospital based SNFs. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, there is no administratively established upper limit. Effective January 1, 1987, and continuing through the rate years beginning July 1, 1987, and July 1, 1988, the allowable cost for each facility shall include a patient care labor intensity factor of two and six-tenths (2.6) percent applied to that portion of the facilities' operating costs attributable (based on averages for the class of facility) to labor costs. This allowance is generally intended for the purpose of direct service staff improvements to enhance patient care. [Effective with the rate year beginning on July 1, 1987, that portion of the facilities' operating costs attributable (based on averages for the class of facility) to labor costs shall be indexed for the rate year by a labor cost intensity factor based on the state employee annual salary increment; this indexing shall be in lieu of the usual indexing for inflation of such labor costs, however, the labor cost intensity factor shall be not less than the usual indexing factor and, if necessary, shall be increased to an amount equal to the usual indexing factor. This adjustment is designed to allow for salary and staffing improvements to improve patient care.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and nonlegend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

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

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of

indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

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

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

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

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

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

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

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

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multilevel facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981; however, as an exception to the conditions specified in this subsection a facility will not be considered as newly participating if it increases its certified bed capacity by no more than a cumulative total of thirty-five (35) beds (on or after April 1, 1981) so long as its new total certified bed capacity does not exceed sixty-five (65) beds. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

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

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

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

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

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

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

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

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements and/or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until such time as legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

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

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

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

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

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

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

(14) The cabinet shall review each year-end cost report to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. If an audit is not performed, the report will be settled without audit. If an audit is indicated, it will be either a limited-scope audit or a full field audit. An audit may be conducted for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost will be conducted as needed.

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

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

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

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

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

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

(18) Each facility shall submit the required

data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

[(19) Each ICF which admits a recipient from an SNF during the period of September 1, 1985 through January 31, 1986 shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered such recipient, subject to the following conditions:]

[(a) The recipient must meet SNF patient status criteria as of August 31, 1985 only because of nonavailability of an ICF bed, where the recipient is on the waiting list of an ICF; and]

[(b) The incentive payment may be paid for more than ninety (90) covered days of care only if all such days are prior to February 1, 1986.]

[(20) When a recipient in a SNF changes patient status (from SNF to ICF) on or after February 1, 1986 and is admitted to an ICF within the permitted transfer period for the recipient (i.e., while the recipient still qualifies for coverage at the skilled rate), the ICF shall receive an incentive payment of seven (7) dollars and fifty (50) cents for each day of covered care rendered the recipient; such incentive payment shall be paid for no more than ninety (90) days of care.]

[(21) The incentive payment referenced in subsections (19) and (20) of this section shall be paid without regard to maximum payment limitations shown elsewhere in this regulation.]

(19) [(22)] Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment will be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient must be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient must have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient must meet ICF patient status criteria, and the appropriate representative of the Department for Social Services must certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

[(23) SNF's which on February 1, 1986 continued to care for recipients who were classified as meeting SNF patient status criteria as of August 31, 1985 only because of nonavailability of an ICF bed, where the recipient is on the waiting list of an ICF, may receive the usual SNF rate for those recipients subject to the following transitional reimbursement standards and criteria:]

[(a) The facility must file a letter of intent with the Cabinet for Human Resources, Office of the Secretary, 275 East Main Street, Fourth Floor, Frankfort, Kentucky 40621 by January 31, 1986 (receipt in the cabinet is required) for downward conversion of the bed(s) in which the recipient(s) is residing.]

[(b) Any facility which files a letter of intent must submit to the Commission for Health Economics Control in Kentucky (CHECK) an appropriate certificate of need application for downward conversion of the skilled bed(s), no later than February 14, 1986, in order for the transitional reimbursement payments to continue.]

[(c) Payment under this transitional reimbursement provision shall continue only until such time as the Commission for Health Economics Control in Kentucky (CHECK) has acted on the application and any appropriate licensure action has been effected.]

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

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

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

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

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

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

(a) Cost incentive and investment schedule for

general intermediate care facilities:

(Effective 7-1-88 [7-1-87])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$32.99 & below [31.99 & below]	$.92	$.58
33.00 - 33.99 [32.00 - 32.99]	$.86	$.50
34.00 - 34.99 [33.00 - 33.99]	$.78	$.41
35.00 - 35.99 [34.00 - 34.99]	$.70	$.32
36.00 - 36.99 [35.00 - 35.99]	$.61	$.21
37.00 - 37.99 [36.00 - 36.99]	$.51	$.09
38.00 - 38.61 [37.00 - 37.87]	$.35	-

Maximum Payment $38.61 [37.87]

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

(Effective 7-1-87)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$86.99 & below	$1.38	$.87
87.00 - 92.99	$1.29	$.75
93.00 - 98.99	$1.18	$.62
99.00 -104.99	$1.06	$.47
105.00 -110.99	$ .92	$.31
111.00 -116.99	$ .76	$.13
117.00 -123.49	$ .53	-

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

(Effective 7-1-88 [7-1-87])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$43.99 & below [41.99 & below]	$.92	$.58
44.00 - 45.99 [42.00 - 43.99]	.86	.50
46.00 - 47.99 [44.00 - 45.99]	.78	.41
48.00 - 49.99 [46.00 - 47.99]	.70	.32
50.00 - 51.99 [48.00 - 49.99]	.61	.21
52.00 - 53.99 [50.00 - 51.99]	.51	.09
54.00 - 56.07 [52.00 - 54.00]	.35	-

Maximum Payment $56.07 [54.00]*

*The maximum payment for hospital based skilled nursing facilities is set at $58.87 [72.90].

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities have special requirements that must be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

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

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts, a reevaluation of the point at issue. This request must be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing review panel to be established by the commissioner. This request must be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement and Contracts. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care

Facilities at review panel meetings shall be at the cabinet's expense.

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

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

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

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

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies and inhalation therapy.

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

(g) Ventilator therapy services, subject to the coverage limitations shown in the Reimbursement Manual.

(h) Disposable and reusable incontinent briefs, reusable briefs with disposable liners, and disposable or reusable underpads when ordered by a physician.

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

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

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985 and thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) For disposable briefs, reusable briefs, reusable briefs with disposable liners, and disposable or reusable underpads provided upon a physician's orders, the per unit product cost in excess of twenty (20) cents, but not in excess of forty (40) cents, shall be considered ancillary cost, with other cost for such products (including all laundry cost) to be considered routine cost. The first six (6) dollars and fifty (50) cents of cost per catheter for indwelling urethral catheters (excluding specialty purpose catheters) shall be considered as allowable ancillary cost with any balance of cost to be considered as allowable routine cost. Indwelling urethral special purpose catheters will be reimbursable as an ancillary at full allowable cost when ordered by a physician. [The first twenty (20) cents of cost of each disposable incontinent brief shall be considered to be ancillary costs when such briefs are provided upon a physician's orders,

with the balance of the cost of such briefs considered to be routine costs.]

Section 7. Implementation Date. The amendments to this regulation shall be effective on July [May] 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:042E

This emergency administrative regulation is amended to show that the cabinet will pay for dual licensed hospital furnished skilled nursing and intermediate care services at the upper limit for hospital based skilled nursing and freestanding intermediate care facilities, respectively. Assuming the cabinet would have to move to a cost related payment system to receive federal approval of its methods of payment for dual licensed care, the action taken at this time in conjunction with reduction of the hospital based upper limit shows a projected cost saving. Implementation of this regulation in an emergency manner is required to resolve in a timely manner the issue of payments for dual licensed care and the projected savings will support the cabinet's effort to face the projected Medicaid deficit. This emergency regulation shall be replaced by an ordinary administrative regulation to be filed on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:042E. Amounts payable for hospital furnished skilled nursing and intermediate care facility services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program for Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital furnished skilled nursing facility and intermediate care facility services.

Section 1. Reimbursement for Hospital Furnished Skilled Nursing and Intermediate Care Services. To qualify for reimbursement, any hospital(s) providing skilled nursing facility services and intermediate care facility services must have in effect an agreement with the secretary, Department of Health and Human Services, pursuant to Section 1883 of the Social Security Act, or be dual licensed (as provided for in KRS Chapter 216B) to provide skilled nursing and/or intermediate care services in an acute care hospital bed. Such hospital(s) shall be paid for swing-bed services provided pursuant to Section 1883 of the Act at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the state's Title XIX plan to skilled nursing and intermediate care facilities, respectively, located in the state in which the hospital is located; for dual licensed skilled nursing or intermediate care services, such hospital shall be paid at a rate equal to the hospital based nursing facility upper limit or intermediate care facility upper limit, as appropriate for the level of care provided, in effect at the time the service is provided. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services; covered ancillary services shall be the same as for all other skilled nursing and intermediate care facilities.

Section 2. Rate Review and Adjustment. Any participating facility may appeal its established rates using either the customary appeals mechanism for providers of hospital inpatient services or for providers of skilled nursing and intermediate care facility services.

Section 3. Eligibility for Reimbursement. A facility shall be eligible for reimbursement only when considered to be a participating vendor, and reimbursement shall be made only for covered services rendered eligible Title XIX recipients meeting patient status as determined in accordance with applicable regulations.

Section 4. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1987.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:170E

This emergency administrative regulation sets limits on specified home and community based services (assessment, homemaker services, and personal care services). This is a cost containment regulation, and it is necessary to implement this emergency regulation in order to achieve necessary savings taking into consideration the projected Medicaid deficit. This emergency regulation shall be replaced by an ordinary administrative regulation to be filed on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:170E. Payments for home and community based services.

RELATES TO: KRS 205.520
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the methods of payment for home and community based services provided as an alternative to skilled nursing facility and intermediate care facility care.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers (including coordinating agencies) of home and community based (HCB) services for services rendered to eligible medical assistance recipients who meet patient status criteria for skilled nursing or intermediate care facility care, and who are prior authorized for the HCB service. Coverage provisions are contained in 907 KAR 1:160.

Section 2. Payments. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained herein.

(1) Assessment, case management, homemaker services, personal care services, respiratory therapy shall be paid using an interim payment method with a year-end settlement to the lower of actual reasonable costs or reasonable charges utilizing Medicare principles of reimbursement. In addition, these services, except for case management and respiratory therapy, shall be subject to a prospectively set upper limit with such upper limit set at 130 percent of the weighted median of the array of services using the most recent cost report available as of May 31 with upper limits updated each July 1; this limit shall not apply until such time as a provider has participated in the program for two (2) full facility fiscal years. The interim rate is derived by applying a reduction factor to current charges based on the difference between prior year allowable cost and charges. When prior year costs and charges are not available, the interim rate will be set at the cabinet's best estimate of current costs (not to exceed charges) based on payments made for similar services.

(2) Respite care shall be paid on the basis of billed charges, with reimbursement for an individual (beginning with the first billed HCB service) not to exceed $2,000 per calendar year or $1,000 in any six (6) month period within that calendar year. The billed charge should include only the actual cost of the respite care services plus actual overhead costs incurred by the provider. There will be a [no] year-end settlement to actual cost, or charges if lower, not to exceed the upper limits.

(3) Minor home adaptations shall be paid on the basis of actual billed charges, with reimbursement for an individual for a calendar year limited to a maximum of $500 for all modifications. The service must have been appropriately prior authorized and have been provided. The billed charge should include only the actual cost of the minor home adaptations plus actual overhead costs incurred by the provider. There will be a [no] year-end settlement to actual costs, or charges if lower, not to exceed the upper limit.

(4) Payments for adult day health care services shall be made directly to licensed participation adult day health care centers on the basis of an interim rate with a year-end cost settlement to the lower of actual reasonable allowable costs or charges. The basic rate shall not exceed eighty (80) percent of the maximum intermediate care reimbursement rate for routine services. Reimbursement for ancillary services shall not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program element.

Section 3. Audits shall be performed as necessary to ensure that final payments are in accorance with the payment provisions contained in this regulation.

Section 4. [3.] Implementation. The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1988 [January 1, 1987].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:360E

This emergency administrative regulation provides for the provision of preventive and remedial Medicaid health care services through agreement between the Medicaid agency and the state health department. In order to permit state Medicaid recipients to receive services immediately under such an agreement, it is necessary to promulgate this emergency administrative regulation. This emergency regulation shall be replaced by an ordinary administrative regulation to be filed with the Regulations Compiler on or about July 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:360E. Preventive and remedial health care services provided through interagency agreement.

RELATES TO: KRS 205.520, 42 CFR 431.615
PURSUANT TO: KRS 194.050
EFFECTIVE: July 1, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the coverage and payment conditions for preventive and remedial health care services provided eligible medical assistance recipients through interagency agreement between the Medicaid single state agency and the state health department.

Section 1. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Department for Health Services for the provision of covered preventive and remedial health care services to eligible Medicaid recipients by the Department for Health Services. That agreement shall be consistent with the terms and conditions shown in this regulation.

Section 2. Subcontracted Services. The Department for Health Services may subcontract with the local health departments under its jurisdiction for the provision of health care services as specified in Section 1 of this regulation. Such agreement shall not extend to services determined by the Department for Medicaid Services to be uncovered services within the Medicaid program. A copy of the subcontract shall be provided to the Department for Medicaid Services for retention in its files as appropriate.

Section 3. Covered Services. The Department for Health Services may provide a broad array of preventive, screening, diagnostic, rehabilitative, and remedial services. These services will be specifically identified by procedure in the interagency agreement and will generally be classified as one of the following types of medical care services: pediatric services, prenatal and related services, epidemiology, family planning, and unrestricted medical services.

Section 4. Payments. The Department for Health Services will be paid for each service at an amount which the Department for Medicaid Services finds is reasonably equivalent to cost. The first year of payments shall be prospective in nature with no cost settlements. After the first year, the Department for Medicaid Services will set rates using actual utilization data and will not settle back to costs unless required to do so to avoid paying the Department for Health Services an amount substantially in excess of cost. Payment rates shall be set annually to be effective on July 1 of each year.

Section 5. Participation. Local health departments operating primary care centers may elect to have such primary care centers participate separately in the Medicaid program. All other Medicaid related functions of the local health departments shall be construed as covered or coverable under this provision for interagency agreement (and subsequent subcontracting) unless determined otherwise by the Department for Medicaid Services.

Section 6. Audits. The Department for Medicaid Services reserves the right to examine and audit appropriate financial and service records of the Department for Health Services and subcontracting local health departments to determine the allowability of costs, provision of services, and appropriateness of services and further reserves such right to the following named organizations or agencies and their lawfully appointed agents and representatives in the performance of their duties: the United States Department of Health and Human Services, the United States Health Care Financing Administration, the United States Attorney's Office, the Kentucky Attorney General's Office, and such other agents or representatives as may be designated by the Secretary, Cabinet for Human Resources.

Section 7. Effective Date. The provisions contained herein shall be effective with regard to services provided on or after July 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 29, 1988
FILED WITH LRC: July 1, 1988 at 3 p.m.

AS AMENDED AT PUBLIC MEETING OF THE SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychologists
(As Amended)

201 KAR 26:240. Requirements for temporary licensure and certification.

RELATES TO: KRS 319.032
PURSUANT TO: KRS 319.032
NECESSITY AND FUNCTION: This regulation permits psychologists to practice under conditions of temporary licensure and certification.

Section 1. (1) Upon acceptance of the application to sit for the examination in psychology, the applicant may practice psychology under the supervision of a licensed psychologist under conditions of temporary licensure established by the board. No applicant shall supervise certified psychologists or psychological assistants until he successfully completes all licensure requirements.

(2) Upon acceptance of the application to sit for the examination in psychology, the applicant may practice psychology under the supervision of a licensed psychologist under conditions of temporary certification established by the board.

(3) This administrative regulation shall become effective upon review by the second legislative committee as provided in KRS Chapter 13A.

KIM R. JONASON, Chair
APPROVED: April 11, 1988
FILED WITH LRC: April 13, 1988 at 2 p.m.

LABOR CABINET
Department of Workers' Claims
Workers' Compensation Board
(As Amended)

803 KAR 25:011. Procedure in applications for adjustments of claims.

RELATES TO: KRS Chapter 342
PURSUANT TO: KRS Chapter 13A, 342.260
NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate practice and procedure before the administrative law judge.

Section 1. Definitions. (1) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(2) "Commissioner" means the individual employed by the board pursuant to KRS 342.230(2).

(3) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(4) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(5) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640, but has not complied with KRS 342.340.

(6) "Date of filing" means the date a pleading, motion or other document is received by the board at its office in Frankfort, Kentucky.

Section 2. Parties. (1) The parties to any application for adjustment of claim filed with the board pursuant to KRS 342.270 shall be designated as "plaintiff" and "defendant." The party filing the original application in such proceedings shall be designated as the "plaintiff" and the adverse party (parties) as "defendant" ("defendants").

(2) All parties shall join as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any such person should refuse to join as a plaintiff, he shall then be joined as a defendant, and the fact of his refusal to join as a plaintiff shall be pleaded.

(3) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. The administrative law judge to whom the matter is assigned may order upon a proper showing that any additional party be joined when the administrative law judge deems the presence of the party necessary or that any party be dismissed when the administrative law judge deems the presence of the party unnecessary.

Section 3. Pleadings. (1) Any application for adjustment of claim for compensation, answer, and other pleading shall be typewritten and the printed forms prescribed by the board shall be used whenever applicable. All forms shall be furnished by the commissioner to any person who requests them, without charge.

(2) The original application for adjustment of claim shall be fully completed and filed in triplicate with the commissioner. The original and sufficient copies for serving all named parties and the administrative law judge shall be furnished. The commissioner shall serve the application upon all named parties other than the plaintiff by first class [certified] mail. The commissioner shall return unfiled to the plaintiff or his attorney any application which is not fully completed or which does not have attached all forms required to be filed with the application. If the application is resubmitted in proper form within ten (10) days of the date it was returned by the commissioner, the filing date shall relate back to the date the application was first received by the commissioner. Otherwise the second date of receipt shall be the filing date.

(3) All pleadings filed with the commissioner subsequent to the original application shall include the certificate of the party or attorney who filed the pleading stating the date and manner of service of a copy of the pleading upon the other parties. Service of these pleadings shall be made in one of the ways provided by Rule 5.02, Kentucky Rules of Civil Procedure. Copies of all pleadings filed after the application has been assigned to an administrative law judge and the parties have received notice of the assignment shall also be served upon the administrative law judge at his office address and the certificate of service shall so show. Service of all pleadings and

transcripts of proof by deposition upon the administrative law judge and the commissioner is required.

Section 4. Motions. (1) Every application for an order of the administrative law judge shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation.

(2) When a motion is filed, the party may file with it a short memorandum supporting the motion and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(3) Every motion, the grounds of which depend upon the existence of facts not appearing in evidence at the time of the filing of the motion, shall be supported by affidavits evidencing such facts, which shall be served and filed with the motion. Contrary affidavits may likewise be served and filed by the opposing party.

(4) Every motion, the grounds of which depend upon the existence of one (1) or more facts which the movant contends are shown in evidence or are admitted by the pleading of the adverse party, shall contain a reference to the hearing transcript of deposition transcript containing the evidence, and to the page where it is to be found, or to the pleading containing the admission.

(5) A motion be considered by an administrative law judge ten (10) days after the date of filing of the motion. A response to a motion will be considered if filed prior to the tenth day after the date of filing of the motion.

(6) Every motion for the allowance of an attorney's fee shall be served upon the adverse party and also upon the attorney's client and the fact of such service certified as provided in Section 3(3) of this regulation. Every motion for the allowance of an attorney's fee shall set forth the amount of money requested and the percentage of the award represented by the fee. Every motion shall be accompanied by an affidavit of the attorney setting forth in detail the services rendered and the amount of time expended. Every motion shall also be accompanied by a completed Form 109 signed by the attorney and his client, and notarized, as required by KRS 342.320(3). Every motion for allowance of an attorney fee shall be submitted within thirty (30) days following finality of the last appealable order of the administrative law judge.

Section 5. Application for Adjustment of an Injury Claim. (1) The original application for adjustment of injury claim (Form 101) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) One (1) medical report describing the injury which is the basis of the claim; and

(d) A signed waiver and consent to release relevant medical information in compliance with KRS 342.020(4) (Form 106).

The medical report required to be filed under paragraph (c) of this subsection may consist of the notes of a treating physician and other materials provided by the physician so long as the notes and materials are legible. Medical reports presented in this form and not on Form 107 shall not be considered as the direct testimony of a physician through a medical report pursuant to KRS 342.033.

(2) A defendant may file an answer to the plaintiff's application for adjustment of an injury claim (Form 101) within twenty (20) days after the date of service upon him of the application, but no such answer is required and if none is filed, all of the allegations of the application will be deemed to be denied. If, however, an answer other than a special answer under subsection (3) of this section is filed, only those allegations which are specifically denied by the answer shall be deemed to be in disagreement.

(3) If any defendant in an application for adjustment of injury claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within twenty (20) days after the date of service upon him of the application, or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken.

(4) Upon the issuance of a scheduling order by the Department of Workers' Claims [filing of an application for adjustment of an injury claim (Form 101)] all parties may begin discovery and proof. All parties may take discovery and proof for sixty (60) days from the filing date of the application; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendant's discovery and proof time the plaintiffs may take rebuttal discovery and proof for an additional fifteen (15) days.

All parties shall be furnished with copies of all medical reports and vocational evaluation reports resulting from medical examinations and evaluations by vocational experts within thirty (30) days of the examination or evaluation by the party requesting the examination or evaluation.

(5) Within thirty (30) days after an application for adjustment of an injury claim is filed the commissioner shall assign the case to an administrative law judge, and schedule the time and place for the prehearing conference. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference. All parties shall be notified of the assignment and schedule by the commissioner.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) The original application for adjustment of an occupational disease claim (Form 102) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106);

(d) Two (2) written medical reports supporting the claim (Form 108) in compliance with KRS 342.316(2)(b)1.

An application for an adjustment of an occupational disease claim (Form 102) may be used to apply for retraining incentive benefits if the plaintiff does not wish to use the expedited procedure described in KRS 342.732 and this section. Retraining incentive benefits may be awarded as an adjustment of an occupational disease claim if the evidence supports such an award, even though this benefit was not requested.

(2) Within sixty (60) days after the date of service upon him of an application for adjustment of an occupational disease claim (Form 102) each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3 or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for adjustment of an occupational disease claim relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application, or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken.

(4) Upon being served with an application for adjustment of an occupational disease claim pursuant to KRS 342.316(2)(6)1a or KRS 342.732 (Form 102) a defendant may have the plaintiff examined by medical experts and evaluated by vocational experts, at the defendant's expense. All parties shall be furnished with copies of the resulting medical reports and vocational evaluations within thirty (30) days of the date of the examination or evaluation and within the sixty (60) day discovery time. During this sixty (60) day discovery time, the defendants may depose the plaintiff for discovery purposes. If at the end of the sixty (60) day discovery time the commissioner has received one (1) or more notices of election to resist an application, the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the prehearing conference and at the same time issue a schedule for the taking of discovery and of proof by deposition prior to the prehearing conference. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time the plaintiffs may take discovery and proof for an additional fifteen (15) days. The prehearing conference shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the prehearing conference.

(5) When an application for adjustment of an occupational disease claim (Form 102) is filed, and one (1) or more of the medical reports filed with the application pursuant to KRS 342.316 contains the findings of more than one (1) physician, the findings of one (1) physician concerning the x-ray examination, one (1) physician concerning the spirometric testing and one (1) physician concerning the comprehensive clinical examination shall together constitute one (1) "written medical report" and cross-examination by deposition may be taken of all the three (3) physicians contributing to any "written medical report" and be introduced as the "direct testimony" of one (1) physician for the purposes of KRS 342.033. Up to three (3) "written medical reports" may be introduced by any party to an occupational disease claim or application for retraining incentive benefits without prior consent from the administrative law judge, as required by KRS 342.033.

Section 7. Application for Retraining Incentive Benefits. (1) The original application for retraining incentive benefits (expedited procedure) (Form 103) shall be filed with the following attachments:

(a) A complete work history of the plaintiff (Form 104);

(b) A complete relevant medical history of the plaintiff (Form 105);

(c) A signed waiver and consent to release of relevant medical information (Form 106) in compliance with KRS 342.020(4).

(2) Within sixty (60) days after the date of service upon him of an application for retraining incentive benefits (expedited procedure) (Form 103) each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3 or eligibility of the plaintiff for benefits shall be deemed to be conceded.

(3) If any defendant in an application for retraining incentive benefits (expedited procedure) relies upon an affirmative special defense, he shall plead the defense in a special answer filed within sixty (60) days after the date of service upon him of the application or within ten (10) days after the defense is discovered if the defense could not have been discovered earlier in the exercise of reasonable diligence. If the affirmative special defense is not so pled, it is waived. If, in the exercise of reasonable diligence, the defense could not have been discovered until the introduction of proof, the pleading shall be filed to conform with the proof within ten (10) days after the proof is taken. Failure of the plaintiff to file and pursue in good faith a claim under the federal Coal Mine Health and Safety Act as required by KRS 342.800 when pneumoconiosis or silicosis benefits are sought shall not be an affirmative special defense when rehabilitation incentive benefits are sought in an expedited procedure.

(4) When an application for retraining incentive benefits (expedited procedure) (Form 103) has been filed, the commissioner shall appoint a physician to conduct a comprehensive clinical examination, radiographic testing and spirometric testing of the plaintiff, or may appoint up to three (3) physicians if any one (1) physician is not qualified to conduct all these procedures. The findings of this physician or these physicians shall constitute a report of the "examination" which the claimant may elect pursuant to KRS 342.732(b)(a). The examination shall be conducted and the findings filed and served on all parties within fifty (50) days of

the appointment. No other medical examination shall be conducted.

(5) If at the end of the sixty (60) days discovery time, the commissioner has received one (1) or more notices of election to resist the application the commissioner shall assign the case to an administrative law judge, shall schedule the time and place for the hearing and at the same time shall issue a schedule for the taking of proof. During this proof-taking time, direct testimony may be taken from the physicians who conducted the examination, and proof may be taken by deposition concerning any special defenses pleaded by the employer at the time of filing of the Notice of Resistance. All parties shall be notified of this assignment and schedule by the commissioner. The schedule for taking discovery and proof by deposition shall provide that all parties may take discovery and proof for sixty (60) days from the date of filing of the scheduling order; the defendants may then take discovery and proof for an additional thirty (30) days; following the defendants' discovery and proof time the plaintiff may take discovery and proof for an additional fifteen (15) days. The hearing shall be scheduled at least fifteen (15) days after the last day of discovery and proof time in order for transcripts of proof by deposition to be filed prior to the hearing. There shall be no prehearing conference in a claim which is initiated by an application for retraining benefits (expedited procedure).

Section 8. Prehearing Conference. (1) The purposes of the prehearing conference are to expedite the processing of contested cases and to avoid whenever possible the need for a formal hearing. The conference is an informal procedure, presided over by the administrative law judge. No transcript of the proceedings of the conference shall be made. At the conference every effort shall be made by all parties to dispose of controversies whenever possible, to narrow and define issues, and to facilitate prompt settlement of the claim. The parties shall exchange lists of known witnesses fifteen (15) days before the prehearing conference and final additions, if any, to the respective witness lists shall be made at least seven (7) days before the prehearing conference.

(2) The plaintiff and his representative, the defendant employer/insurer or its representative, and the representatives of all other parties shall attend the prehearing conference. The representative of any party must have authority to resolve disputed issues and settle the claim at the conference. The administrative law judge may upon motion waive the requirement that the plaintiff shall attend the conference, but only for good cause shown in the motion and with a showing that the plaintiff's representative will attend the conference with full authority to settle the claim.

(3) The representative of a party may seek rescheduling or postponement of a prehearing conference by motion filed at least fifteen (15) days prior to the schedule date of the conference, stating the reason for the request. A motion to postpone or reschedule shall be sustained only upon good cause shown at the discretion of the administrative law judge.

(4) If all parties agree upon a settlement prior to the prehearing conference, the settlement agreement shall be filed for the approval of the administrative law judge. If the agreement is approved by the administrative law judge, the prehearing conference shall be cancelled and notice of the cancellation served on all parties.

(5) If the parties reach agreement on all issues at the prehearing conference and the claim is settled, the administrative law judge shall summarize the terms of the agreement using a Form 110. This record of the terms of the agreement shall be signed by the parties. The administrative law judge may approve the agreement at the conference or retain it for review for up to ten (10) days prior to approval. The administrative law judge shall cause copies of the agreement form to be served on all parties, and the claim will thereafter be closed.

(6) If at the conclusion of the conference the parties have not reached agreement on all the issues, the administrative law judge shall prepare a stipulated summary of all contested and uncontested issues, which shall be signed by representatives of the parties and by the administrative law judge. This stipulation shall be filed and only the contested issues shall be the subject of further proceedings before the administrative law judge.

(7) In the sole discretion of the administrative law judge upon motion of a party with good cause shown, the administrative law judge may order that additional discovery or proof by deposition be taken on a contested issue between the prehearing conference and the hearing. Taking of this proof shall not automatically be a valid reason for continuing the date for the hearing.

(8) If the claim is not settled, the administrative law judge shall schedule a date for the hearing on the claim at the prehearing conference. The date for the hearing shall be within sixty (60) days from the date of the prehearing conference. Representatives of the parties shall come to the prehearing conference prepared to schedule a hearing during the conference. The hearing date will not be changed except for good cause shown on motion of the representative requesting the change.

(9) If the parties agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed for the approval of the administrative law judge. The administrative law judge shall approve or disapprove the settlement agreement within ten (10) days of filing. If the agreement is approved by the administrative law judge, the hearing shall be cancelled and notice of the cancellation served on all parties.

Section 9. Interlocutory Relief. (1) The plaintiff may seek three (3) forms of interlocutory relief while his claim is in process of consideration for adjustment.

(a) If the plaintiff is totally disabled he may seek to have income benefits paid pursuant to KRS 342.730 while the claim is pending.

(b) He may seek to have medical and hospital bills paid pursuant to 342.020 while the claim is pending.

(c) He may seek provision of rehabilitation services pursuant to KRS 342.710 while the claim is pending. The defendants may also request rehabilitation services for the plaintiff while the claim is pending.

(2) The plaintiff may seek one (1) or more forms of interlocutory relief by completing the appropriate section of the application for adjustment of claim. The plaintiff or defendants may seek interlocutory relief by motion if the need for interlocutory relief arises after the application is filed.

(3) If the plaintiff seeks interlocutory relief in his application for adjustment of claim or by motion at least twenty (20) days prior to the prehearing conference, or if there is agreement of all parties, the request for interlocutory relief may be considered at or before the prehearing conference. If the motion is filed within twenty (20) days of the prehearing conference or after the prehearing conference but before the hearing, it may be considered at or before the hearing.

(4) One (1) or more of the forms of interlocutory relief described in Section 7(1) of this regulation may be granted by the administrative law judge if the plaintiff shows by means of affidavits, or his own deposition or other evidence of record that he is eligible for the interlocutory remedies being sought under KRS Chapter 342 and that if he does not receive the interlocutory relief sought he will suffer immediate and irreparable injury, loss, or damage pending a final decision on the application. A defendant may be granted the right to provide rehabilitation services to the plaintiff while the claim is pending upon a showing that the plaintiff will benefit from the services and have a better chance of returning to work as a result.

(5) When the plaintiff seeks interlocutory relief, [by either of the two (2) ways authorized in Section 7(2) of this regulation] the defendant shall file his response, if any, and supporting affidavits, as appropriate, within twenty (20) days <u>from the date of the issuance of the scheduling order by the Department of Workers' Claims, as herein provided.</u> [of filing of the application or twenty (20) days of the filing of the motion of the plaintiff or defendant.]

(6) When the plaintiff seeks interlocutory relief, the administrative law judge shall review all pleadings, affidavits, and other evidence in the record and at the prehearing conference or hearing may in his discretion hear oral arguments in support of each party's position. The administrative law judge shall render his decision, file it in the record, and serve it on all parties.

(7) When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, the application shall be placed in abeyance, unless the plaintiff shows that he will be irreparably harmed thereby. While the application is in abeyance, the parties shall submit in writing to the administrative law judge a report on the plaintiff's continued total disability every sixty (60) days. If in the administrative law judge's discretion new evidence shows that the plaintiff is no longer totally disabled, the administrative law judge may revoke the interlocutory payment of income benefits based on total disability, and remove the claim from abeyance.

[(8) If the claim remains in abeyance for one (1) year and the plaintiff continues to be totally disabled, the administrative law judge shall on his own motion order the claim to be removed from abeyance and scheduled for hearing, unless in response to the motion a party shows good cause for the claim to remain in abeyance.]

<u>(8)</u> [(9)] No interlocutory relief may be sought or granted when the claim is an application for retraining incentive benefits (expedited procedure).

<u>(9)</u> [(10)] When the administrative law judge awards to the plaintiff interlocutory relief in the form of income benefits while he is totally disabled, an attorney fee in the amounts authorized by KRS 342.320 but in no case to exceed twenty (20) percent of the weekly income benefit awarded may be ordered by the administrative law judge upon motion of the attorney. The administrative law judge may award the fee on a sixty (60) day basis, renewable for additional sixty (60) day periods if the interlocutory benefit is renewed pursuant to Section <u>9</u> [7](7) of this regulation. All provisions of KRS 342.320 and Section 4<u>(6)</u> [(7)] of this regulation must be complied with. The fee awarded shall be deducted in equal amounts from the weekly income benefits awarded and paid directly to the attorney awarded the fee at the beginning of each sixty (60) day period.

Section 10. Hearings. (1) If the parties have not arrived at a settlement prior to the scheduled hearing date, a hearing shall be held to complete proof on all contested issues set forth in the stipulated summary filed pursuant to Section 6(6) of this regulation.

(2) The administrative law judge to whom the case has been assigned shall conduct the hearing. No proof shall be taken following the hearing.

(3) The plaintiff shall appear at the hearing and shall present his testimony concerning the contested issues still before the administrative law judge, even if the plaintiff's testimony has previously been taken by deposition. Defendants may cross-examine. Other proof may be taken at the hearing only if it has not previously been taken by deposition.

(4) If the plaintiff fails to appear at the hearing of his claim and no good cause is shown for his failure to appear, the administrative law judge may dismiss the case for want of prosecution. If good cause is shown, the case may be continued until the plaintiff is able to appear.

(5) When a defendant or his representative fails to appear at the hearing, the hearing may proceed as scheduled.

(6) At the conclusion of the hearing the administrative law judge may take the application under submission immediately or request briefs from the parties, to be filed according to a schedule announced by the administrative law judge at the hearing. Upon filing of the last brief scheduled or passage of the due date for that brief the case shall stand submitted. The administrative law judge may announce his decision at the conclusion of the hearing and subsequently file his written opinion, serving it on the parties when filed, or the administrative law judge may defer his decision until he files the written opinion. In either case, the time for filing a petition for reconsideration shall not begin to run until the date of filing of the written opinion.

Section 11. Petitions for Reconsideration. (1) Within fourteen (14) days from the date the

written opinion announcing an order, award, or decision is filed, any party may file a petition for reconsideration of the award, order or decision. The petition shall clearly identify the error "patently appearing upon the face" of the award, order or decision which the petitioner seeks to have corrected, and set forth arguments and authorities supporting the correction sought.

(2) Any party may file a response to the petition within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall by order overrule or sustain the petition for reconsideration within ten (10) days after the date the responses are due.

(4) If the administrative law judge finds that the petition is frivolous, he may assess costs and attorney fees against the petitioner or his attorney.

(5) The filing of a petition for reconsideration shall suspend the finality of any order, decision, or award until the ruling is made thereon.

Section 12. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a written opinion, order or decision finally adjudicating a case, a party aggrieved by the opinion, order or decision may appeal the opinion, order, or decision to the Workers' Compensation Board. Opinions, orders or decisions of administrative law judges and of the (old) Workers' Compensation Board established pursuant to KRS 342.215(5) shall be appealed in this manner.

(2) The appeal shall be initiated by the filing of a notice of appeal. The notice of appeal shall style the appealing party first as the "petitioner" and all other parties against whom the appeal is being taken as the "respondents." The Workers' Compensation Board case number shall be retained in the petition and in all other pleadings related to the appeal to the board. The administrative law judge who rendered the opinion, order or decision appealed from or the (old) Workers' Compensation Board shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(6).

(3) Any party other than the petitioner in the appeal may file a cross-appeal against a party who has taken an appeal against him. All cross-appeals shall be filed by notice of cross-appeal within ten (10) days after notice of appeal is filed. If a cross-appeal is filed, the style of the appealed and cross-appealed case shall designate the parties as appropriate (i.e., petitioner-cross-respondent). The Workers' Compensation Board number shall remain the same.

(4) The notice of appeal or cross-appeal, and enough copies for service on all respondents shall be filed with the commissioner. The commissioner shall cause all respondents to be served by first class [certified] mail with a copy of the notice of appeal or cross-appeal. All subsequent pleadings shall be served on the respondents as provided in Section 3(3) of this regulation.

(5) When a notice of appeal is filed, the record in the case shall be transferred to the Workers' Compensation Board in its entirety, unpaginated. All references to specific evidence in the record shall be by the title of the evidence referenced and the page number at which the specific entry occurs (i.e., Deposition of Dr. A. B., p. 17.)

(6) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(3), the board shall immediately schedule a hearing on that issue before the board. All testimony concerning the issue shall be transcribed and placed in the record and notice of filing of the transcript shall be given to all parties by the commissioner. All subsequent time in such a case shall be calculated from the date the transcript is filed instead of the date of filing of the notice of appeal.

(7) The petitioner's brief shall be filed with the board within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in Rule 76.12(4)(c) of the Kentucky Rules of Civil Procedure except that no index [or contents page] shall be required and the only appendix shall be a copy of the decision appealed from, including the decision of the administrative law judge, all petitions for reconsideration of the opinion and all rulings on petitions for reconsideration.

(8) The respondent's brief shall be filed with the board within thirty (30) days of the date the petitioner's brief was filed. The organization and contents of the respondent's brief shall be as provided in Rule 76.12(4)(d) of the Kentucky Rules of Civil Procedure, except that no index [or contents page] shall be required and the only appendix shall be a copy of any response filed to a petition for reconsideration. If a respondent is also a cross-petitioner, a combined brief shall be filed addressing issues raised by the petitioner's brief and by the cross-appeal.

(9) The petitioner's reply brief shall be filed within fifteen (15) days after the date on which the last respondent's brief was filed or due. The organization and contents of the petitioner's reply brief shall be as provided in Rule 76.12(4)(e) except that no appendix, index or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall be filed addressing issues raised by the response, and issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief shall be filed within fifteen (15) days after the date on which the last cross-respondent's brief was filed or due. The organization and contents of the cross-petitioner's reply brief shall be as provided in Rule 76.12(4)(e) except that no appendix, index or contents page shall be required.

(11) The petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each in overall length. Reply briefs shall be limited to five (5) pages in overall length. Combined briefs shall be limited to twenty (20) pages each in overall length. The requirements of this rule with respect to a "statement of points and authorities" shall not apply to any brief of five (5) pages or less. Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. All pleadings shall be typewritten and conform to the requirements set forth in Rule 7.02(4) of the Kentucky Rules of Civil Procedure. Pleadings shall be filed

without covers, but the style of the case, including the board number, and the title of the pleading shall appear on the first page of the pleading.

(12) When all briefs have been filed or the due date is past on the last brief due, any party shall by motion move for submission of the appeal to the board for decision. Upon issuance of the board's order, the case shall stand submitted.

(13) Within thirty (30) days of the filing of the board's order of submission, the board shall enter its decision affirming, modifying or setting aside the decision, order or award appealed from, or in its discretion remanding the claim to the administrative law judge for further proceedings in conformity with the direction of the board.

(14) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in Rule 76.25, Kentucky Rules of Civil Procedure.

(15) Every application for an order of the board shall be by typewritten motion, served and filed in the manner prescribed by Section 3(3) of this regulation.

(16) When a motion is filed, the party may file with it a short memorandum supporting the motion, and the opposing party may file a short memorandum in reply. No further memoranda in support of a motion may be filed.

(17) All motions filed with the board subsequent to the original notice of appeal shall include the certificate of the party or attorney who filed the motion stating the date and manner of service of a copy of the motion upon the other parties. Service of these motions shall be made in one of the ways provided in Rule 5.02, Kentucky Rules of Civil Procedure.

(18) The opposing party may file a response, accompanied by a certificate of service, within ten (10) days after the date the motion was filed with the board.

(19) Three (3) copies of motions and responses in the Workers' Compensation Board shall be filed.

(20) Except for motions that call for final disposition of an appeal in the board, any member of the board designated by the chairman may dispose of any motion; and any intermediate order of a procedural nature pending final disposition of a proceeding pending before the board may be issued on the signature of any member of the board.

Section 13. Medical Reports. (1) As provided in KRS 342.033, any party may introduce direct testimony (proof) from a physician through a written medical report, subject to the limitations of KRS 342.033, Section 5(3) of this regulation and the scheduling order issued by the administrative law judge pursuant to Section 5 of this regulation.

(2) Any written medical report sought to be introduced as evidence shall be submitted on a Form 107 (injury) or Form 108 (occupational disease) whichever is appropriate.

(3) Any written medical report sought to be introduced as evidence shall be signed by the physician making the report, bearing an original signature. A [photocopied or] reproduced medical report which is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report.

(4) Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report.

(5) Any narrative in a written medical report on a Form 107 or Form 108 sought to be introduced into evidence shall be typewritten. Any written medical report or any attachment to a written medical report, such as spirometric tracings, shall be clearly legible in the original and on the copies served on other parties.

(6) The written medical reports required by KRS 342.316(2)(b)1a shall be filed with the application for adjustment of an occupational disease claim as required by that section.

(7) All other written medical reports shall be introduced by motion for admission. The written medical report shall be attached to the motion. The party seeking admission of the report may also file a memorandum in support of the motion.

(8) Any objection to the filing of a written medical report shall be filed within ten (10) days of the filing of the motion for admission. Grounds for the objection shall be stated with particularity. The objecting party may file a memorandum in support of his objection.

(9) The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.

(10) If a written medical report is admitted as direct testimony, any adverse party may depose the physician making the written report as cross-examination concerning it and the deposition shall be filed as proof without a motion.

Section 14. Continuances, Extensions and Motions to Hold in Abeyance. (1) Continuances of hearings and prehearing conferences may be granted by the administrative law judge upon motion supported by affidavits stating facts making a proper showing of good cause for a continuance. A motion for a continuance must be filed no later than twenty (20) days prior to the conference or hearing unless there is a showing of [personal] emergency or circumstances beyond the control of the requesting party which prohibited timely filing of the motion. The opposing parties may have ten (10) days from the filing date of the motion to respond, with a brief memorandum with affidavits in support of his position.

(2) Extensions of time for the taking of discovery or proof by deposition shall not be granted except upon [a good cause] showing of [extraordinary] circumstances preventing the party moving for an extension from timely taking discovery or proof by deposition. The motion for extension of time must be filed no later than five (5) days before the deadline sought to be extended. The motion for extension of time and supporting affidavits must clearly set forth the following:

(a) A showing of timely and diligent efforts by counsel to take the discovery or proof by deposition in question must be detailed.

(b) The facts which prevent taking of the needed discovery or proof by deposition must be detailed.

(c) The date of availability of the evidence needed and the probability of its production must be detailed.

(d) Where possible, supporting documentation

giving rise to the need for the extension should be filed with the motion.

(3) In the absence of unusual circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(4) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs, if the extension is granted to a plaintiff, or to all defendants should an extension be granted to a defendant.

(5) The provisions of this section shall apply to motions requesting that a claim be held in abeyance pending settlement or for any other reason.

Section 15. Stipulation of Facts and Judicial Notice. (1) Stipulation of facts which are not in issue is mandatory and the refusal without good cause to stipulate facts which are not at issue, within the sound discretion of the administrative law judge, may result in assessment of [the] costs [of the hearing] against the party who without good cause has refused to stipulate to routine matters not in issue. The assertion of the fact that a party has not had sufficient time or opportunity to ascertain the facts will not be necessarily considered "good cause" within the meaning of this regulation.

(2) Every party to a stipulation shall be considered bound to the same. For good cause shown, however, any party may be relieved of a stipulation he has made provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing. Upon granting relief from a stipulation, the administrative law judge shall grant a continuation of the hearing and shall schedule additional discovery or proof time for the opposing party or parties to complete their discovery or proof so as to prevent prejudice or surprise.

(3) At the prehearing conference, the administrative law judge shall ask the appropriate questions in order to determine the reasons for an inability or unwillingness to stipulate. The plaintiff and the defendants have the joint responsibility of resolving jurisdictional issues and preaward payment of compensation and explaining why these cannot be stipulated.

(4) The administrative law judge will take judicial notice that the Act is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the Act pursuant to KRS 342.395 and 342.400.

(5) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650, has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should the employer or any other person against whom a claim is filed not have insurance coverage or qualify as a self-insurer, the commissioner within <u>thirty (30)</u> [twenty (20)] days after the filing of the claim shall certify to the file that the defendant or any other person against whom a claim has been filed has failed to secure payment of compensation as required by KRS Chapter 342, and shall notify the administrative law judge and all parties by service of a copy of the certification of no coverage.

Section 16. Evidence: Rules Applicable. (1) The same rules of evidence that apply in judicial proceedings and that are governed by the common law and the statutes in effect in this Commonwealth, apply in all hearings and depositions taken to be used in cases before the administrative law judges.

(2) An exception to the above rule applies in medical reports submitted by and depositions taken of evaluating physicians who are nontreating physicians. In those instances the nontreating physician is permitted to use the case history related to him by the patient and the subjective symptomatology related to him by the patient in arriving at and formulating his opinion as to causation and disability.

Section 17. Discovery and Depositions. The parties may obtain discovery and take depositions in accordance with the provisions of Rules 26 to 37, inclusive, of the Kentucky Rules of Civil Procedure, except for Rules 27, 33 and 36, which are not adopted by the board and which shall not apply to practice before the administrative law judges or the board.

Section 18. Depositions of Physicians Appointed under KRS 342.121. (1) An examining physician appointed by an administrative law judge pursuant to KRS 342.121(1) shall make his report to the administrative law judge on either Form 107 or Form 108 as appropriate, and his report shall be filed as direct testimony. An examining physician appointed by the administrative law judge shall not be examined by deposition on his report except by permission of the administrative law judge.

(2) Motions to join the special fund shall include a designation of the area of medical specialty for appointment of the physician designated pursuant to KRS 342.121.

Section 19. Examinations by Disinterested Physicians. When a disinterested physician or surgeon has been appointed by an administrative law judge pursuant to KRS 342.315, no party shall furnish to the physician or surgeon any copies of reports previously made or depositions given by any physicians or surgeons who have examined the claimant in the case. Either party, however, may transmit to the appointed physician or surgeon, through the administrative law judge, properly identified x-ray photographs made by another person. The transmittal shall be accompanied by certification of service upon all parties.

Section 20. Appearances. (1) Only attorneys-at-law duly licensed in Kentucky may appear or practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself only but shall not, either directly or indirectly, represent or appear in behalf of any legal entity other than himself.

(2) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as qualified counsel.

Section 21. Withdrawal of Records. (1) No paper, or other portion of any original record of the board shall be withdrawn except on order of the administrative law judge.

(2) All physical exhibits, including x-rays,

will be disposed of sixty (60) days after the case is finally closed, unless the filing party makes arrangements to claim the exhibit prior to that time. If the unclaimed exhibit has no money value, it will be destroyed; if the unclaimed exhibit has a value of more than $100, it will be sold as surplus property; the unclaimed exhibit will be donated to an appropriate state agency if it has a value of less than $100; if the unclaimed exhibit has historic or museum value it will be sent to the state archives.

Section 22. Routine Records Admission. Any party may file in the record of a case any routine hospital, armed forces and Social Security records. These shall be made part of the record and considered for their statistical content only and any opinion contained therein shall be stricken and not considered. A party, however, may depose the proper agent in the manner provided in these regulation in order to have these records admitted as to any opinion contained therein.

Section 23. Exceptions. Formal exceptions to rulings or orders of the administrative law judges or the board are unnecessary.

Section 24. Frivolous Filings. All provisions of Rule 11 and Rule 73.02(4), Kentucky Rules of Civil Procedure, are incorporated into this rule by reference.

Section 25. Retraining Incentive Benefits. If an applicant for retraining incentive benefits is working in the coal industry at the time his application is filed, the insurance company responsible is the one insuring the applicant's employer on the date of the filing. Otherwise, the insurance company responsible is the one insuring the applicant's employer on the date of his last exposure.

Section 26. Forms. Forms 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and 111 are hereby adopted by reference.

Section 27. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation which has been awarded a claimant in the case where the defendant-employer, or any other party liable for the payment thereof, has not secured payment of compensation as provided for by KRS Chapter 342, shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the defendant-employer, or any other person liable for payment of said action, judgment has been rendered thereon, and there has been default in payment of said judgement by the defendant-employer, or any other party liable for payment thereof, except the uninsured employers' fund.

(2) When the procedure provided in subsection (1) of this section has been complied with, the claimant may file a motion with the administrative law judge together with proof of compliance with the requirement of subsection (1) of this section, requesting that the administrative law judge order payment from the uninsured employers' fund in accordance with KRS 342.760. Upon satisfactory proof of such compliance, the administrative law judge shall enter an order directing payment of compensation or any portion thereof from the uninsured employers' fund.

(3) This section shall not be construed as to prohibit the voluntary payment of compenstion by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim or award approved by the board pursuant to KRS 342.265, or the payment of its proportionate share of a claim or award by the special fund.

Section 28. [27.] Repeal of 803 KAR 25:010. 803 KAR 25:010 is hereby repealed.

ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: June 6, 1988
FILED WITH LRC: June 6, 1988 at noon

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Food and Sanitation
(As Amended)

902 KAR 45:120. Inspection fees; permit fees; food service establishments, hotels, mobile home and recreational vehicle parks.

RELATES TO: KRS 219.031, 219.041, 219.330, 219.350
PURSUANT TO: KRS 194.050, 219.041(4), 219.340, 219.350, HB 516 Part IIA #42 of the 1988 GA
NECESSITY AND FUNCTION: KRS 219.041(4) and HB 516 authorizes the Secretary for Human Resources to provide by regulation a schedule of reasonable fees to be paid by food service establishments and hotels, mobile home and recreational vehicle parks to cover the cost of inspection activities carried out by the Cabinet for Human Resources. This regulation is to set forth the fees to be charged.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.
(2) "Department" means Department for Health Services and local health departments having jurisdiction.

Section 2. Fees for Inspections. For inspections conducted by the department or its representative to determine compliance with regulations adopted by the cabinet pursuant to KRS 219.041, food service establishments and hotels shall be subject to the payment of the following fees:
(1) Hotels with twenty-five (25) rooms or less - thirty (30) [twenty-five (25)] dollars per year.
(2) Hotels with twenty-six (26) rooms or more - sixty (60) [fifty (50)] dollars per year.
(3) Permanent food service establishments with no seats or twenty-five (25) seats or less - thirty-five (35) [thirty (30)] dollars per year.
(4) Permanent food service establishments with twenty-six (26) to fifty (50) seats - fifty (50) [forty (40)] dollars per year.
(5) Permanent food service establishments with more than fifty (50) seats - sixty (60) [fifty (50)] dollars per year.

Section 3. Permit Fees for Hotels and Mobile Home and Recreational Vehicle Parks, and Food

Service Establishments. (1) Each application for an annual permit to operate a food service establishment shall be accompanied by a fee of thirty (30) dollars.

(2) Applications for a permit to operate a temporary food service establishment shall be accompanied by a fee of fifteen (15) dollars.

(3) Each application for an annual permit to operate a hotel, shall be accompanied by a fee as follows:

[(a)] Hotels [with twenty-five (25) rooms or less] - thirty (30) dollars per year.

[(b) Hotels with twenty-six (26) rooms or more - sixty (60) dollars per year.]

(4) Each application for an annual permit to operate a mobile home or recreational vehicle park shall be accompanied by a fee as follows:

(a) Mobile home or recreational vehicle park with ten (10) spaces or less - sixty (60) dollars.

(b) Parks with more than ten (10) spaces - ninety-five (95) dollars.

(5) Each application for a permit to construct or alter a mobile home or recreational vehicle park shall be accompanied by a fee of thirty (30) dollars.

Section 4. [3.] Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate as required by KRS 219.021 or 219.340 as applicable.

Section 5. [4.] Exemptions. Private, parochial, and public school cafeterias or lunchroom facilities through the 12th grade and all facilities operated by the Cabinet for Human Resources or the Corrections Cabinet shall be exempt from the payment of inspection fees.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: April 13, 1988
FILED WITH LRC: April 15, 1988 at 10 a.m.

AMENDED AFTER HEARING

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 12:090. Unfair claims settlement practices.

RELATES TO: KRS 304.2-165, 304.3-200, 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150 to 304.20-180, 304.29-590, 304.32-270, 304.38-200, 304.39-070, 304.43-130[, HB 552 §17]

PURSUANT TO: KRS Chapter 13A, 304.2-110, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky insurance code. KRS 304.32-250 provides that the commissioner may promulgate reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may promulgate reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This regulation defines certain minimum standards which, if violated in such a manner as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices.

Section 1. Scope. This regulation defines certain practices [minimum standards] which are [, if violated with such frequency or in any other manner as to indicate a general business practice, will be] deemed to constitute unfair claims settlement practices. This regulation applies to all insurance policies and insurance contracts except workers' compensation insurance. This regulation applies to all persons, but shall not be construed as creating sanctions against an insured. This regulation is not exclusive and other acts or practices not herein specified may also be deemed to be a violation of KRS 304.12-230.

Section 2. Definitions. As used in this regulation:

(1) "Agent" means any individual, corporation, association, partnership, or other legal entity authorized to represent an insurer with respect to a claim.

(2) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.

(3) "First party claimant" means any individual, corporation, association, partnership, or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract.

(4) "Good faith" means an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render a transaction unconscientious.

(5) [(4)] "Insurance policy or insurance contract" has the meaning defined in KRS 304.14-020 and also includes certificates of group insurance.

(6) [(5)] "Insurer" means a person licensed to issue or who issues any insurance policy or insurance contract in this state, fraternal benefit societies, nonprofit hospital, medical, surgical, dental, and health service corporations, health maintenance organizations, or prepaid dental plan organizations.

(7) [(6)] "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(8) [(7)] "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.

(9) [(8)] "Person" has the meaning defined in KRS 304.1-020.

(10) [(9)] "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership, or other legal entity insured under an insurance policy or insurance contract of an insurer.

(11) Delay or denial of a claim is "without reasonable foundation" when there is no rational relationship between the reasons for the delay or denial of a claim and the insurance contract, applicable law, or applicable facts.

(12) [(10)] "Workers' Compensation" includes, but is not limited to, Longshoremen's and Harbor Workers' Compensation.

Section 3. File and Record Documentation. The insurer's claim files shall be subject to examination by the Commissioner of Insurance or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

Section 4. Misrepresentation of Policy Provisions. (1) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages, or other provisions of an insurance policy or insurance contract under which a claim is presented.

(2) No agent shall conceal from first party claimants benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages, or other provisions are pertinent to a claim.

(3) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unreasonable [unfounded] refusal by a claimant to do so.

(4) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit

prejudices the insurer's rights.

(5) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(6) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

Section 5. Failure to Acknowledge Pertinent Communications. (1) Every insurer, upon receiving notification of a claim shall, within ten (10) working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) Every insurer, upon receipt of any inquiry from the Insurance Department respecting a claim shall, within fifteen (15) working days of receipt of such inquiry, furnish the Insurance Department with an adequate response to the inquiry. Insurers receiving Insurance Department inquiries concerning health insurance claims should send a written reply to the Insurance Department within ten (10) days of receipt if it is reasonably possible to do so.

(3) An appropriate reply shall be made within ten (10) working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within ten (10) working days of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt Investigation of Claims. Every insurer shall complete investigation of a claim within thirty (30) days after notification of claim, unless such investigation cannot reasonably be completed within such time.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers. (1) For a claim subject to KRS 304.12-235, within sixty (60) [fifteen (15) working] days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. For other first party claims, the first party claimant shall be advised of the insurer's aceptance or denial of the claim within fifteen (15) working days after receipt of proof of loss. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial. A fire insurance claim for which a first party claimant is entitled to be paid shall be paid within thirty (30) days of receipt of due proof of loss. Where there is a reasonable basis supported by specific information available for review by the Commissioner of Insurance that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of this subsection. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(2) If a claim is denied for reasons other than those described in subsection (1) of this section and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

(3) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen (15) working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five (45) days from the date of the initial notification and every forty-five (45) days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation. If the claim is subject to KRS 304.12-235, the notice shall also advise the first party claimant that if the insurer fails to make a good faith attempt to settle a claim within sixty (60) days of receipt of proof of loss the claim bears interest at the rate of twelve (12) percent per annum from the expiration of the sixty (60) day period specified in subsection (1) of this section and that if the delay is without reasonable foundation, the insured must be reimbursed for reasonable attorney's fees incurred in collecting the claim. Where there is a reasonable basis supported by specific information available for review by the Commissioner of Insurance for suspecting that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of this subsection. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(4) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(5) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty (30) days and to third party claimants sixty (60) days before the date on which such time limit may expire.

(6) No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the

provision of a statute of limitations.

Section 8. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle [Automobile] Insurance. (1) When the insurance policy provides for the adjustment and settlement of first party motor vehicle [automobile] total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(a) The insurer may elect to offer a replacement motor vehicle [automobile] which is a specific comparable motor vehicle [automobile] available to the insured, with all applicable taxes, license fees (if such fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of the motor vehicle [automobile] paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle [automobile] including all applicable taxes, license fees (if such fees cannot be refunded by the Transportation Cabinet), and other fees incident to transfer of evidence of ownership of a comparable motor vehicle [automobile]. Such cost may be determined by:

1. The cost of a comparable motor vehicle [automobile] in the local market area when a comparable motor vehicle [automobile] is available in the local market area.

2. One (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified dealers (i.e., dealers which engage in the buying and selling of comparable motor vehicles [automobiles] in the ordinary course of their business) located within the local market area when a comparable motor vehicle [automobile] is not available in the local market area.

(c) When a first party motor vehicle [automobile] total loss is settled on a basis which deviates from the methods described in subsection (1)(a) and (b) of this section, the deviation must be supported by documentation giving particulars of the motor vehicle's [automobile] condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(2) The measure of damages in a third party motor vehicle loss is the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by such third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value.

(3) [(2)] Where liability and damages are reasonably clear, insurers shall not recommended that third party claimants make claims under their own policies solely to avoid paying claims under such insurers' insurance policies or insurance contracts.

(4) [(3)] Insurers shall not require a claimant to travel unreasonably either to inspect a replacement motor vehicle [automobile], to obtain a repair estimate or to have the motor vehicle [automobile] repaired at a specific repair shop.

(5) [(4)] Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense. This subsection shall not be construed as requiring subrogation procedures prohibited by KRS 304.39-070.

(6) [(5)] If an insurer prepares an estimate of the cost of motor vehicle [automobile] repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one (1) or more conveniently located repair shops.

(7) [(6)] When the amount claimed is reduced because of betterment or depreciation, all information supporting such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(8) [(7)] When the insurer elects to repair and designates a specific repair shop for motor vehicle [automobile] repairs, the insurer shall cause the damaged motor vehicle [automobile] to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 1, 1988
FILED WITH LRC: July 6, 1988 at 10 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-210, 304.20-160, 304.20-300 to 304.20-350, 304.30-110

PURSUANT TO: KRS Chapter 13A, 304.2-110, 304.30-070

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.30-070 provides that the Commissioner of Insurance may make reasonable regulations necessary for the effectuation of any provision of KRS Chapter 304.30. This regulation provides certain guidelines for the declination, cancellation, and nonrenewal of property and casualty insurance pursuant to KRS 304.20-300 to 304.20-350.

Section 1. Definitions. The definitions of KRS

304.20-300 and 304.20-310 apply to this regulation.

Section 2. Application of KRS 304.20-300 to 304.20-350 to Property and Casualty Insurance Policies. (1) KRS 304.20-300 to 304.20-350 apply to declinations, cancellations, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies described in KRS 304.20-300 delivered, issued for delivery, or renewed after July 15, 1986.

(2) KRS 304.20-300 to 304.20-350 apply to every declination which occurs after July 15, 1986.

(3) KRS 304.20-300 to 304.20-350 apply to the cancellation, nonrenewals, and twenty-five (25) percent premium increases of all property and casualty insurance policies delivered or issued for delivery after July 15, 1986.

(4) KRS 304.20-300 to 304.20-350 apply to the cancellation, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies in existence on July 15, 1986, only after such policies have been renewed after July 15, 1986.

(5) The 1988 amendments to KRS 304.20-300 to 304.20-350 apply to:

(a) Declinations which occur on or after July 15, 1988;

(b) Cancellations, nonrenewals, and twenty-five (25) percent premium increases of all property and casualty insurance policies delivered or issued for delivery to be effective on or after July 15, 1988; and

(c) Cancellations, nonrenewals, and twenty-five (25) percent premium increases of property and casualty insurance policies in existence on July 15, 1988, only after such policies have been renewed after July 15, 1988.

[Section 3. Notice of Nonrenewal. (1) Every notice of nonrenewal pursuant to KRS 304.20-320 shall contain the following statement, or a statement substantially similar to the following statement:]

> [Kentucky law provides that you may submit a written request to the insurer for an explanation of the reason for the nonrenewal of your policy. The insurer must respond within 15 working days of the receipt of your request. Submit your written request to: (name and address of person whom request should be directed).]

[(2) The statement required by subsection (1) of this section shall be printed in a manner reasonably calculated to inform the insured of the right to request in writing the reason for the nonrenewal.]

[(3) Written requests for explanations of the reasons for nonrenewals shall be answered by insurers within fifteen (15) working days of receipt of such requests.]

[(4) The statement set forth in subsection (1) of this section is not required if the notice of nonrenewal contains the reason for the nonrenewal.]

Section 3. [4.] Notice of Reason for Declination, Cancellation, or Nonrenewal. (1) In every instance where KRS 304.20-300 to 304.20-350 [or this regulation] require a reason for declination, cancellation, or nonrenewal to be given to an applicant or an insured, the reason given shall be a statement reasonably calculated to inform the applicant or insured of the reason for the declination, cancellation, or nonrenewal. For example, the statement that a policy was nonrenewed for "underwriting reasons" is inadequate.

(2) Subsection (1) of this section does not apply where a risk is declined or a policy terminated where there is specific information available for review by the Commissioner of Insurance that the insured has contributed to a loss by arson. A more general reason may be given to the insured in this situation.

(3) The fact that the reason for declination, cancellation, or nonrenewal has been obtained through an investigative consumer report subject to the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., does not relieve the insurer from the requirement of notifying the insured of the declination, cancellation, or nonrenewal pursuant to KRS 304.20-300 to 304.20-350. However, any insured wishing to learn the substance of an investigative consumer report must be directed to contact the consumer reporting agency and follow the procedures contained in the Fair Credit Reporting Act.

(4) A reason for cancellation or nonrenewal which does not appear in the notice of cancellation or nonrenewal shall not be a basis for cancellation or nonrenewal.

Section 4. [5.] Policy Forms. (1) Policy forms filed with and approved by the Commissioner of Insurance as of July 15, 1986, need not be amended to comply with KRS 304.20-300 to 304.20-350, but insurers using such forms shall adopt procedures which conform to KRS 304.20-300 to 304.20-350. Policy forms filed with and approved by the Commissioner of Insurance as of July 15, 1988, need not be amended to comply with the 1988 amendments to KRS 304.20-300 to 304.20-350, but insurers using such forms shall adopt procedures which conform to the 1988 amendments to KRS 304.20-300 to 304.20-350.

(2) Policy forms filed with the Commissioner of Insurance after July 15, 1986, shall contain language complying with KRS 304.20-300 to 304.20-350. Policy forms filed with the Commissioner of Insurance after July 15, 1988, shall contain language complying with the 1988 amendments to KRS 304.20-300 to 304.20-350.

Section 5. [6.] Cancellation for Nonpayment of Premium Under Insurance Premium Finance Company Contracts Controlled by KRS Chapter 304.30. (1) If an insurance premium finance company exercises its power of attorney to cancel a policy pursuant to KRS 304.30-110, such cancellation is considered to be a cancellation at the request of the insured and shall not be subject to KRS 304.20-300 to 304.20-350.

(2) The phrases "premium finance plan" and "extension of credit" in KRS 304.20-310(2) refer to extensions of credit to pay for insurance which are made by insurers or other entities not subject to KRS Chapter 304.30.

Section 6. [7.] Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: July 1, 1988
FILED WITH LRC: July 6, 1988 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH JULY 15

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:320. Probationary period.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning probationary periods.

Section 1. Initial Probationary Period. (1) An employee initially appointed to a position in the classified service shall serve a six (6) month probationary period, except when appointed to a job classification for which an initial probationary period in excess of six (6) months has been established by 101 KAR 1:325. For such job classifications, the probationary period shall be the number of months specified to apply to that job classification. No initial probationary period shall exceed twelve (12) months, except as provided by subsection 10 of this section.

(2) The initial probationary period shall be a period of special observation and evaluation of an employee's work and shall be utilized for the most effective adjustment of a new employee. Any employee whose job performance does not meet the required standards shall be dismissed.

(3) An employee who satisfactorily completes the initial probationary period shall be granted status. Unless an employee receives notice prior to the end of his initial probationary period that he is dismissed from his position, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service. If an employee receives notice prior to the end of his initial probationary period that he is dismissed, the effective date of such dismissal may be after the date when the employee would have completed the initial probationary period, if this is necessary to comply with the ten (10) working day notice requirement of subsection (4) of this section.

(4) An employee serving an initial probationary period may be dismissed for unsatisfactory performance and shall not have a right to appeal except as provided by 101 KAR 1:350, Sections 11 and 12. If an employee is dismissed while serving an initial probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his dismissal. The notification shall advise the employee of the effective date of dismissal and shall include a general statement of the reason for the dismissal. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel.

(5) An employee who has been dismissed while serving an initial probationary period shall be placed on the eligible register for the job classification from which initially appointed, but shall not be certified to the agency which dismissed him unless that agency so requests.

(6) An employee serving an initial probationary period may be disciplined without the right of appeal except as provided by 101 KAR 1:350, Sections 11 and 12.

(7) An employee serving an initial probationary period shall not be promoted[, demoted,] or transferred.

(8) Provisional service in a job class immediately prior to initial probationary appointment to a position in that job classification shall be credited toward the initial probationary period.

(9) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth month following appointment, unless an initial probationary period in excess of six (6) months has been established by 101 KAR 1:325, in which event it shall be computed from the effective date of appointment to the corresponding date in the month as specified.

(10) If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence.

Section 2. Promotional Probationary Period. (1) An employee with status who has been promoted to another position in the classified service shall serve a promotional probationary period of six (6) months.

(2) While serving a promotional probationary period, an employee shall retain the rights and privileges of a status employee.

(3) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(4) An employee who fails to satisfactorily complete a promotional probationary period for unsatisfactory performance shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion and shall include a general statement of the reason for failure to complete the promotional probationary period. At the time of notification, copies of the notice shall be forwarded to the Commissioner of Personnel. Failure to complete a promotional probationary period for unsatisfactory performance is not appealable, except as provided in 101 KAR 1:350, Sections 11 and 12.

(5) An employee who was selected for promotion from a promotional register and who has failed to satisfactorily complete a promotional probationary period shall be placed on the promotional register for the job classification

from which he was selected for promotion.

(6) An employee serving a promotional probationary period may request that he be reverted to his former position or a position in the same job classification as his former position at any time during the promotional probationary period. If his request is granted by the appointing authority, the notification requirements of subsection (4) of this section do not apply.

(7) If there is no position in the same job classification as his former position to which an employee serving a promotional probationary period may be reverted, the provisions of 101 KAR 2:080 shall apply.

(8) An employee serving a promotional probationary period shall not be promoted, demoted or transferred.

(9) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion.

(10) If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence.

Section 3. Probationary Period Upon Reinstatement. (1) Except as provided in subsection (2) of this section, an employee who is reinstated to a position in the classified service shall serve an initial probationary period.

(2) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.

(3) If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence.

Section 4. Probationary Period Upon Reemployment. (1) A laid-off employee who is reemployed or who accepts a bona fide written offer of employment to a position shall serve a promotional probationary period as provided in Section 2 of this regulation. He shall be an employee with status and shall have all the rights and privileges of a status employee.

(2) If an employee is serving a promotional probationary period pursuant to this section and fails to satisfactorily complete the promotional probationary period, he shall be notified in accordance with Section 2(4) of this regulation and removed from the position. He shall then be placed on the reemployment register from which reemployed and any other reemployment register in accordance with the provisions of 101 KAR 1:330, Section 5.

(3) If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: July 8, 1988

FILED WITH LRC: July 12, 1988 at 10 a.m.

PUBLIC HEARING: Public hearing on this regulation is scheduled for August 22, 1988, at 9:30 a.m., in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucy 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with positions in the classified service.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings.

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:

(2) Effects on the promulgating administrative body: All state agencies with positions in the classified service.

(a) Direct and indirect costs or savings: No direct or 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: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not aware of alternate methods considered or rejected.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(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: Administrative regulation amended to conform to the provisions of Senate Bill No. 225.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the Board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 18A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid where issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606, (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in

some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as: (a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment. (b) Providing equitable and adequate compensation. (c) Training employees, as needed, to assure high quality performance. (d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected. (e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws. (f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsiblities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate. It provides clarification as to the amount of time that must actually be worked by an employee during the probationary period.

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. Initial probationary periods in excess of six (6) months.

RELATES TO: KRS 18A.0751, 18A.111
PURSUANT TO: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.111 provides that specified job classifications may require an initial probationary period in excess of six (6) months. KRS 18A.0751 provides that initial probationary periods in excess of six (6) months be established by administrative regulation. This regulation is to implement these statutory provisions.

Section 1. Initial Probationary Periods for Specific Job Classifications. The following job classifications shall require an initial probationary period in excess of six (6) months, as specified:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2408	MVE Trainee	12 months
2410	MVE Officer Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

Section 2. Other Provisions. (1) Except for the length of the initial probationary period, the provisions of 101 KAR 1:320 shall apply to an employee appointed to a job classification specified in Section 1 of this regulation.

(2) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall be required to serve the shorter of the initial probationary periods.

ARTHUR HATTERICK, JR., Secretary
APPROVED BY AGENCY: May 18, 1988
FILED WITH LRC: June 16, 1988 at 2 p.m.
PUBLIC HEARING: Public hearing on this regulation is scheduled for August 22, 1988 at 9:30 a.m., in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.
(1) Type and number of entities affected: All state agencies with classified employees.
(a) Direct and indirect costs or savings to those affected: No appreciable change.
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: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: N/A
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: None
(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: None
(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: None
TIERING: Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:360. Appeal procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
PURSUANT TO: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. KRS 18A.095 relates specifically to the manner in which hearings are to be conducted. This regulation is to implement these statutory provisions and to provide comprehensive guidance to state agencies and employees concerning the procedures for hearing of appeals.

Section 1. Scheduling of Appeals. (1) Upon receipt of an appeal, the executive director shall transmit copies to the appointing authority and the Department of Personnel.
(2) The executive director shall schedule the appeal for a hearing to be conducted within sixty (60) days after the appeal was filed. Written notice shall be sent to all parties as to the date and place of the hearing. The board shall, within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.
(3) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders to the appealing employee regarding the appeal will be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.
(4) Unless otherwise directed by the board, the executive director shall assign the appeal to be heard by one (1) or more of the following [any of the following, who shall serve as hearing examiners]:
(a) Its executive director [Two (2) nonelected board members];
(b) Its general counsel [A nonelected board member and the executive director];
(c) Any nonelected member of the board; or [A nonelected board member and a hearing officer;]
(d) Any of its hearing officers hired by personal service contract. [The executive director and a hearing officer; or]
[(e) The general counsel of the board and either a nonelected board member, the executive director, or a hearing officer.]
(5) Hearing officers not employed by the board [to assist in the hearing of appeals] shall be attorneys authorized to practice law in Kentucky and hired by personal service contract.
(6) Unless the appeal is to be heard by the full board, the executive director shall designate a chief hearing examiner in each appeal. If the appeal is to be heard by the full board, the chairman shall be the chief hearing examiner.
(7) All appeals shall be scheduled to be heard in Frankfort, Kentucky.

Section 2. Request for Continuance. (1) Any party may request a continuance of a scheduled hearing for good cause. Such request must be in writing, must state the reason for the request, and shall include proposed dates for rescheduling the hearing. The request shall be filed with the board, through the office of the executive director, and mailed to all other parties at least seven (7) days prior to the scheduled hearing.
(2) If a continuance is requested by an employee who would be entitled to back pay if successful in his appeal, the request must include a waiver of back pay from the date of the originally scheduled hearing until the date of the hearing as rescheduled pursuant to his request.
(3) Any party objecting to a requested continuance may file a written objection stating the reason therefore with the board, through the office of the executive director, within four (4) days after the request for continuance was mailed. Copies shall be mailed to all other parties.
(4) A general continuance will be granted only

in extraordinary circumstances, unless agreed upon by all parties and the chief hearing examiner.

(5) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(6) All requests for continuances shall be ruled on by the chief hearing examiner. At the direction of the chief hearing examiner, the executive director shall prepare, execute, and transmit to all parties an interim order either granting or denying the requested continuance. If the request is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) Any motion, request or filing required by this section by any party prior to the scheduled hearing shall be in writing, shall be filed with the board through the office of the executive director, and shall be served on all other parties.

(2) The chief hearing examiner shall rule on any motion or request. At the direction of the chief hearing examiner, the executive director shall prepare, execute and transmit to all parties an interim order stating his ruling. Interim orders are not reviewable by the board except as part of the record of the hearing on final review, unless otherwise provided in the interim order.

(3) No motions for summary judgment shall be considered. No motion to dismiss the appeal shall be considered except on the ground that the appeal was not timely filed or, in the case of an appeal filed by an unclassified employee, for failure to state the cause for which he has been dismissed or penalized. If such a motion to dismiss is granted, or if the chief hearing examiner determines, upon review, that an appeal was not timely filed or, in the case of an unclassified employee, failed to state the cause for which he has been dismissed or penalized, an interim order shall be entered and such order shall be reviewed by the full board at its next regularly scheduled meeting.

(4) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders to the appealing employee regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) An appealing employee shall notify all other parties and the board in writing of any change of address.

(6) A list of witnesses who may be called to testify at the hearing and any request for the production of documents shall be filed by each party at least five (5) days prior to the scheduled hearing.

(7) Subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(8) Depositions for proof may be taken only in extraordinary circumstances and upon authorization by the chief hearing examiner. A request to take a deposition for proof shall be filed at least seven (7) days prior to the scheduled hearing. Any objections to such request shall be filed at least two (2) days of receipt of the request.

(9) Upon request of all parties and approval by the chief hearing examiner, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the chief hearing examiner may join other parties as necessary to appropriately consider the matter on appeal.

(10) The chief hearing examiner may schedule a prehearing conference to be held [no more than five (5) days] prior to a [the] scheduled hearing. The prehearing conference may be utilized to define the issues to be considered at the hearing, to determine which facts, if any, can be stipulated, and to rule on any pending motions or requests, or to address any other matter which will facilitate the hearing of the appeal.

(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

(a) Scheduling of appeal hearings;

(b) Procedural questions concerning motions filed or those to be filed; and

(c) Such other actions in which all parties are participating, including mediation, settlement conferences, and conferences conducted by telephone.

(12) Any agreed settlements resulting from the provisions of subsection (11) of this section shall be submitted in writing for the full board's review and final action.

Section 4. Conduct of Hearing. (1) No appeal shall be decided by the board except after a hearing except as provided in Section 3(3) of this regulation. Each appeal shall be decided on its merits and the decision of the board shall be based on the evidence, facts, and information presented at the hearing and contained in the record.

(2) Each party shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts. An appealing employee is not required to retain counsel and may proceed without counsel if he so desires.

(3) Unless the appeal is heard by the full board, [both] hearing examiners assigned to the appeal, pursuant to Section 1 of this regulation, shall hear the appeal. The chief hearing examiner shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing, including motions filed or presented orally at the hearing. He shall require an orderly and proper decorum at the hearing, and he shall be authorized to require compliance with his rulings.

(4) [Either] Hearing examiners may participate in the hearing by questioning witnesses. Upon his own motion, or upon request of a party or [the] other hearing examiners, the chief hearing examiner may require the production by a party of documents, records, or other material relevant to the appeal.

(5) All parties shall have access to information produced by an investigation by the board of any matter related to an appeal. Such information shall be made a part of the record by the chief hearing examiner and any party

shall be permitted an adequate opportunity to rebut or comment on such information.

(6) Each appeal shall be decided individually unless all parties and the chief hearing examiner have agreed to the consolidation of cases involving the same or similar facts.

(7) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(8) Technical rules of evidence and the rules of civil procedure do not apply.

(9) The burden of proof shall be on the appointing authority, unless the appeal is one which was required by 101 KAR 1:350 to be first filed through the employee grievance procedure. In such cases, the burden of proof shall initially be on the appealing employee.

(10) The party with the burden of proof shall put on its case first, presenting any witnesses and documentation, subject to cross examination. The opposing party shall then put on its case, presenting any witnesses and documentation, subject to cross examination.

(11) All parties shall provide four (4) copies of any exhibit which is to be introduced as evidence.

(12) A record shall be made by a court reporter of the evidence presented at the hearing.

(13) Appeal hearings shall be open to the public. However, no electronic media coverage, including radio or television broadcasting or video recording, shall be permitted during the hearing.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the chief hearing examiner shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record. If the appeal was heard by the full board, the chairman shall prepare the recommended order.

(2) The findings of fact shall include, but are not limited to, findings that the action being appealed was or was not taken with just cause, that the action being appealed was or was not erroneous or excessive in view of all the surrounding circumstances, or that the action being appealed was or was not taken in violation of laws prohibiting discrimination. Where appropriate, the findings shall also include a determination as to whether the appealing employee was or was not penalized.

(3) The recommendations shall include, but are not limited to, recommendations that the action being appealed be sustained, rescinded, altered or modified, that the appealing employee be reinstated or otherwise be made whole, that the appointing authority be directed to take or refrain from taking some action, or that the appeal be dismissed.

(4) At the direction of the chief hearing examiner, the recommended order shall be entered and transmitted by the executive director to all parties.

(5) Any party may submit written exceptions to the findings of fact and recommendations. Such exceptions must be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, unless otherwise directed by the chief hearing examiner and served on all other parties.

(6) Any party may submit a written response to any exceptions filed with the board. Such response must be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, unless otherwise directed by the chief hearing examiner and served on all other parties.

(7) If it is recommended that an employee who has been dismissed for cause be reinstated, exceptions filed by the appointing authority may include a request, supported by sufficient justification, that the employee not be reinstated to his former position until conclusion of any appeal of the board's decision under KRS 18A.100.

(8) Any exception or response which is not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(9) Any party may request, in writing, oral argument before the board. Such request must be filed with the board through the office of the executive director within fifteen (15) days of entry of the recommended order, and served on all other parties. Upon such request, or upon its own motion, the board shall permit all parties to present oral argument, subject to such limitations as prescribed by the chairman.

Section 6. Board Review and Action. (1) The full board shall review the record of evidence [presented at the hearing], the findings of fact and recommendations of the chief hearing examiner, the written exceptions and responses filed by the parties, and any oral arguments prior to reaching a final determination. Each appeal shall be decided on its merits and the board shall base its decision on the evidence, facts and information contained in the record.

(2) The board may adopt as submitted the findings and recommendations of the chief hearing examiner, amend such findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing examiners for further action as appropriate.

(3) Following consideration by the full board, a final order shall be entered disposing of the appeal. Such order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

(4) If the board finds that the action appealed was taken without just cause or in violation of laws prohibiting discrimination, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay, or otherwise make the employee whole.

(5) If the board finds that the action appealed was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify or rescind the action, or otherwise grant such relief to which the employee is entitled.

(6) If the board's order is appealed by the appointing authority pursuant to KRS 18A.100, the reinstated employee shall remain in the position to which reinstated until the conclusion of such court appeal, unless the order of the board directs otherwise.

(7) When an employee has been dismissed and not ordered reinstated after appeal, the board may direct that his name be placed on an

appropriate reemployment register for any similar position.

(8) Unless the order of the board is appealed pursuant to KRS 18A.100, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board. An employee who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at his hearing before the board.

Section 7. Appeal of Board Decision. (1) Any final order of the board may be appealed by any party pursuant to KRS 18A.100.

(2) If the appointing authority appeals the final order of the board, an employee who was ordered reinstated shall remain in the position to which reinstated until the conclusion of such court appeal, unless the order of the board directs otherwise.

(3) If a final order of the board is appealed, an employee who prevails in the final adjudication shall be credited with the amount of leave time used for time spent at his hearing before the board and before the court. An employee who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at his hearing before the board and before the court.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: July 8, 1988

FILED WITH LRC: July 12, 1988 at 10 a.m.

PUBLIC HEARING: Public hearing on this regulation is scheduled for August 22, 1988, at 9:30 a.m., in Room 360 of the Capitol Annex Building. Those interested in attending please contact: Commonwealth of Kentucky, Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified and unclassified positions. It also affects public service employment by the Commonwealth of Kentucky, or by any county, city, or political subdivision, or any department, board, agency, or commission thereof.

(a) Direct and indirect costs or savings to those affected: It will reduce costs as a result of employees prevailing in an appeal relating to open records requests, KRS 18A.020. It will also reduce costs to those agencies who do not prevail in an appeal before the board and are required to pay the appellant back pay and made otherwise whole. This results from the ability of the board to have only one hearing officer instead of two. This will allow the board to hear appeals in a more timely fashion thereby reducing the possible back pay for the interim period of unemployment. It will also allow the parties, appellants and appellees, to participate in conversations relating to procedures in person or by telephone which will reduce the time spent on preparation of written correspondence.

1. First year: Those savings that would result following a speedier decision by the board and/or the courts.

2. Continuing costs or savings: See 1 above

3. Additional factors increasing or decreasing costs (note any effects upon competition): The sooner the Personnel Board enters a final order which results in an appeal with the courts it would appear that the sooner the courts would enter a final order resulting in less back pay to an employee who prevails in a hearing before the board.

(b) Reporting and paperwork requirements: See (1)(a) above.

(2) Effects on the promulgating administrative body: Ex parte communication with the parties will decrease the required number of prehearing conferences relating to procedures and settlement agreements.

(a) Direct and indirect costs or savings: See (2) above.

1. First year: A decrease in the amount of expenses related to the number of prehearing conferences would be unnecessary in the future.

2. Continuing costs or savings: See (1) above.

3. Additional factors increasing or decreasing costs: The one hearing officer requirement will reduce considerably the expenses per appeal. It will allow the board to hear more appeals in a more timely fashion. It will not result in a cost savings to the board this fiscal year but will increase the number of appeals heard. It will also allow the board to address inquiries concerning scheduling, procedures and settlements in a less-time consuming manner.

(b) Reporting and paperwork requirements: It will reduce correspondence and orders of the hearing officers on those matters pertaining to scheduling, procedure inquiries and settlement agreements. It will also reduce the number of copies of documents resulting from one hearing officer instead of two.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None have been identified at this time as being appropriate resulting from the passage of SB 270.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We have attempted to promulgate this regulation which is in keeping with the provisions of KRS 18A.095, 18A.100 and the board's statutory authority to promulgate regulations pursuant to KRS 18A.0751(4)(a) and (k). In an attempt to harmonize these three statutes into a comprehensive administrative regulation there is some overlapping and duplication.

(a) Necessity of proposed regulation if in conflict: See (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See (5) above.

(6) Any additional information or comments: This regulation will provide comprehensive guidance to state agencies, employees, and applicants who are affected by these appeal procedures.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the Board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No___

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Local governments must comply with the provisions of this regulation pursuant to the provisions of KRS 61.371 to 61.379 as it relates to an appeal before the board. Such appeals are filed by individuals seeking to be restored to employment from military duty. Since the amendment of KRS 61.371 there have been only two appeals filed relating to this matter, both of which have been resolved prior to a full evidentiary hearing.

3. State the aspect or service of local government to which this administrative regulation relates. See item No. 2 above.

4. How does this administrative regulation affect the local government or any service it provides: See item No. 2 above.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid where issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606, (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as: (a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment. (b) Providing equitable and adequate compensation. (c) Training employees, as needed, to assure high quality performance. (d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected. (e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws. (f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate. It merely provides the impartial appeal process as required by the federal merit standard that results in a timely enforceable decision.

REVENUE CABINET
Department of Professional & Support Services
(Proposed Amendment)

103 KAR 16:100. Apportionment and allocation; telephone and telegraph companies.

RELATES TO: KRS 141.120
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(10)(b), specifies how the factors for apportioning the income of interstate telephone and telegraph companies are to be determined.

Section 1. General. (1) Business income of multistate telephone and telegraph companies shall be apportioned to Kentucky by multiplying the income by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent) plus the weighted property factor (twenty-five (25) percent) plus the weighted payroll factor (twenty-five (25) percent) and the denominator of which is four (4) [three (3)].

(2) Nonbusiness income shall be allocated to Kentucky by KRS 141.120(4) through [(3) to] (7) and 103 KAR 16:060.

Section 2. Sales Factor. Sales means total gross rceipts excluding gross receipts allocated as nonbusiness income under subsections (4) through (7) of KRS 141.120. The sales factor is a fraction, the numerator of which shall be sales which are assigned to Kentucky and the denominator of which is total sales. Sales are assigned to Kentucky as follows:

(1) Gross receipts from sales or services billed to customers in Kentucky;

(2) Access fees from long distance carriers for services rendered by the local company in Kentucky; and

(3) Gross receipts from other than sales or services and access fees, shall be assigned to Kentucky pursuant to Section 6(5) of 103 KAR 16:070.

Gross receipts from sales or services

includes, but is not limited to, the following accounts or charges: local service, toll revenue, access fees, or any other charges billed directly or indirectly to a customer. [Sales means operating revenues as defined by the Federal Communications Commission. The sales factor is a fraction, the numerator of which shall be revenues included in gross operating revenue accounts, as defined in the Uniform System of Accounts prescribed by the Federal Communications Commission, which are assigned to Kentucky and the denominator of which is the total of such gross operating revenues. Operating revenues are assigned to Kentucky as follows:]

[(1) Kentucky gross intrastate operating revenues, and]

[(2) Gross interstate operating revenues which are attributable to Kentucky based upon cost of performance and return on investments. Costs of performance and return on investments shall be determined in accordance with the procedures detailed in the "Separation Manual" issued by the National Association of Railroad and Utility Commissioners and concurred in or ordered on an interim basis by the Federal Communications Commission.]

Section 3. Property Factor. The property factor shall be determined under the provisions of KRS 141.120(8)(a) and 103 KAR 16:080 except that owned or leased property in outer space shall be excluded from the factor. [The property factor shall be determined under the provisions of KRS 141.120(8)(a) and 103 KAR 16:080.]

Section 4. Payroll Factor. The payroll factor shall be determined under the provisions of KRS 141.120(8)(b) and 103 KAR 16:090.

Section 5. The provisions of this regulation are effective for taxable years beginning on or after January 1, 1985 except that Section 1 of this regulation shall be effective for taxable years beginning after July 31, 1985. For taxable years beginning before August 1, 1985, the business income shall be apportioned by a fraction consisting of a sales factor, property factor and payroll factor and a denominator of three (3).

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: July 5, 1988
FILED WITH LRC: July 11, 1988 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 22, 1988 at 1:30 p.m. in Room 406 of the Capitol 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 Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: This corporation income tax apportionment and allocation regulation affects multistate taxpayers engaged in the interstate transmission of telephone and telegraph messages. The 1985 United States Supreme Court opinion made a major revision in the taxing structure in the telephone industry. This industry breakup substantially increased the number and type of taxpayer while complicating the apportionment and allocation of sales. This regulation amendment conforms to apportionment factor amendments enacted by the 1985 Extraordinary Session of the General Assembly, and also prescribes factor changes necessary to reflect these changing conditions.
(a) Direct and indirect costs or savings to those affected:
1. First year: Additional cost involved in conforming to the apportionment factor change was incurred in prior years following reorganization.
2. Continuing costs or savings: None. Costs involved in calculating factors under new law should not exceed those under prior law.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Apportionment factor change causes a nominal increase in state revenue. Local revenue is not affected.
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 141.120(10) requires property and sales factors to be prescribed by regulation.
(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 & Support Services
(Proposed Amendment)

103 KAR 16:110. Apportionment and allocation; pipeline companies.

RELATES TO: KRS 141.120
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(10)(b), specifies how the factors for apportioning the income of interstate pipeline companies are to be determined.

Section 1. General. (1) Business income of multistate pipeline companies shall be apportioned to Kentucky by multiplying the income by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent) plus the weighted property factor

(twenty-five (25) percent) plus the weighted payroll factor (twenty-five (25) percent), and the denominator of which is four (4) [three (3)].

(2) Nonbusiness income shall be allocated to Kentucky pursuant to [by] KRS 141.120(4) through [(3) to] (7) and 103 KAR 16:060.

Section 2. Sales Factor. (1) Gas transmission pipelines. Sales means operating revenues as defined by the Federal Energy Regulatory Commission [Federal Power Commission]. Sales are assigned under the provisions of KRS 141.120(8)(c).

(2) Crude oil pipelines. Sales means operating income as defined by the Federal Energy Regulatory Commission [Interstate Commerce Commission]. The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky, and the denominator of which is total operating income. Kentucky operating income is determined as follows: total operating income shall be multiplied by a fraction the numerator of which is barrel miles in Kentucky and the denominator of which is total barrel miles. A "barrel mile" means one (1) barrel of liquid transported one (1) mile.

Section 3. Property Factor. The property factor of gas transmission pipelines and crude oil pipelines shall be determined under the provisions of KRS 141.120(8)(a) and 103 KAR 16:080.

Section 4. Payroll Factor. The payroll factor of gas transmission pipelines and crude oil pipelines shall be determined under the provisions of KRS 141.120(8)(b) and 103 KAR 16:090.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: July 5, 1988
FILED WITH LRC: July 11, 1988 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 22, 1988 at 10 a.m. in Room 406 of the Capitol 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 Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: This corporation income tax apportionment and allocation regulation affects multistate taxpayers engaged in the interstate transmission of natural gas, oil and other materials by pipeline. This regulation amendment conforms to apportionment factor changes enacted by the 1985 Extraordinary Session of the General Assembly, and reflects changes in the Federal Regulatory Agency which controls this industry.
(a) Direct and indirect costs or savings to those affected:
1. First year: Any additional cost involved in conforming to the apportionment factor change was incurred in prior years.
2. Continuing costs or savings: None. Costs involved in calculating factors under new law should not exceed those under prior law.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: Audit costs may increase slightly with increased factor complexity.
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Apportionment factor change causes a nominal decrease in state revenue. Local revenue is not affected.
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 141.120(4) requires property and sales factors to be prescribed by regulation.
(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 & Support Services
(Proposed Amendment)

103 KAR 16:130. Apportionment and allocation; railroad companies.

RELATES TO: KRS 141.120
PURSUANT TO: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation, under authority of KRS 141.120(10)(b), specifies how the factors for apportioning the income of interstate railroad companies are to be determined.

Section 1. General. (1) Business income of multistate railroad companies shall be apportioned to Kentucky by multiplying the business income by a weighted fraction, the numerator of which is the weighted sales factor (fifty (50) percent) plus the weighted property factor (twenty-five (25) percent) plus the payroll factor (twenty-five (25) percent) and the denominator of which is four (4) [three (3)].

(2) Nonbusiness income shall be allocated to Kentucky pursuant to [by] KRS 141.120(3) through [to] (7) and 103 KAR 16:060.

Section 2. Sales Factor. Sales means railway operating revenue as defined by the Interstate Commerce Commission (I.C.C.) plus all other business income. The sales factor is a fraction, the numerator of which is railway operating revenue plus other business income assigned to Kentucky and the denominator of which is total railway operating revenues plus total other business income. Railway operating revenue and other business income shall be assigned to Kentucky as follows:

(1) Railway operating revenue shall be assigned to Kentucky by the use of the ratio of revenue car miles in Kentucky to total revenue car miles of the railway carrier everywhere. The term "revenue car mile" shall mean the movement of a loaded car one (1) mile.

(2) All other gross receipts classified as business income shall be assigned to Kentucky pursuant to 103 KAR 16:070. [Sales means operating income as defined by the Interstate Commerce Commission. Operating income shall be railway operating revenue determined in accordance with accounting rules for railroads prescribed by the Interstate Commerce Commission. The sales factor is a fraction, the numerator of which is operating income assigned to Kentucky and the denominator of which is total operating income. Operating income is assigned to Kentucky as follows:]

[(1) All operating income from business which both originates and terminates within Kentucky, and]

[(2) The Kentucky mileage portion of the operating income from each movement or shipment passing through, into, or out of Kentucky.]

Section 3. Property Factor. (1) The property factor shall be a fraction, the numerator of which is the average value of road property owned or leased in Kentucky plus the average value of equipment property owned or leased in Kentucky, plus the average value of all other real or tangible business property owned or leased in Kentucky and the denominator of which is the average value of the total owned or leased road property, equipment property and other real or tangible business property. The average value of all property during the taxable period shall be determined under the provisions of 103 KAR 16:080. The value of owned road property, equipment property and other business property shall be its original cost reported for I.C.C. purposes plus capitalized improvements. The value of leased property shall be determined in accordance with the provisions of KRS 141.120(8) and 103 KAR 16:080(6). The value of leased equipment property and road property shall exclude joint facility and joint trackage rentals.

(2) Property shall be assigned to Kentucky (numerator) as follows:

(a) Equipment property owned or leased shall be assigned on the ratio that the locomotive and respective classes of car miles in Kentucky bears to the total locomotive and respective classes of car miles everywhere.

(b) Road property owned or leased shall be assigned if its situs is in Kentucky.

(c) Other business property, real or tangible, shall be assigned if its situs is in Kentucky.

[The property factor is a fraction, the numerator of which shall be the average value of the road property owned or leased in Kentucky plus the average value of the owned equipment property used in Kentucky and the denominator of which shall be the average value of the total road property owned or leased plus the average value of the total owned equipment property used everywhere. The average value of all property during the taxable period shall be determined under the provisions of 103 KAR 16:080. The value of the road property owned or leased shall be its cost or its federal inventory valuation and the value of the owned equipment property shall be its cost. The value of road and equipment properties shall be determined in accordance with the accounting rules prescribed by the Interstate Commerce Commission for railroads and shall not be reduced by depreciation or amortization. Road property shall be assigned to Kentucky if its situs is in Kentucky. The value of owned equipment property used in Kentucky shall be that ratio of the cost to taxpayer of its locomotives and respective classes of cars which its locomotive and respective classes of car miles in Kentucky bear to its total locomotive and respective classes of car miles.]

Section 4. Payroll Factor. Payroll shall be assigned to Kentucky under the provisions of KRS 141.120(8)(b) and 103 KAR 16:090.

Section 5. Definitions. (1) Equipment Property means "the several primary accounts designed to show the cost of the several classes of equipment owned by the carrier, or held under equipment trust agreements or other contractual obligations for purchase of the property."

(2) Road property means "the several primary accounts designed to show the cost of land and road property owned by the carrier and devoted to transportation service."

(3) Other accounting terms and account titles in this regulation shall have those definitions assigned to them by the Interstate Commerce Commission.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: July 5, 1988

FILED WITH LRC: July 11, 1988 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on August 22, 1988 at 9 a.m. in Room 406 of the Capitol 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 Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: This corporation income tax apportionment and allocation regulation affects multistate taxpayers engaged in the interstate transportation of property or persons. This regulation amendment conforms to apportionment factor changes enacted by the 1985 Extraordinary Session of the General Assembly, and also reflects changes in federal regulatory requirements and definitions. Specific minor factor revisions more acurately assign certain sales and property both within and without Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Any additional cost involved in conforming to the apportionment factor change was incurred in prior years.

2. Continuing costs or savings: None. Costs involved in calculating factors should not exceed those under prior law.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: Audit costs may increase slightly with increased factor complexity.
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Apportionment factor change causes a nominal decrease in state revenue. Local revenue is not affected.
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 141.120(10) requires property, and sales factors to be prescribed by regulation.
(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.

DEPARTMENT OF AGRICULTURE
(Proposed Amendment)

302 KAR 20:056. Qualifications and eligibility requirements on state brucellosis indemnity payments for negative exposed cattle.

RELATES TO: KRS 257.020, 257.030, 257.110, 257.120, 257.140
PURSUANT TO: KRS 257.030, 257.110, 257.120, 257.140
NECESSITY AND FUNCTION: The regulation is necessary to explain the conditions under which a cattle herd owner may collect state indemnity which is available only for sero negative exposed adult breeding cattle and heifer calves from within a brucellosis infected herd which are sent directly to slaughter.

Section 1. General Conditions for Eligibility. (1) The state veterinarian shall determine the eligibility of cattle (genus Bos) and bison for the payment of state indemnity funds.
(2) State indemnity funds, if available, shall be paid only for the following classes of cattle that are sent directly to slaughter and in the following amounts:
(a) Fifty (50) [Seventy-five (75)] dollars for each adult breeding cow from a brucellosis infected herd that has [have] been exposed to the disease and branded with a "B" brand but that has been tested negative to an approved brucellosis blood test.
(b) Thirty (30) [Fifty (50)] dollars for each heifer cow from a brucellosis infected herd that has been exposed to the disease. For purposes of this section a heifer cow shall mean a female bovine or bison that has never calved.
(3) In order to be eligible, any animal on which indemnity is requested must have been in Kentucky for at least six (6) months prior to the time of the test which shall determine eligibility for state indemnity and if tested eligible must have been negative to an approved brucellosis test upon entry into Kentucky.
(4) Any animal on which a state indemnity claim is made must be properly tagged and branded within fifteen (15) days of signing of a required state depopulation agreement, sold for slaughter within fifteen (15) days of branding, and proof of slaughter obtained from meat inspection. Home slaughter by the original owner for his home consumption is allowed but proof of slaughter must be supplied. The fifteen (15) day requirement for branding, tagging and slaughter may be extended by the state veterinarian upon written request and for good cause shown.
(5) In order to be eligible for state indemnity funds pursuant to this regulation a written depopulation agreement shall be signed by the owner seeking state indemnity. Authorization for depopulation and for the receipt of state indemnity shall be approved by the state veterinarian and the amount of indemnity is to be mutually agreed upon prior to signing of the agreement.
(6) The following criteria may be considered by the state veterinarian in determining which infected herds qualify for available state indemnity funds:
(a) The percentage of known reactors found in an infected herd;
(b) The clinical evidence of brucellosis infection in the herd;
(c) Culture and isolation of the brucella organism in the herd;
(d) Possibility of spread of brucellosis infection to neighboring herds;
(7) In the alternative, an animal may qualify for the state indemnity provided in this section when the animal is destroyed in compliance with an order of eradication issued pursuant to the authority of 302 KAR 20:058.
(8) In the event that an animal destroyed pursuant to an order of eradication issued under the authority of 302 KAR 20:058 fails to qualify for federal indemnity the state veterinarian may make a supplemental state indemnity payment for the animal. The supplemental indemnity payment may not exceed seventy-five (75) dollars.

Section 2. Exclusions from Eligibility for State Indemnity Payments. Indemnity shall not be paid on the following classes of cattle:
(1) Any test eligible animal that moved into Kentucky without a negative blood test for brucellosis or without an approved health certificate and/or permit when applicable, or in violation of any health requirement for admission or in violation of any law or regulation of the board.
(2) Any animal imported into Kentucky that originated from a known infected or quarantined herd, or determined otherwise to be an exposed animal.
(3) Cattle moving in trade channels in Kentucky which are owned by dealers or traders whether or not said owners are currently licensed by the department.
(4) No state indemnity funds shall be paid to an owner whose cattle are found to be in violation of any state or federal law, regulation, or agreement.

WARD "BUTCH" BURNETTE, Commissioner
APPROVED BY AGENCY: June 22, 1988
FILED WITH LRC: June 27, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on August 25, 1988 at 9:30 a.m. in the Seventh Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact: J. Michael Noyes, General Counsel, Department of Agriculture, Room 719, Capital Plaza Tower, Frankfort, Kentucky 40601. 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.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Donald Notter, State Veterinarian

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: At the present time there are 2,407 adult cattle and 438 heifer calves which could qualify for depopulation payments at a cost to the state of $202,425. Under the proposed amendment, the same number of animals can be depopulated at a cost of $133,490. The real important feature is the livestock owner realizes an award of twenty-five percent per animal through the proposed amendment.

2. Continuing costs or savings: The state funds saved through the proposed amendment would be available for additional livestock and thus utilizing a set number of total dollars available ($250,000) to a higher degree. This is important as the animals currently infected can infect now healthy cattle so the number of livestock owners looking for financial award will be greater than the current 2,845 exposed animals.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The need to totally eradicate brucellosis in Kentucky is urgent as the federal government has set October 1990 as the time of total withdrawal of federal money and of a federal quarantine unless an "A State" status is achieved.

(b) Reporting and paperwork requirements: There would be no change in the amount of paperwork required or the amount of reporting required. Both reporting and paperwork procedures would remain as they are currently.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: See discussion above.

2. Continuing costs or savings: See discussion above.

3. Additional factors increasing or decreasing costs: See discussion above.

(b) Reporting and paperwork requirements: See discussion above.

(3) Assessment of anticipated effect on state and local revenues: This regulation would have no direct impact as such upon state and local revenue but indirectly would have considerable impact upon both. The vitality of the cattle industry has an impact upon the economic condition of the entire state. The better the beef market, the better the economy for local and state revenue. Conversely, should there be a severe negative impact upon the cattle industry, such as a federal quarantine, the effect would be felt throughout the entire state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative exists which utilizes matching funds from the United States Department of Agriculture. This method increases payment to the livestock owner while reducing payment from Kentucky funds.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Statutes and other regulations which are overlapping are: 302 KAR 20:055, 302 KAR 20:057, 302 KAR 20:058, KRS 257.110, 257.120, and 257.115.

(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. This regulation will apply evenly to the entire related industries.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate: The Kentucky Department of Agriculture has for a considerable length of time been party to a cooperate agreement with the United States Department of Agriculture aimed at the eradication of brucellosis. The cooperative agreement includes terms regarding federal assistance for funding the Kentucky program through October 1990. The cooperative agreement is an important element of the state program but is not a mandate. Also 9 CFR 1 through 9 CFR 199 deals with the movement of livestock, but primarily interstate movement. State regulations deal primarily with intrastate movement. Since standards for state brucellosis eradication are left primarily to state enforcement authorities, a comparison of state and federal standards cannot readily be made.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate: The regulation does not impose stricter standards than those required by a federal mandate. The standards for brucellosis eradication in Kentucky are matters of state law primarily and are not matters of fiducial law.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities: N/A

ECONOMIC DEVELOPMENT CABINET
Development Finance Authority
(Proposed Amendment)

307 KAR 1:010. Bond financed loan program.

RELATES TO: KRS Chapter 154

PURSUANT TO: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 154.005 et seq. creates the Kentucky Development Finance Authority (the "Authority") and provides statutory authority for the initiation, financing and implementation of the various programs of the authority. Pursuant to KRS 154.040(9) and KRS 154.060 the authority is authorized and empowered to promulgate reasonable regulations for the administration of the powers granted to the authority by the Kentucky Revised Statutes and in respect of determinations of eligibility for loans. Chapter

398 of the Acts of the General Assembly of the Commonwealth of Kentucky, 1982 Regular Session, authorizes issuance of a $50,000,000 Economic Development Bond issue for the Kentucky Development Finance Authority Loan Program. The purpose of the regulation hereby promulgated is to establish definitive standards in respect of the Kentucky Development Finance Authority Loan Program as such program is financed pursuant to Chapter 398 of the 1982 Acts of the General Assembly of the Commonwealth of Kentucky. The adoption of regulations in respect of the Kentucky Development Finance Authority Loan Program is necessary and desirable in order to provide detailed guidance and proper regulatory structure for the initiation and financing by the authority of eligible projects, as hereinafter defined, which are specifically financed pursuant to the Kentucky Development Finance Authority Loan Program. The regulation herein promulgated shall be applicable only to such program, as authorized to be financed by the 1982 General Assembly of the Commonwealth, and shall not be directly applicable to any other program of the authority. In financing eligible projects pursuant of the authority. In financing eligible projects pursuant to KRS 154.005 et seq. the regulations and Chapter 398 of the Acts of the General Assembly of the Commonwealth of Kentucky, 1982 Regular Session, the authority shall make loans in respect of eligible projects using the statutory authority granted by KRS 154.127.

Section 1. Definitions. As used in this regulation, the following words and phrases shall have the following meanings:

(1) "Act" means collectively.

(a) Chapter 398 of the Acts of the General Assembly of the Commonwealth of Kentucky, 1982 Regular Session;

(b) Chapter 56 of the Kentucky Revised Statutes; and

(c) Sections 154.005 et seq. of the Kentucky Revised Statutes, construed in pari material.

(2) "Allowable costs" means all or a portion of the costs of an eligible project, including the costs of acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping, maintaining, or furnishing project facilities, including site clearance and preparation, necessary public utility relocations, designs, plans, specifications, studies and estimates in respect of the eligible project, necessary architectural, engineering and legal fees and expenses and provision for costs of operating and maintaining such eligible project.

(3) "Authority" means Kentucky Development Finance Authority, a de jure body corporate and politic, created pursuant to KRS 154.005 et seq.

(4) "Bonds" means up to $50,000,000 principal amount of Commonwealth of Kentucky State Property and Building Commission Economic Development Revenue Bonds. Project No._____ (KDFA Loan Program), authorized by Chapter 398 of the Acts of the General Assembly of the Commonwealth of Kentucky, 1982 Regular Session and issued pursuant to the Act.

(5) "Commonwealth" means the Commonwealth of Kentucky.

(6) "Eligible project" means the acquisition, construction, equipping, establishment, expansion, reconstruction, rehabilitation or retention of project facilities within the Commonwealth of Kentucky.

(7) "Executive director" means the Executive Director of the Authority, pursuant to KRS 154.025(3), or the statutory or other successor to such executive director.

(8) "Facilities Establishment Fund" means the special fund hereinafter created, into which the net proceeds of the bonds will initially be deposited and into which all moneys received by the authority as representing repayments of program loans must be deposited as received.

(9) "KRS" means the Kentucky Revised Statutes.

(10) "Person" means any individual, firm, partnership, governmental entity, association or corporation or any combination thereof.

(11) "Program" means the Kentucky Development Finance Authority Loan Program, authorized by the Act.

(12) "Program loans" means loans made by the authority from the proceeds of the bonds and from moneys from time to time in the Facilities Establishment Funds to individuals, firms, partnerships, associations, corporations, governmental entities or any combination thereof for the acquisition by such persons of eligible projects.

(13) "Project facilities" includes, but not by way of limitation, land, buildings, structures, operating and manufacturing equipment and machinery, inventory, supplies or any combination of the foregoing.

(14) "Regulations" means the regulations adopted by the authority in connection with the program.

(15) "Committee" means the Capital Projects and Bond Oversight Committee of the Kentucky General Assembly.

(16) "Assistance" means any loan, pledge, guarantee, line of credit, or other financial assistance from the proceeds of the bonds and from moneys from time to time in the facilities establishment funds to individuals, firms, partnerships, associations, corporations, governmental entities or any combination thereof for the acquisition by such persons of eligible projects.

Section 2. Kentucky Development Finance Authority Loan Program. (1) By the enactment of Chapter 398 of the Acts of the General Assembly of the Commonwealth of Kentucky, 1982 Regular Session, which created the Kentucky Development Finance Authority Loan Program, the General Assembly has determined that the financing and implementation of the Kentucky Development Finance Authority Loan Program is necessary and desirable in the public interest. The Kentucky Development Finance Authority Loan Program shall be administered from time to time by the authority pursuant to the Act and the regulations. It is declared by the authority as a finding of fact that economic development of the Commonwealth carried out by increases in manufacturing, agriculture and tourism programs and projects will be in the best interests of the Commonwealth and its citizens, in that many areas of the Commonwealth have experienced and are experiencing significant economic impact and decline as a result of national and regional economic conditions, and transformation of the Commonwealth from a predominantly agricultural economy. The General Assembly has found that the Kentucky Development Finance Authority Loan Program will materially contribute to the economic stability and revitalization of the

Commonwealth and result in improving the economic welfare of the Commonwealth generally. Accordingly, it has been determined to be the public policy of the Commonwealth through the operation of the program to assist in and facilitate the establishment, retention or expansion of eligible projects in the Commonwealth and the General Assembly has provided by the financing of the program by the issuance of the bonds.

(2) In furtherance of the public policy of the Commonwealth and for the implementation of the program pursuant to the Act, the authority may initiate and carry out, but not by way of limitation, the following actions in connection with the program.

(a) The authority may enter into appropriate agreements with persons engaged in or proposing to engage in, directly or indirectly, manufacturing, tourism and agricultural enterprises to induce such persons to acquire, construct, reconstruct, rehabilitate, enlarge, improve, equip or otherwise develop eligible projects.

(b) The authority may make direct loans to persons in respect of the establishment of eligible projects pursuant to the Act and the regulations, provided, however, that no such direct loan shall exceed fifty (50) percent of the total debt financing to be carried out in respect of an eligible project when such financing does not exceed $500,000, plus one-third (1/3) of any such aggregate debt financing in excess of $500,000, but no program loan of the authority may exceed $1,000,000; provided, however, that the restrictions herein contained may be waived in respect of any eligible project by unanimous action taken by the members of the authority present and constituting a quorum.

(c) In connection with the program, the authority may retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, construction and accounting experts, attorneys and employees, agents and independent contractors as are necessary in the reasonable judgment of the authority.

(d) The authority may apply for, receive and accept grants, gifts and contributions of money, property, labor and other things of value in connection with the program, to be held, used and applied only for the purposes for which such grants, gifts and contributions are made.

(e) The authority may enter into appropriate agreements and arrangements with any person and with any unit of government, state, local or federal, in furtherance of the program.

(f) The authority may do and carry out, pro se or through agents and employees, any and all other acts and things, enter into contracts and execute all instruments, papers and documents necessary or appropriate to carry out the provisions of the Act and the regulations.

(g) The authority may adopt further regulations in connection with the program in order to more fully implement and regulate the proper financing and implementation of the program. Notwithstanding the foregoing, no supplemental or amended regulation adopted by the authority may alter, amend, change, modify or rescind the provisions of the regulations relating to the Facilities Establishment Fund and the automatic and irrevocable deposit of moneys received by the authority representing repayment of program loans, including interest thereon, shall be deposited as received into the Facilities Establishment Fund and may never be applied or used for any purpose except the making of program loans.

(3) The approval of a program loan shall, before the program loan is disbursed by the authority, be approved by the authority or by properly authorized committee of the authority, which committee is appointed by unanimous action taken by the members of the authority present and constituting a quorum. Upon such approval, the determination made by the authority that particular project facilities constitute an eligible project, that costs of such eligible project are allowable costs and the financing of the eligible project by a program loan will create or retain employment opportunities, increase economic development, or otherwise carry out the purposes of the Act, shall be conclusive for purposes of the validity and enforceability of the rights of parties arising from actions so taken and agreements entered into by the authority pursuant to the Act and the regulations.

Section 3. Facilities Establishment Fund. The Facilities Establishment Fund is hereby created and established.

(1) The Facilities Establishment Fund shall be a separate and discrete fund or account which shall be maintained by an indenture trustee to be selected in connection with the issuance of the bonds (the "Trustee"). The net proceeds from the sale of the bonds to be used for the making of program loans shall be deposited, when received, into the Facilities Establishment Fund and shall be disbursed by the authority pursuant to the Act, the regulations and the proceedings in respect of the bonds, for the making of program loans. There shall be, and the proceedings incident to the issuance of the bonds shall confirm and establish, provisions for a separate accounting within the Facilities Establishment Fund of the net proceeds of the bonds and the investment income thereon, as well as a separate accounting for moneys received as repayments of program loans and investment income thereon.

(2) All moneys received as a result of repayment of program loans, both principal and interest, shall be received by the trustee in respect of the bonds and deposited as received into the Facilities Establishment Fund and, together with the investment income thereon, shall be separately accounted for within the Facilities Establishment Fund. In the making of program loans, the authority shall make program loans having such terms and provisions so as to assure that the present value of moneys received as repayment of program loans, which will automatically be paid into the Facilities Establishment Fund shall, in the aggregate, not to exceed eighty (80) percent of the present value of the debt service in respect of the proceed of the bonds that are actually applied to the making of program loans. The authority shall monitor compliance with this requirement on a continuous basis and shall, to the extent necessary, adjust program loan repayment obligations so that moneys received into the Facilities Establishment Fund representing repayments of program loans will at all times comply herewith.

(3) Following the issuance of the bonds, no

amendments, modifications or rescissions shall be made with respect to the regulations which would change the fundamental character of or otherwise materially affect the Facilities Establishment Fund and the restrictions upon the use of moneys in the Facilities Establishment Fund for the making of program loans or the limitation of repayments of program loans to be received into the Facilities Establishment Fund as established by the regulations. Moneys from all sources from time to time in the Facilities Establishment Fund may be used and applied by the authority solely and only for the purpose of making program loans. Moneys in the Facilities Establishment Fund may never be transferred to any other unit of government of the Commonwealth and may never be used or applied, directly or indirectly, for any purpose except the making of program loans.

Section 4. Criteria for Selecting Eligible Projects. (1) The authority shall formulate appropriate application and credit forms for use by persons applying to the authority for program loans. In selecting and determining the eligible projects to be assisted and the nature, amount and terms of program loans to be provided for any eligible project under the Kentucky Development Finance Authority Loan Program, the authority shall consider and take into consideration, inter alia, the following:

(a) The number of jobs to be created or reserved, directly or indirectly, within the development period of the eligible project;

(b) Payrolls, and the taxes generated, at both state and local levels, by the eligible project and taxes generated by the employment created or preserved by the eligible project;

(c) The size, nature and cost of the eligible project, including the prospect of the eligible project for providing long-term jobs in enterprises consistent with the changing economies of the Commonwealth and the nation;

(d) The needs, and degree of needs, of the area in which the eligible project is to be located;

(e) The needs of any private sector enterprise to be assisted;

(f) The amount and kind of assistance, if any, to be provided to any applicant by other governmental agencies through tax exemption or abatement, financing assistance with industrial development bonds, and otherwise, with respect to the eligible project;

(g) The amount of capital made available to he eligible project by other lenders and by the owners of the eligible project; and

(h) The economic feasibility of the eligible project.

(2) Prior to final approval of any program loan to be provided, and as a condition precedent thereto, the authority shall determine that the benefits to be derived by the Commonwealth and the local economic area from the establishment and operation of the eligible project will exceed the cost of providing such assistance.

Section 5. Program Loans to be Made from the Facilities Establishment Fund. (1) The authority, subject to the other applicable provisions of this regulation, will make program loans only from moneys in the Facilities Establishment Fund. Program loans will be made if the authority determines that:

(a) The project is an eligible project and is economically sound;

(b) The amount to be loaned from the Facilities Establishment Fund will not exceed fifty (50) percent of the total allowable costs of the eligible project; and

(c) The amount of the program loan from the Facilities Establishment Fund to be repaid will, if deemed necessary by the authority, be adequately secured by a mortgage, lien, assignment or pledge, at such level of priority as the authority may require.

(2) The determinations of the authority under subsection (1) of this section shall be conclusive for purposes of the validity of a program loan commitment evidenced by an agreement of the authority.

(3) Fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions and provisions of and security for program loans made from the Facilities Establishment Fund pursuant to this section hall be as such as the authority determines to be appropriate and in furtherance of the purpose for which the program loans are made. Provided, that repayments of program loans shall conform to the requirements of Section 3 of this regulation.

(4) The authority is authorized to take such action as may be necessary or appropriate to collect or otherwise deal with any program loan.

Section 6. Authority to Administer Program. (1) The authority, pursuant to the Act, will at all times administer the program and the program loans and will provide adequate staff and resources for the proper carrying out of such duties and functions. All costs incident to the administration of the program shall be deferred and paid by the authority from funds other than funds in the Facilities Establishment Fund and no moneys in the Facilities Establishment Fund will ever be used or applied to any purpose except the purpose stipulated in this regulation.

(2) The authority will monitor each program loan to assure that all program loans meet the requirements of financing agreements in respect thereto between the authority and th obligors in respect to such program loans. In that regard, the authority shall require financial reports to be made by the program loan obligors at such intervals as shall be deemed necessary by the authority. The authority shall monitor the average annual employment generated by eligible projects financed by program loans and generally will do and perform all actions as shall be required to assure that program loans continuously meet the program standards established by this regulation.

Section 7. Authority Reporting Requirements. (1) The authority shall submit to the committee a written report on persons that receive assistance from the authority in the calendar year 1988 and in the five (5) years previous thereto. The report shall include the following information regarding each of these persons:

(a) A description of the type and amounts of the assistance provided by the authority;

(b) The closing date on the assistance provided by the authority;

(c) The growth or decline in the number of individuals employed by the person receiving assistance. This includes only those individuals employed at the funded project site or whose

employment is a result of the funded project. The authority shall request employment data from the Kentucky Department of Employment Services.

(2) The authority shall submit biennially a report which shall include the information referred to in subsection (1) of this section and shall also include a summary of the rationale used for funding any project during the biennium being reported which cumulatively received more that $1,000,000 of authority and economic development bond program assistance or received more than $5,000 per full-time job estimated to be created or retained two (2) years following completion of the project. The estimation of jobs shall reflect a realistic projection of the effects of the project based upon the authority's own analysis of the proposed projects.

(3) For those persons receiving assistance approval on or after July 15, 1988, and receiving assistance in excess of $250,000, or combined authority and economic development bond program assistance in excess of $250,000, the biennial report shall also include the following:

(a) An estimate of the effect of the assisted project on other businesses within the state;

(b) An estimate of the increased cost of public services resulting from each funded project including, but limited to, roads, sewer, water, utilities, pollution control and education;

(c) An estimate of state and local taxes paid by each business.

(4) The authority shall file a construction activity report to the Kentucky Department of Employment Services and to the committee no later than fifteen (15) days following the end of each month in which a program loan commitment is issued. This report is to describe in summary fashion any construction, reconstruction, or alterations financed by the authority in whole or in part.

(5) On a quarterly basis the authority shall file a written projects status report with the committee with regard to authority program loans approved. The committee may request representatives of the authority to appear before the committee to testify and answer questions as it deems proper. The status report on program loans approved is to include:

(a) A summary of the status of the project and its cost;

(b) A description of the financial obligation of the authority;

(c) Any change that has occurred in the obligation of the authority or any changes in the principles to a program loan agreement.

(6) The authority shall maintain a written record of all program loan inquiries, written or oral, made by potential borrowers or on behalf of potential borrowers. This record shall include, if available, the name and address of the potential borrower, a summary of the inquiry made by the potential borrower, the name of the representative or representatives of the authority handling the inquiry and the disposition of the inquiry.

JAMES H. JONES, Executive Director
APPROVED BY AGENCY: July 11, 1988
FILED WITH LRC: July 12, 1988 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1988, at 10 a.m. at the Conference Room of the Economic Development Cabinet, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Denis B. Fleming, Jr., General Counsel, Economic Development Cabinet, 2400 Capital Plaza Tower, Frankfort, Kentucky 40601, (502) 564-7670.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Denis B. Fleming, Jr.

(1) Type and number of entities affected: This amendment affects no public entities. It delineates reporting requirements for KDFA staff to the Capital Projects and Bond Oversight Committee and the Kentucky Department of Employment Services.

(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: KDFA staff will be required to assemble and prepare data for the reports set out in this amendment and maintain a written record of loan inquiries.

(a) Direct and indirect costs or savings: No direct costs. Indirect costs will be those associated with copying reports, postage and similar administrative costs.

1. First year: $100 (estimate).
2. Continuing costs or savings: Same each year.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment contains reporting requirements and therefore entails such paperwork as preparation of the reports require.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This amendment began as a bill draft but is considered more feasible and proper as an administrative 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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 4:100. Wild Rivers boundaries.

RELATES TO: KRS 146.241 [146.240], 146.250
PURSUANT TO: KRS 146.270, 224.033, 224.045 [146.250]
NECESSITY AND FUNCTION: KRS 146.250 directs the Secretary to determine generally the boundaries of the Wild Rivers designated in KRS 146.240. The boundaries must include at least the visual horizon of the stream but not extend more than 2,000 feet from the center of the stream. The statute further requires that the Secretary designate access points at the upper and lower boundaries of each stream. This regulation incorporates by reference maps adopted and filed with the regulation delineating the general boundaries of each stream area and specifies the access points to each area. The maps are incorporated by reference as they are too large and cumbersome for reproduction. Copies of the maps are available by request from the Division of Water, Natural Resources and Environmental Protection Cabinet, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 1. The boundaries of the stream area of the Cumberland River are as delineated on the map captioned "Designated Wild River Area, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Ky. 204 approaches the Cumberland River below Summer Shoals and the lower access point is at Cumberland Falls State Park.

Section 2. The boundaries of the stream area of the Red River are as delineated on the map captioned "Designated Wild River Area, Red River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Ky. 746 crosses the Red River and the lower access point is the area where Ky. 715 crosses the river.

Section 3. The boundaries of the stream area of the Rockcastle River are as delineated on the map captioned "Designated Wild River Area, Rockcastle River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Ky. 80 crosses the Rockcastle River and the lower access point is the area where Ky. 192 crosses the river.

Section 4. The boundaries of the stream area of the Green River are as delineated on the map captioned "Designated Wild River Area, Green River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Big Woods Road meets the Green River and the lower access point is the area of Lock No. 6 on the Green River.

Section 5. The boundaries of the stream area of the Big South Fork of the Cumberland River are as delineated on the map captioned, "Designated Wild River Area, Big South Fork, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where Difficulty Creek joins the Big South Fork and the lower access point is the area where the Blue Heron Road ends.

Section 6. The boundaries of the stream area of [the] Martins Fork of the Cumberland River are as delineated on the map captioned "Designated Wild River Area, Martins Fork, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where [the] Martins Fork flows from the Cumberland Gap National Historical Park and the lower access point is the area where Ky. 987 crosses the mouth of Laurel Branch Creek.

Section 7. The boundaries of the stream area of Rock Creek are as delineated on the map captioned "Designated Wild River Area, Rock Creek," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where the Rock Creek Bell Farm Road crosses Big Branch. The lower access point is at the White Oak Junction Bridge.

Section 8. The boundaries of the Little South Fork of the Cumberland River are as delineated on the map captioned "Designated Wild River Area, Little South Fork, Cumberland River," which map is hereby adopted and incorporated herein by reference. The upper access point is the area where the East Coopersville Road fords the Little South Fork and the lower access point is the area where the Lower Morrow Hollow Road crosses the Little South Fork.

Section 9. The boundaries of the stream area of Bad Branch are as delineated on the map capitoned "Designated Wild River, Bad Branch," which map is hereby adopted and incorporated herein by reference. The upper access point is the headwaters on Pine Mountain and the lower access point is the area where Ky. 932 crosses Bad Branch.

CARL H. BRADLEY, Secretary
APPROVED: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1988 at 7 p.m. in the Ground Floor Auditorium, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing or in submitting written comments shall notify this agency in writing by August 21, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Robert W. Ware, Manager, Water Quality Branch, Division of Water, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sherri Evans

(1) Type and number of entities affected: Generally, the entities to which this regulation apply are persons owning property within the proposed boundaries of the Bad Branch Wild River corridor. The proposed wild river boundaries encompass approximately 1,325 acres along four miles of stream. One state agency, the Kentucky Nature Preserves Commission, and seven private entities have been identified as owning land within the proposed boundaries. All of these lands are owned or under a mangement agreement or lease with the Kentucky Chapter of The Nature Conservancy, a private, nonprofit conservation organization.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment to 401 KAR 4:100 incorporates by reference a map depicting the boundaries of the Bad Branch Wild River corridor as set forth in KRS 146.241, as amended in 1986. The proposed amendment will not result in any significant costs or savings to affected entities.

2. Continuing costs or savings: None determined.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None determined.

(b) Reporting and paperwork requirements: None determined.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal costs will be incurred by the Natural Resources and Environmental Protection Cabinet to develop an official boundary map depicting the proposed boundaries of the Bad Branch Wild River corridor, and to make copies available to the general public. These costs will be internalized within normal budget appropriations.

2. Continuing costs or savings: None determined.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None determined.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A no-action alternative was considered and rejected because the delineation of corridor boundaries is essential to implementation of KRS 146.200 to 146.360 within a designated wild river corridor, and KRS 146.270 directs the Secretary to adopt such rules and regulations necessary for the preservation and enhancement of designated wild river areas as set forth in KRS 146.250. The proposed boundaries encompass the immediate watershed within 2,000 feet of the center of the stream so as to protect the aesthetic and environmental integrity of the designated area.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None determined.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applied because this regulation merely depicts on a map the wild river corridor boundaries prescribed in KRS 146.241.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 224.033(17)

NECESSITY AND FUNCTION: This regulation provides definitions and administrative procedures authorized for the issuance of permits for the construction and operation of sewage systems authorized under KRS Chapter 224. The regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits.

Section 1. Definitions. (1) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(2) "Cabinet," means the Natural Resources and Environmental Protection Cabinet.

(3) "Division" means the Division of Water.

(4) "Establishment" means any industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, oil refinery, boat, vessel or other type of commercial, manufacturing or industrial works or facility in the operation of which sewage, industrial wastes or other wastes are produced or stored.

(5) "Facility" for the purpose of this regulation means a sewage system as defined in KRS 224.005[(20)] except for septic tanks, pretreatment facilities, and disposal wells as defined in 401 KAR 5:090.

(6) "Industrial wastes" means any liquid, or other waste resulting from any process of industry, manufacture, trade or business, or from the depletion of any natural resource.

(7) "Intermediate facility" means a treatment facility with an average daily design flow of 10,000 to 49,999 gallons per day or of sewer lines of more than 2,500 feet to 5,000 feet in length including appurtenances.

(8) "Large facility" means a treatment facility with an average daily design flow of 50,000 gallons per day or more or of sewer lines of more than 5,000 feet in length including appurtenances.

(9) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(10) "Permit" means written permission in whatever form by the cabinet to construct and operate a facility.

(11) "Professional engineer" or "engineer" means a person registered to practice

engineering pursuant to KRS Chapter 322.

(12) "Publicly owned treatment works" for the purpose of this regulation means treatment facilities eligible for funding under United States Environmental Protection Agency's 205(g) (33 U.S.C. Section 1285(g)) Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35.

(13) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm or other water, as may be present.

(14) "Sewer line" means those devices used for collecting, pumping, and disposing of sewage, but not those devices used for tap-ons by individual discharges.

(15) [(14)] "Small facility" means a treatment facility with an average daily design flow less than 10,000 gallons per day or a sewer line of less than 2,500 feet in length including appurtenances.

Section 2. Applicability. No person shall construct, modify or operate a facility without having received a permit from the cabinet. However, the cabinet may exempt from the provisions of this regulation any facility which it determines will not at any time discharge into waters of the Commonwealth. In addition, the operational permit provisions of this regulation will be deemed met by those facilities which have a valid KPDES permit as defined in 401 KAR 5:050.

Section 3. The Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained prior to any construction.

(2) A permit to construct a facility shall automatically become an operational permit when:

(a) The applicant notifies the cabinet that the facility has been properly constructed; and,

(b) A cabinet representative inspects the site and determines that the facility is properly operating.

(3) The applicant shall notify the cabinet in writing within thirty (30) days of completed construction and commencement of trial operation.

(4) Permits may contain special conditions not found in this regulation. Such conditions shall be in writing and treated as a part of a permit.

(5) Issuance of a permit represents a judgment of the cabinet that a proposed facility will protect water quality or achieve certain effluent reductions if constructed in accordance with approved plans and specifications. Construction shall be in accord with approved plans and specifications.

Section 4. Permit Application. An application for a permit shall be submitted not less than thirty (30) days prior to the date a permit is desired.

Section 5. The Application; Preliminary Considerations. (1) Where a river basin plan, an areawide waste management plan and/or a regional or facility plan has been developed, the applicant shall provide the cabinet with a statement from the agency developing any such plan, that the applicant's proposed facility is compatible with any applicable plan.

(2) Any proposed large facility shall submit a preliminary or facilities plan to the cabinet. Said plan shall include:

(a) A seven and one-half (7 1/2) minute, United States Geological Survey topographic map with the projected service area outlined and the discharge point identified thereon.

(b) A schematic of the facility layout and detailed explanation of the proposed facility and its method of operation;

(c) All wastes shall be identified in regard to the processes giving rise to the waste, the character and quantity of the waste, its treatability; and

(d) A statement regarding the expected degree of reduction in pollution load to be accomplished by the facility.

(3) Where the discharge point of a proposed facility fails to coincide with an intermittent or perennial stream as indicated by a blue line on U.S. Geological Survey topographic maps, the applicant shall demonstrate that he has a legal right to discharge his effluent across any other land owner's property which comes between the point of discharge and a blue line stream. The cabinet may require the applicant to provide it with an opinion of counsel to that effect.

Section 6. Plans and Specifications. (1) Not fewer than three (3) sets of detailed plans and specifications shall be submitted to the cabinet. The submittal shall be accompanied by a completed permit application form provided by the cabinet.

(2) The cabinet may request such additional information as it needs to evaluate the facility.

(3) Once cabinet approval is obtained, no changes shall be made to the plans and specifications which would alter or affect the location, type of process or quality of effluent without prior written approval from the cabinet.

(4) Where a proposed or existing facility is part of or may become a part of a comprehensive sewer system and has a projected capacity of 50,000 gallons per day or more, the plans and specifications shall be prepared by a professional engineer. The plans shall be accompanied by such engineering calculations as are necessary for the understanding of the basis and design of the facility.

Section 7. Design Considerations. (1) Specific design criteria for any facility shall be controlled by current engineering practice. Some references to current engineering practice can be found in the following: "Guidelines for Design, Operation and Maintenance of Waste Water Treatment" by the United States Environmental Protection Agency; the latest edition of "Recommended Standards for Sewage Works of the Great Lake-Upper Mississippi River Board of Sanitary Engineers," and the Water Pollution Control Federation's "Manual of Practice No. 8 and 9."

(2) Consideration should be given to the treatment requirements of the United States Environmental Protection Agency for specific types of facilities and processes.

(3) The applicant shall demonstrate to the cabinet that the effluent from a proposed facility will:

(a) Protect those minimum conditions applicable to all waters of the Commonwealth

found in Section 2 of 401 KAR 5:031.

(b) Not cause those waters classified by 401 KAR 5:035 to be of lesser quality than the numeric criteria applicable to those waters in Section 3 to 9 of 401 KAR 5:031; and

(c) Be in accord with any general or particular facility requirement mandated by other regulations. An example of a general facility requirement is the "best practicable control technology" found in 401 KAR 5:080.

(4) A recording flow-measuring device shall be installed at each large facility. Any facility may estimate flow from a measuring device at the plant.

(5) Infiltration/exfiltration.

(a) The entrance of ground water into or loss of waste from a sewer system shall be limited to 250 gallons per inch of diameter per mile per day with a maximum of 6,000 gallons per mile per day regardless of the pipe diameter. This limitation is inclusive of manholes, sewers, and appurtenances.

(b) The integrity of a new system shall be verified by means of either smoke testing or low pressure air testing or both testing methods. The use of smoke testing shall depend on prevailing ground water conditions at the time of testing. Sewers over eighteen (18) inches in diameter shall be tested by the exfiltration method and/or smoke testing if ground water conditions permit.

(6) Inflow. No new combined, extension or replacement of combined sewers shall be permitted. All points of entrance of inflow to a separate sanitary system will be identified and eliminated.

Section 8. Application; Other Supporting Documents. (1) The applicant shall demonstrate that provision has been made for continuous inspection of a facility under construction to assure its conformity with approved plans and specifications. Those facilities designed by an engineer shall be inspected by an engineer.

(2) The applicant shall demonstrate that laboratory services shall be provided for self-monitoring to assure facility operation in accord with any permit conditions and to substantiate protection of the receiving waters.

(3) Where a proposed facility will serve multiple users, the applicant shall demonstrate the financial ability to guarantee continuous operation and maintenance to the cabinet's satisfaction. Such guarantee may take the form of a supporting promise by another person to operate the facility if the applicant fails to properly do so, or by posting a bond payable or depositing money in escrow to be available for making necessary repairs only upon the cabinet's determination that the facility's operation and maintenance is not achieving permit conditions. The above requirement can be demonstrated by a certification from the Public Service Commission.

Section 9. Operation. (1) The cabinet's permit may specify the type of analysis required for a facility and the frequency that such analysis shall be performed and reported to the cabinet.

(2) The cabinet may provide forms for self-monitoring reports.

Section 10. Fees. (1) The applicant shall submit a permit fee as provided in subsection (5) of this section with the construction permit application.

(2) Should the cabinet deny a construction permit, the fee for the construction permit will be refunded.

(3) Checks or money orders shall be made payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule:

Facility Category	Construction Permit Fee
Large Facility	$1,800 [$1,000]
Intermediate Facility	$ 900 [$ 500]
Small Facility	$ 450 [$ 250]
Large Facility: Sewer Lines	$ 800
Intermediate Facility: Sewer Lines	$ 400
Small Facility: Sewer Lines	$ 200

(5) If the cabinet has delegated to a local or regional agency, through formal written agreement, review responsibility for sewer lines, a twenty (20) dollar fee per approval letter will be charged in lieu of the sewer line fees described in subsection (4) of this section.

(6) [(5)] Fees in this section do not apply to publicly owned treatment works or agricultural wastes handling systems designed by the U.S. Soil Conservation Service (SCS) in accordance with the cabinet's May 15, 1980 memorandum of understanding with SCS, incorporated herein by reference.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 14, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William Gatewood

(1) Type and number of entities affected: The proposed amendment establishes and revises fees for construction permits for wastewater treatment works. The proposed amendment also allows a fee to be charged to entities which are delegated review responsibility. Entities affected are municipalities, industries, and inidividuals constructing or seeking to construct a sewage system as defined by KRS 224.005; these entities number 100.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs for construction permits will be assessed according to the following fee schedule: large facility - $1,800; intermediate facility - $900; small facility - $450; large facility modification or construction - $800; intermediate facility modification or construction - $400; small facility modification or construction - $200. If the cabinet delegates review authority to an agency through formal written agreement, the cabinet will assess a $20

fee for issuance of an approval letter to the agency.

2. Continuing costs or savings: Continuing costs to a permittee are determined by the renewal frequency.

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: The revision of the fee schedule for wastewater treatment works construction permits is expected to offset the costs of processing permit applications.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements will result from the processing of receipts to the Kentucky State Treasury for the three new fee categories.

(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for construction permits is expected to have a positive effect on state revenue by offsetting the cost of processing construction permit applications.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising the fee schedule for wastewater treatment plant construction is no action. This option was rejected because current fee levels are not sufficient to recover all construction permitting costs.

(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: 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: None

TIERING: Was tiering applied? Yes.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Permits to discharge sewage; industrial and other wastes; definitions.
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
LOCAL GOVERNMENT MANDATE: No.
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: The proposed amendment revises the fees set forth in Section 10 to reflect the costs of processing construction permit applications.
PROVISION/MECHANICS: Processing fees for construction permit applications are an existing obligation. The proposed change modifies an existing obligation.
FISCAL EXPLANATION: There is no obligation to local governments. KRS 224.033(20) prohibits the Natural Resources and Environmental Protection Cabinet from charging processing fees to local governments for publicly owned wastewater treatment facilities.
PREPARER: Don E. Thomason

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:010. Certification of wastewater system operators.

RELATES TO: KRS 224.135
PURSUANT TO: KRS 224.032, 224.033(17)
NECESSITY AND FUNCTION: The secretary is directed to adopt regulations applicable to certification of wastewater system operators. This regulation establishes standards for classification of wastewater systems; qualifications of applicants; examination procedures; duties of the board; provisions relating to the issuance, renewal or revocation of certificates, fee schedule and other provisions necessary for certification of operators; and other operational provisions related to the functions of the wastewater operators certification board.

Section 1. Definitions. The following terms shall have the meanings set forth below unless the context clearly indicates otherwise:

(1) "Board" means the Kentucky Board of Certification of Wastewater System Operators.

(2) "Cabinet" means the Kentucky Natural Resources and Environmental Protection Cabinet.

(3) "Secretary" means the secretary of the cabinet.

(4) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met all requirements for the specified operator classification as set by this regulation.

(5) "Division" means the Division of Water, Natural Resources and Environmental Protection Cabinet.

(6) "Operator" means the person having primary responsibility of a wastewater system or any portion thereof which may affect the performance of the system.

(7) "Primary responsibility" means having the authority to conduct or supervise the procedures and practices necessary to insure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws and regulations of the Commonwealth.

(8) "Wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry and treat domestic and/or industrial wastewater, including solids handling. The term "wastewater system" is synonymous and interchangeable with the term "sewage system."

(9) "Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC)" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems and state programs, and assists authorities in establishing new certification programs and upgrading existing ones.

Section 2. General Provisions. (1) Each wastewater system must be operated under the supervision of an individual holding a current Kentucky operator's certificate for at least the class of system he/she supervises. Certified

operators are required for the operation of all wastewater treatment facilities.

(2) In the event the operator with primary responsibility is not physically present while a system is operating, he/she must be reasonably available. Such availability shall be determined by the board on a case-by-case basis.

(3) An industrial certification is available for operators of pretreatment facilities. However, operators of such facilities are not required to obtain this or any other form of certification.

Section 3. Duties of the Board. (1) In carrying out its responsibilities the board shall among other things:

(a) Examine the qualifications of applicants for certification.

(b) Recommend qualified applicants for certification by the cabinet.

(c) Review and provide comments to the cabinet on proposed wastewater treatment plant operator regulations or revisions to regulations dealing with wastewater treatment plant operator certification.

(d) Review and make recommendations to the cabinet on training materials and methods dealing with the certification of wastewater treatment plant operators.

(e) Perform such other and further acts as may be necessary to carry out the duties and responsibilities as herein described.

(2) In carrying out its certification responsibilities, the board may establish minimum criteria and provide a general recommendation for certification for all applicants who exceed them.

Section 4. Application for Certification. (1) An operator desiring to be certified shall file application with the cabinet preceding examination on an application form provided by the cabinet.

(2) The executive secretary and treasurer of the board shall assemble all the information needed by the board or cabinet to determine eligibility of the applicant for examination and certification.

(3) The board or cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination and notify him/her of his/her status.

Section 5. Examinations. (1) The board and the cabinet shall be jointly responsible for preparation of the examinations to be used in determining knowledge, ability and judgment of the applicants. The examination questions promulgated by the ABC shall be used as a guideline.

(2) Examinations shall be held at places and times set forth by the cabinet. The examinations shall be conducted at least semiannually.

(3) Except in cases which the board may decide represent proper exceptions, all examinations shall be written. All examinations will be graded by the board, or by the cabinet and the applicant notified of the outcome. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon request by the applicant.

(4) Separate examinations will be prepared to cover basic differences in the duties and responsibilities of operators, types of facilities, variations in wastewater quality, conditions of receiving waters and other pertinent matters.

(5) Applicants who fail to pass an examination may reapply for the examination at a regularly scheduled examination or by appointment with the cabinet.

Section 6. Fees. (1) Fees for certification of operators of wastewater systems shall be as follows:

(a) Examination: thirty-five (35) [fifteen (15)] dollars.

(b) Renewal of certificate: thirty-five (35) [twelve (12) dollars per biennium beginning April 9, 1985, and sixteen (16)] dollars per biennium [beginning March 1, 1987]. Limited certificates: twenty (20) [six (6) dollars per year beginning March 1, 1985 and eight (8)] dollars per year [beginning March 1, 1987].

(c) Certification by reciprocity: fifteen (15) dollars.

(2) For training sessions conducted by the cabinet: five (5) dollars per contact hour.

(3) [(2)] Fees accompanying applications will not be returned to those who do not pass the examination.

Section 7. Issuance of Certificates. (1) Upon satisfactory fulfillment of the requirements provided herein and upon recommendation of the board of certification, the cabinet shall issue a suitable certificate to the applicant designating his/her competency. This certificate will indicate the classification of the wastewater system for which the operator is qualified.

(2) All certificates shall expire at midnight on February 28 of odd-numbered years. Certificates of operators in good standing will be renewed automatically upon written application and submission of applicable renewal fee to be received by the cabinet before June 1 of each renewal year. If the application and fee are not received by the cabinet prior to June 1, the certificate shall be invalid and the operator shall be required to obtain a new certificate as provided in subsection (5) of this section. Limited certificates shall expire each year on midnight of the last day of February and may be renewed only after the cabinet has timely received the required written application and renewal fee, and certified that the holder of the certificate has substantially complied with all requirements for properly operating the facility under his/her responsible charge.

(3) Certified operators who desire to become certified in a higher classification must first satisfactorily complete the requirements for the higher classification before a new certificate is issued. Experience under a limited certificate does not count toward fulfillment of qualifications for other classifications.

(4) Certificates shall be valid only so long as the holder uses reasonable care, judgment and application of his/her knowledge in the performance of his/her duties. No certificate will be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) The certificates of operators who terminate their employment at a wastewater system will be valid for four (4) years providing they are renewed as required by

subsection 2 of this section, except for limited certificate holders. After four (4) years, the certificate will be automatically invalidated. Limited certificates become invalid immediately if not renewed. Operators whose certificates are invalidated may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of a written or oral examination shall be required by the board.

(6) Certificates may be issued at the discretion of the board in a comparable classification to any person who holds a valid certificate in any state, territory, or possession of the United States or any country provided the requirements for certification of operators under which the person's certificate was issued do not conflict with any provisions of KRS Chapter 224 and are of a comparable standard; and, providing further, that reciprocal privileges are granted to certified operators of this state.

(7) Certificates shall be prominently displayed in the office of the operator.

(8) Certificates heretofore issued by the cabinet shall continue in full force and effect, unless revoked for cause, until such time as the cabinet issues new certificates based upon the classifications provided herein.

(9) Training requirements.

(a) Class III and Class IV operators shall have accumulated twelve (12) hours per year of appropriate board approved training for certificate renewal. Class I and II operators shall complete six (6) hours of training per year for renewal. Such training shall include, but may not be limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. However, at least one-half (1/2) of the training required for recertification shall be in process control and operation or in the basic sciences related to these topics. Training hours accumulated in any biennium in excess of the minimum requirement necessary for renewal may be carried forward to the next renewal period. No training is required for holders of limited or industrial certificates.

(b) Certified operators who teach board-approved training courses may receive hour-per-hour credit for actual instruction time, provided, however, that for courses taught more than once during a renewal period, credit will be allowed for only one (1) period of instruction.

(c) The criteria used for determining whether to approve training, other than the training provided by the cabinet, are:

1. The ability of the course to provide information that will enhance the proper operation and maintenance of wastewater treatment facilities; and

2. The ability of the instructor to properly present such information.

Therefore, in making its determination regarding approval of training courses the board will require that at least the following specifics about the course be submitted: the course name; the date, location, and the beginning and ending times of the course; a summary of the course content of sufficient detail to determine relevance and quality of the course; and the name and credentials of each instructor for the course.

(d) The board may waive any or all of the requirements of paragraph (a) of this subsection for all or portion(s) of a class of operators as defined in Section 11 of this regulation when the board has determined, based on information it has gathered, that such action is appropriate and justified.

Section 8. Revocation of Certificates. The cabinet may revoke the certificate of an operator, following a hearing before the board and upon recommendation by the board, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of his/her knowledge was not used in the performance of his/her duties; or that the operator is incompetent or unable to properly perform his/her duties.

Section 9. Classification of Wastewater Systems. Wastewater systems shall be classified in one (1) of five (5) classes. These classifications shall be made according to population served, type of work, character and volume of wastes to be treated, and the use and nature of the waters receiving the system effluent. Classifications I through IV shall be based on the population served or for which the system is designed except that systems may be classified in a group higher than indicated at the discretion of the cabinet by reason of the incorporation in the system of special features of design or characteristics more difficult to operate than usual, or by reason of conditions of flow or use of the receiving water requiring an unusually high degree of system operation control, or for combinations of such conditions or circumstances. In addition, a limited classification is available for operators of wastewater facilities at schools. Classes I through IV are defined as:

(1) Class I: Systems with a design capacity of less than or equal to 300,000 gallons per day.

(2) Class II: Systems with a design capacity more than 300,000 gallons per day, but less than or equal to two (2) million gallons per day.

(3) Class III: Systems with a design capacity more than two (2) million gallons per day, but less than or equal to seven and one-half (7 1/2) million gallons per day.

(4) Class IV: Systems with a design capacity in excess of seven and one-half (7 1/2) million gallons per day.

An industrial certification is available for operators of pretreatment facilities. However, operators of such facilities are not required to obtain this or any other form of certification.

Section 10. Classification of Wastewater System Operators. Five (5) classes of operators are hereby established and shall range from Class I through Class IV plus Limited. Each operator classification is intended to relate directly to the corresponding classification of wastewater system. In addition, there is hereby established an industrial classification for operators of facilities for pretreating wastewater prior to discharge into municipal sewers.

Section 11. Operator Qualifications: Experience, Education and Equivalencies. (1) Operators shall be examined by the board or cabinet as to education, experience, and knowledge as related to the classification of wastewater systems for which examined.

Applicants may be required further to give evidence of good moral character, dependability, initiative, interest in his/her work, and other pertinent characteristics in relation to operation of the class of wastewater system for which certification is being applied.

(2) Experience and educational requirements of operators shall be as follows:

(a) Class I and industrial.

1. Completion of high school or equivalent; and

2. One (1) year of acceptable operation of applicable wastewater system.

(b) Class II.

1. Completion of high school or equivalent; and

2. Two (2) years of acceptable operation of applicable wastewater system of Class I or higher.

(c) Class III.

1. Completion of high school or equivalent; and

2. Three (3) years of acceptable operation of applicable wastewater system of Class II or higher.

(d) Class IV.

1. A baccalaureate degree in a standard curriculum in engineering, allied sciences or equivalent; and

2. At least five (5) years of acceptable operation of applicable wastewater system of Class III or higher.

(3) In evaluating qualifications of operators and experience/educational equivalencies the board shall be guided by the following:

(a) In order to establish how much experience will be accepted, the board must determine whether the work performed required some technical knowledge of the work and whether or not responsible charge of work was included. In wastewater systems, where responsibility is divided, supervisors of important divisions may be credited with having responsible charge. Experience accumulated under an industrial certificate will be equivalent to Class I. No experience credit will be allowed for operation under a limited certificate.

(b) Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the cabinet or other agencies having appropriate responsibilities for supervising wastewater systems.

(c) Partial credit may be given for operating experience in maintenance laboratories or other work of wastewater systems and allied trades such as plumbing.

(d) Where applicable, education may be substituted for a portion of experience requirements as specified below:

1. One (1) year of college work (limited to approved curricula in environmental engineering, environmental technology or related scientific fields) may be considered as equivalent to a maximum of two (2) years of experience or one (1) year of experience with responsible charge.

2. Where education is substituted for experience it shall not exceed an amount which would reduce the requirements of actual operating experience to less than six (6) months for Class I or less than one (1) year for Class II or two (2) years for Class III or three (3) years for Class IV.

3. Education applied to the experience requirement cannot also be applied to the education requirement.

(e) Where applicable, experience may be substituted for education requirements as specified below:

1. One (1) year of experience may be considered as equivalent to a maximum of one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school degree.

2. Each year of responsible charge or two (2) years experience in an important phase of operation, other than responsible charge, will be considered equivalent to one (1) year of college. Four (4) years of responsible change approved by the board or eight (8) years of other board-approved experience may be considered equivalent to a baccalaureate degree.

3. Experience applied to educational requirements may not also be applied to the experience requirement.

(f) Substitutions for formal education may be as follows:

1. Training credits (T.C.) for board approved operators training schools, seminars and technical courses may be substituted for high school and college requirements. One (1) year of college work equals thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board approved courses shall equal one (1) T.C., and forty-five (45) T.C. equals eighteen (18) semester hours of college or one (1) year of high school.

2. An acceptable high school equivalency certificate may be used to substitute for graduation from high school.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 14, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Hornback

(1) Type and number of entities affected: The proposed amendment revises fees for certification of operators of wastewater treatment systems. Entities affected are current certified wastewater treatment system operators; these entities number 2,400 to 2,500.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs for operator certification will be assessed according to the following fee schedule: examination - $35; certificate renewal - $35; limited certificates - $20; training sessions by cabinet - $5 per contact hour.

2. Continuing costs or savings: Continuing costs to certified operators are determined by the renewal frequency.

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: The revision of the fee schedule for wastewater treatment system operator certification is expected to offset the costs of processing certification applications.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for operator certification is expected to have a positive effect on state revenue by offsetting the cost of processing certification applications.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising the fee schedule for operator certification is no action. This option was rejected because current fee levels are not sufficient to cover all processing costs.
(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: 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: None
TIERING: Was tiering applied? No. No cost difference exists in administering certification procedures among Classes I through IV.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Certification of Wastewater System Operators
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
LOCAL GOVERNMENT MANDATE: No.
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: The proposed amendment revises the wastewater system operator certification fees set forth in Section 6 to reflect the cost of procssing operator certification applications.
PROVISION/MECHANICS: Processing fees for wastewater system operator certification are an existing obligation. The proposed change modifies an existing obligation.
FISCAL EXPLANATION: There is no obligation to local governments.
PREPARER: Don E. Thomason

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.073
PURSUANT TO: KRS 224.033, 224.045
NECESSITY AND FUNCTION: This regulation defines the assessment of fees applicable to the issuance of discharge permits and variances. This regulation establishes permit and variance requirements in addition to those requirements of 401 KAR 5:005, 5:031, 5:045, 5:055, 5:060, 5:065, 5:070, 5:075, and 5:080 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required by 401 KAR 5:060, Section 1 to have a permit except for publicly owned sources and sources permitted under a general permit issued under 401 KAR 5:055, Section 5.

Section 2. Definitions. The following definitions described terms used in this regulation. Terms not further defined in this regulation have the meaning given by KRS 224.005 or, if not defined, the meaning attributed by common use.
(1) "Agriculture operation" means operations that use confined feeding in livestock or livestock-by-product production with manure handling facilities that qualify as concentrated animal feeding operations in accordance with 401 KAR 5:050.
(2) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.
(3) "Intermediate nonpublicly owned treatment works" means facilities which discharge a design flow rate of between 10,000 gallons per day and 49,999 gallons per day wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.
(4) "Large nonpublicly owned treatment works" means facilities which discharge a design flow rate greater than or equal to 50,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.
(5) "Major industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate greater than or equal to 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. A "major industry" designation, as defined in this regulation, is not a criteria for classification as a major facility, as defined in 401 KAR 5:050, Section 1.
(6) "Minor industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate less than 50,000 gallons per day of process wastewater containing conventional,

nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a "major industry."

(7) "Nonconventional pollutant" means all pollutants not considered to be a conventional pollutant as defined in this regulation and including priority pollutants identified in 401 KAR 5:060, Section 13.

(8) "Nonprocess industry" means industries that generate and discharge only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distributions, and wholesale and retail trade. These industries discharge nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharge wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration (LC) for fifty (50) percent mortality (ninety-six (96) hr. LC 50) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be a "minor industry."

(9) "Publicly owned treatment works (POTW)" for the purpose of this regulation shall be those facilities as defined in 401 KAR 5:050, Section 1, and which are eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(10) "Small nonpublicly owned treatment works" means facilities which discharge a design flow rate less than 10,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33 and 35.

(11) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to discharge from a wastewater treatment unit will be assessed a filing fee in the amount of twenty (20) percent of the base fee in Section 4(2)(a) of this regulation.

(2) Any owner or operator who submits an application for a variance will include with the application a filing fee in the amount of the base fee in Section 6(2)(a) of this regulation.

(3) A filing fee is not refundable if a discharge permit or variance application to which it is related is denied or withdrawn.

(4) The filing fee will be applied toward the discharge permit or variance fee assessed respectively in Sections 4 and 6 of this regulation.

Section 4. Discharge Permit Fees. (1)(a) Every owner or operator who is issued a discharge permit shall be assessed a discharge permit fee in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the discharge permit can be issued, under 401 KAR 5:075, Section 11, the cabinet will notify the applicant and send a bill for the discharge permit fee. The discharge permit will be issued by the cabinet upon receipt of the total amount of the permit fee less the filing fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(c) Facilities which fall into multiple categories as specified in Section 2 of this regulation shall be assessed the highest fee.

(2) Each discharge permit fee will be determined by adding the base fee in paragraph (a) of this subsection to all other applicable component fees listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a discharge permit for any point source water pollutant shall depend on the type of wastewater treatment unit or facility and the required permit action. The amount of the base fee will be assessed according to the following schedule:

Facility Category	First Issuance and Renewals New and Existing Facilities
Major industry	$3,200 [1600]
Minor industry	2,000 [1200]
Nonprocess industry	1,000 [450]
Large non-POTW	1,700 [1100]
Intermediate non-POTW	1,500 [650]
Small non-POTW	1,000 [350]
Agriculture	1,200 [200]
Surface mining operation	1,200 [350]

(b) Component fees. The component fee for each addition necessary to complete the evaluation of the discharge permit shall be as follows:

1. Fees for major modifications of permits will be prorated based on the life of the permit in accordance with subsection (3) of this section.

2. Public hearing and CWA Section 301 (33 U.S.C Section 1311) technology-based variances - $325.

(3) The provisions of this section will apply with respect to fees for temporary discharge permits except that the fee as determined by subsection (2) of this section will be multiplied by the ratio of the length of time covered by the temporary discharge permit to five (5) years.

Section 5. Duplicate Discharge Permit Fee. Upon application for the issuance of a duplicate discharge permit, the duplicate permit shall be issued by the cabinet upon receipt of a fifteen (15) dollar fee.

Section 6. Water Quality Variance Fee. (1) Any owner or operator granted a variance by the cabinet shall be assessed a variance fee. Upon determining that the variance can be granted, the cabinet shall notify the applicant and send a bill for the variance fee. Failure by the applicant to pay the variance fee on or before the due date shall result in the forfeiture of the filing fee and denial of the variance. The variance shall be granted by the cabinet upon receipt of the total amount of the variance fee less the filing fee.

(2) Variance fees shall be determined by adding the base fee in paragraph (a) of this subsection with the component fee, if applicable, listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a variance for any point source water pollutant shall be equal to $270, the cost of reviewing the feasibility of the variance request and reviewing the applicant's plan of study for the hydrologic-water quality investigation, assessment, or appraisal.

(b) Component fee. The component fee for completing an evaluation of a variance request shall be equal to $690, the cost of a technical review of the study data, results, and conclusions, and for making the variance recommendation.

Section 7. Terms of Payment. (1) Payment of a discharge permit or variance fee, and a duplicate discharge permit fee, as the case may be, will be made within thirty (30) days of the billing date.

(2) Payment of a filing fee shall accompany the application for a discharge permit or variance.

(3) With respect to all fees assessed in Sections 3, 4, 5, and 6 of this regulation, payment, if mailed, should be sent by certified mail. Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Clyde Baldwin

(1) Type and number of entities affected: The proposed amendment revises fees for discharge permits for all sources identified by 401 KAR 5:060, Section 1 except publicy owned sources and sources permitted under a general permit. Entities affected are those industries subject to 401 KAR 5:050 to 5:085; these entities number 2,200.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs for discharge permits are listed in the following fee schedule: Major industry - $3,200; Minor industry - $2,000; Nonprocess industry - $1,000; Large non-POTW - $1,700; Intermediate non-POTW - $1,500; Small non-POTW - $1,000; Agriculture - $1,200; Surface mining operation - $1,200. Each fee is for a permit covering five years of authorization to discharge. The annual fee costs are in reality one-fifth of the amount stated in the schedule. As an example, take the fee for a major industry which is listed as $3,200; then the annual rate would be $3,200 divided by 5, or $640. The fees faced by each category of facilities are designed such that facilities pay the costs of processing permits relevant to their own category. No category of facilities face proportionately greater fees to allow another category of facilities to face proportionately lesser fees.

2. Continuing costs or savings: Continuing costs to discharge permittees are determined by the renewal frequency.

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: The revision of the fee schedule for KPDES permitted dischargers is expected to offset the costs of processing permit applications.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for KPDES discharge permits is expected to have a positive effect on state revenue by offsetting the cost of processing discharge permit applications.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to revising the fee schedule for KPDES discharge permits are (1) no action and (2) terminating the KPDES discharge program and relegating the responsibilities of the program to the U.S. EPA. The no action option was rejected because current fee schedule levels are not sufficient to cover all processing costs. The program termination option was rejected because administration of surface water discharge permitting by EPA would substantially increase the administration cost to permitted and potentially permitted dischargers and decrease program efficiency. The proposed technical correction can only be made by amending the existing 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: 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: None

TIERING: Was tiering applied? Yes

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: KPDES Discharge Permit and Variances Fees
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
LOCAL GOVERNMENT MANDATE: No.
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: The proposed amendment revises the discharge permit fees set forth in Section 4 to reflect the costs of processing construction permit applications.
PROVISION/MECHANICS: Processing fees for discharge permits are an existing obligation. The proposed change modifies an existing obligation.
FISCAL EXPLANATION: There is no obligation to

local governments. KRS 224.033(20) prohibits the Natural Resources and Environmental Protection Cabinet from charging processing fees to local governments for discharges from publicly owned wastewater treatment facilities.
PREPARER: Don E. Thomason

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) Not applicable.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendment is part of the KPDES administrative regulation, 401 KAR 5:050 to 5:085. Under the requirements of primacy,KPDES must conform to NPDES, 40 CFR Part 122. In addition, KRS 224.034(4) requires KPDES to be no stricter than NPDES. The proposed changes imposed no stricter responsibilities.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The proposed changes impose no additional responsibilities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 6:015. Public and semipublic water supplies.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 224.032(3), (4), (5), (6)
NECESSITY AND FUNCTION: The Cabinet is directed by the aforementioned statutory provision to promulgate regulations applicable to all public and semipublic water supply systems operating within the Commonwealth of Kentucky. By accepting primary enforcement responsibility for the Federal Safe Drinking Water Act (P.L. 93-523, 42 U.S.C. Section 300f et seq.) the Commonwealth agrees to adopt and enforce the provisions of that Act. This regulation therefore establishes the standards and safeguards necessary and relative to the planning, operation and maintenance of public and semipublic water supply systems for the protection of public health.

Section 1. Definitions. (1) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his authorized representative.
(2) "Auxiliary intake" means any piping connection or other device whereby raw (untreated) water may be secured from a location or source other than the intake which is normally used.
(3) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.
(4) "Contaminant" means any physical, chemical, biological, or radiological substance or any other similar matter in water.
(5) "Cross-connection" means any physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.
(6) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.
(7) "Division" means the Division of Water.
(8) "Ground water source" means any source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere but excluding wells which have consistently demonstrated a variation in turbidity content exceeding the acceptable levels for potable water contained in these regulations.
(9) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.
(10) "Person" means any individual, firm, corporation, officer or employee thereof, water association, water district, public institution, municipality, county, partnership, company, governmental agency, club, organization of any kind, any political subdivision of the Commonwealth of Kentucky or any federal agency with the exception of Indian reservations.
(11) "Potable water" means any water which meets the provisions of this regulation, the quality of which is approved by the cabinet for human consumption.
(12) "Private water supply" means a residential water supply located on private property under the control of a person holding a possessory interest in the property, the use of which supply is limited to family members.
(13) "Public water system" means any system owned by any person, for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and includes any collection, treatment, storage or distribution facility under control of the operator of such system and used primarily in connection with such system and any collection or pretreatment storage facility not under such control used primarily in connection with such system. A public water system is either a "community water system" or a "noncommunity water system."
(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.
(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by persons for a period

less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round.

(14) "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(15) "Semipublic water supply" means any water supply made available for drinking or domestic use which serves more than three (3) families but does not qualify as a public water system.

(16) "Standard methods" means the latest edition of "Standard Methods for the Examination of Water and Wastewater" prepared and jointly published by APHA, AWWA and WPCF, herein filed by reference. This publication is printed and distributed by the Publication Office, American Public Health Association, 1015 Eighteenth Street, N.W., Washington, D.C. 20036.

(17) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(18) "Supplier of water" means any person who owns or operates a public water system.

(19) "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free flowing springs, wells with variable turbidity due to the characteristics of the raw water, or any source of water supply for a public water system that has a free water surface exposed to the atmosphere.

(20) "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(21) "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical or bacteriological quality of the water.

(22) "Professional engineer" means an engineer with current registration as a professional engineer in Kentucky.

(23) "Turbidity" means the presence of suspended particulates including, but not limited to, sand, silt, clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or elements which optically interfere with the clarity of liquids.

(24) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(25) Definitions relating to trihalomethane surveillance are included in Section 9 [8] of this regulation.

Section 2. General Provisions. (1) Water systems covered. Except where otherwise provided, this regulation applies to each public water system. This regulation shall not apply to a public water system which consists only of distribution and storage facilities which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply, which is not a carrier in interstate commerce and which does not sell water to any person.

(2) Operation and responsibility. No person shall operate or commence operation of a public or semipublic water supply except in compliance with the provisions of this regulation. However, water supply systems constructed prior to the effective date of this regulation may be continued in use provided the operation, maintenance, bacteriological, chemical, physical and radiological standards comply with these requirements, or such system obtain a variance or exemption from those standards with which it does not comply.

(3) Operator certification.

(a) Each public water system shall be operated under the supervision of an individual holding a current Kentucky operators certificate for at least the class of system supervised. Certified operators are required for the operation of treatment facilities and systems having only distribution facilities. In the event the operator is not physically present while a plant is operating, he must be immediately available.

(b) Certified operators are not required for semipublic water systems.

(4) "Boil water" notice. In the event the maximum allowable bacterial level as specified in these regulations is exceeded, the cabinet may issue a public notice that water provided by a system is unfit for human consumption unless first boiled.

(a) When directed by the cabinet, boil water notices shall be issued when the bacteriological maximum contaminant level (MCL) has been exceeded as confirmed by analyses made in a certified laboratory.

(b) The "boil water" notice shall be released through newspapers, radio, television or any media having an immediate public impact. As a health and safety measure, the selected media shall be used to repeat the notification during the period of imminent danger at intervals which shall maintain public awareness. The notice shall be readily understood and include instructions for the public and a summary of the steps the public water system is taking to correct the problem. Boiling instructions shall caution to only boil drinking water for short range use by boiling water for at least five (5) minutes.

(c) A public water system may issue a boil water notice in the absence of a state notice.

(d) Consumer "advisory." At the cabinet's discretion, when conditions within a public water system indicate a possible adverse health effect from consumption of the water distributed by a system, an advisory may be issued. The advisory will inform affected persons of all actions which should be taken.

(5) Cross-connections prohibited. All cross-connections are hereby prohibited. The use of automatic devices such as reduced pressure zone backflow preventers and siphon breakers may be approved by the cabinet in lieu of proper air gap separation under specific regulated conditions as a means of protecting the water supply system. A combination of air gap separation and automatic devices shall be required where determined by the cabinet to be necessary because of the degree of hazard to public health. It shall be the responsibility of the management of every public water supply (PWS) to determine with the most cost-effective approach whether or where cross-connections exist and to take the necessary steps to immediately eliminate them.

(6) Bypasses prohibited. No bypass shall be created or maintained without the written approval of the cabinet.

(7) Auxiliary intakes prohibited. No auxiliary intake shall be used in direct connection with a public or semipublic water supply system except during a period of emergency and only after the written approval of the cabinet.

(8) Sewer and water connections. The sanitary sewer serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains and floor drains shall discharge to the public sewer system where available. Where no such sewer is available, the connection shall be made to a suitable sewage disposal facility. There shall be no direct physical connection between the sewer system and any filter backwash, filter-to-waste drains or clearwell overflow lines. A suitable air gap must be provided between such drains and overflow lines and the approved sanitary, storm sewer, or natural drainage system as to preclude possibility of back-up of sewage or waste into the drain or overflow lines.

(9) Disinfection of water supply. All public and semipublic water supplies shall provide continuous, automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-tenths (0.2) milligrams per liter (or ppm) at all points throughout the distribution system. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. Disinfecting agents other than chlorine may be approved by the cabinet provided reliable feeding equipment is available and testing procedures for a residual are recognized in "Standard Methods." Free chlorine residuals shall be checked daily at representative points throughout the system and reported monthly pursuant to Section 13 [12](1) of this regulation.

(10) Disinfection of new, repaired or extended distribution systems. All new water distribution systems, including storage distribution tanks and repaired portions of, or all extensions to, existing systems, shall be thoroughly disinfected before being placed in service by the use of chlorine or chlorine compounds in such amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours and followed by thorough flushing. New water distribution lines shall not be placed into service until the proper number of representative bacteriological samples taken at the points specified in paragraph (a) of this subsection are examined and are shown to be negative following disinfection. Other methods of disinfection shall have the written approval of the cabinet.

(a) Bacteriological samples shall be submitted for each new construction project, routine repair, replacement or extensions to existing systems after the disinfection and flushing. A core zone which includes up to the first one-half (1/2) mile shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample per mile for each mile of new distribution line shall be submitted. New or routine replacement lines shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the division by the most expedient methods. Written approval of the cabinet is required for other disinfection methods.

(b) When emergency repairs due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling provided appropriate and thorough flushing safeguards, with a chlorine residual present, are taken.

(11) Substances which may have deleterious physiological effect, or for which physiological effects are not known, shall not be introduced into the water supply system in a manner which could permit them to reach the consumer.

(12) Certified laboratories. For the purpose of determining compliance with this regulation, samples may be considered only if they have been analyzed by a laboratory certified by the cabinet or the cabinet's authorized agent except that measurements for turbidity and free chlorine residual may be performed by any person acceptable to the cabinet.

(a) The authorized agent shall be a certification officer qualified in the field of microbiology, chemistry or radiological substances or one (1) individual qualified in all three (3) fields and duly accredited by the U.S. Environmental Protection Agency's designated Environmental Monitoring and Support Laboratory Administrator or his duly appointed staff members.

(b) The cabinet's certification officer shall grant "interim" or "provisional" certification pursuant to the U.S. Environmental Protection Agency's guidelines stipulated in "The Criteria and Procedures for Interim Certification of Laboratories Involved in Analysis of Public Water Supplies" EPA-670/9-75-005, August, 1975, or the most recent revision thereof.

(c) On-site inspections (audits) for recertification will be made on a biannual basis, effective October 1, 1982, unless a special audit is required by receipt of a written request for additional parameter certification or if, in the cabinet's determination, a certified laboratory has failed to maintain proper methodology, physical or instrumental capabilities or qualified personnel.

(d) Methodology for the detection of contaminants or contaminant groups are stipulated in the current edition of "Standard Methods for the Examination of Water and Wastewater;" "Methods of Chemical Analysis of Water and Wastewater;" EPA Monitoring and Support Laboratory, Cincinnati, Ohio; Radiological Techniques as set forth in 41 Federal Register 28402 (July 9, 1976); "Gas Chromatographic Methods for Analysis of Organic Substances in Water," USGS, Book 5; or alternative methods approved by the U.S. EPA in 40 CFR part 141, as amended.

(13) Monitoring of consecutive public water systems. When a public water system supplies water to one or more other public water systems, the cabinet may modify the monitoring requirements imposed by this regulation to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(14) Guidance. The cabinet shall provide information on design criteria upon request.

(15) The cabinet may enter, during normal business hours pursuant to KRS 224.033(10), any establishment, facility or other property of such supplier in order to determine whether such supplier has acted or is acting in compliance

with any applicable law or regulation which the cabinet has the authority to enforce. Such entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed or used under the provision of these regulations. The cabinet or its authorized agent may cause to be tested any feature of a public water system including its raw water source to determine compliance with applicable legal requirements.

Section 3. Design, Construction and Approval of New Facilities. (1) Preliminary plans. When any supplier or potential supplier of water plans to undertake the construction of a new water treatment plant or expand an existing one in any way, preliminary plans shall be submitted to the cabinet before any financial commitment is made or any construction initiated. An applicant shall demonstrate to the cabinet evidence of efforts to avoid locating part or all of the new or expanded facility at a site which is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof. Except for the intake structure, the facility shall be out of the 100-year flood plain.

(2) Preliminary information. The following information shall be submitted to the cabinet by a professional engineer on behalf of the applicant:

(a) A statement as to the name and owner of the plant;

(b) USGS Quadrangle map which shows where the site of the proposed facility is located;

(c) The proposed source of water and quantity available with the location of the intake or wellhead identified by latitude and longitude in degrees, minutes and seconds;

(d) A chemical and bacteriological analysis of the water from the proposed source by a laboratory certified by the cabinet or its authorized agent;

(e) A description of the proposed facility including size, flow rate through filters, settling basin size, and other general criteria;

(f) Operation plan including anticipated load, hours of operation, area served and name of plant operator.

(3) Preliminary plans approval. Upon receipt and review of the preliminary plans as set forth in subsection (1) of this section, the cabinet will either approve the preliminary plans or return them to the supplier or water for revision. Approval of the preliminary plans signifies approval only of the concept described in the preliminary plans and does not alter in any way the responsibility of the supplier of water to submit complete plans and specifications to the cabinet for final approval. The facility shall be designed in compliance with the approved preliminary plans. Any change in the final design from the concept set forth in the preliminary plans shall be approved prior to its incorporation in the final plans and specifications.

(4) Preliminary plans for semipublic treatment facilities or distribution systems. Preliminary plans are not required by the cabinet for semipublic treatment facilities or for distribution system construction, extensions or improvements.

(5) Final plans and specifications, water treatment plants and distribution facilities:

(a) Plans and specifications for all public water supplies shall be prepared and submitted to the cabinet by a professional engineer and shall bear his seal. The seal of a professional engineer is not required on plans and specifications for semipublic water supplies. The construction or installation of any new facilities or works or the alteration or reconstruction of any new facilities or works in any public or semipublic water supply shall not begin until plans and specifications, or any changes thereto together with design data as may be required for proper review of the plans, have first been submitted in four (4) copies to the cabinet and have been approved by the cabinet in writing. Plans and specifications, reports and other information shall be submitted in such form and content as may be specified by the cabinet, and shall be submitted at least thirty (30) days prior to the date on which action is requested of the cabinet. The front page of the plans shall contain the name of the water supply, its ownership, location by city and county, and the name of the person preparing the plans.

(b) The cabinet review of plans is limited to sanitary features of design and other features of public health significance and does not include the examination of structural, mechanical or electrical design or economic factors.

(c) The plans shall be drawn to scale and accompanied by proper specifications so as to permit a comprehensive engineering review and shall include but not be limited to the following:

1. A plan and sectional view with all necessary dimensions of the water treatment facilities;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system; and

3. Specifications containing details on all treatment equipment, including catalog identification of pumps, chlorinators, chemical feeders and related equipment.

(6) Approval of final plans. When approved, one (1) set of plans and specifications stamped "approved" shall be returned to the engineer or person who prepared the plans and specifications.

(7) Construction:

(a) During construction a set of approved plans and specifications shall be available at the job site at all times. All work shall be done in accordance with the approved plans and specifications.

(b) If the cabinet's representative observes work being done in a manner which does not conform to the "approved" plans and specifications, the cabinet shall notify the owner in writing of any noncompliance.

(8) Final approval of facility. Upon completion of the construction, the person who presented the plans shall certify in writing that the project has been completed in accordance with the "approved" plans and specifications.

(9) Expiration of approval. Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

Section 4. Fees. (1) Fees for the review of plans and specifications for new and existing public and semipublic water supplies.

(2) Filing fees.

(a) Except as provided in KRS 224.033(20), any person who submits plans and specifications required by Section 3 of this regulation shall be assessed a filing fee in the amount of twenty (20) percent of the required fee described in subsection (3)(b) of this section.

(b) A filing fee is not refundable if the plans and specifications to which the filing fee is related are denied or withdrawn.

(c) The filing fee will be applied toward the project fee assessed in subsection (3)(b) of this section.

(d) Plans and specifications denied approval will be returned to the applicant. Further consideration of such plans and specifications will require a new submittal with appropriate filing fee(s).

(3) Project fees.

(a) Following preliminary review of the plans and specifications, the applicant will be notified if the plans and specifications are acceptable and advised to submit the remainder of the fee(s) required by paragraph (b) of this subsection.

(b) Fees for review and approval of plans and specifications required by Section 3 of this regulation will be assessed according to the following schedule:

1. Community public water supplies.

a. A water treatment plant utilizing coagulation, disinfection, filtration, and sedimentation (all treatment components, complete treatment) - $775.

b. A water treatment plant utilizing at least disinfection and other treatment component(s) but less than complete treatment - $500.

c. A water treatment plant utilizing only disinfection - $250.

d. A change in design capacity of a water treatment plant involving coagulation, disinfection, filtration, and sedimentation (all treatment components, complete treatment) - $775.

e. A change in design capacity of a water treatment plant involving disinfection and other treatment component(s) but less than complete treatment - $500.

f. A change in design capacity of a water treatment plant involving only disinfection - $100.

g. A change, other than to a water treatment plant, in the structures and appurtenances, except for distribution lines of less than 10,000 feet, of a water supply system - $325.

h. A change to the distribution lines of 10,000 feet or less of a water supply system - $150.

2. Noncommunity public water supplies.

a. A water treatment plant utilizing coagulation, disinfection, infiltration, and sedimentation (all treatment components, complete treatment) - $750.

b. A water supply system serving more than 100 people but not providing complete treatment - $200.

c. A change to a water supply system serving more than 100 people - $100.

d. A water supply system serving 100 people or less but not providing complete treatment - $100.

e. A change to a water supply system serving 100 people or less - $50.

3. Semipublic water supplies. A semipublic water supply facility or a change to a semipublic water supply - $50.

(4) With respect to the fees assessed in this regulation, payment shall be by certified check or money order payable to the Kentucky State Treasurer.

Section 5. [4.] Bacteriological Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must perform bacteriological sampling. All suppliers of water operating a public water system, semipublic water systems, suppliers who produce water and suppliers who purchase water from others are subject to the provisions of this section. Persons operating private water supplies are not subject to the sampling and analytical provisions set forth herein.

(2) Sampling frequency, public water systems:

(a) Sampling frequency for all public water systems. Suppliers of water for all public water systems shall collect samples to be analyzed for total coliform bacteria per 100 milliliters. Coliform density samples shall be taken at regular time intervals and in numbers proportionate to the population served by the system. In no event shall the frequency be less than as set forth following:

MINIMUM NUMBER OF SAMPLES PER MONTH

Population Served	Minimum Number Samples	Population Served	Minimum Number Samples
25 - 2,500	2	37,001 - 41,000	45
2,501 - 3,300	3	41,001 - 46,000	50
3,301 - 4,100	4	46,001 - 50,000	55
4,101 - 4,900	5	50,001 - 54,000	60
4,901 - 5,800	6	54,001 - 59,000	65
5,801 - 6,700	7	59,001 - 64,000	70
6,701 - 7,600	8	64,001 - 70,000	75
7,601 - 8,500	9	70,001 - 76,000	80
8,501 - 9,400	10	76,001 - 83,000	85
9,401 - 10,300	11	83,001 - 90,000	90
10,301 - 11,100	12	90,001 - 96,000	95
11,101 - 12,000	13	96,001 - 111,000	100
12,001 - 12,900	14	111,001 - 130,000	110
12,901 - 13,700	15	130,001 - 160,000	120
13,701 - 14,600	16	160,001 - 190,000	130
14,601 - 15,500	17	190,001 - 220,000	140
15,501 - 16,300	18	220,001 - 250,000	150
16,301 - 17,200	19	250,001 - 290,000	160
17,201 - 18,100	20	290,001 - 320,000	170
18,101 - 18,900	21	320,001 - 360,000	180
18,901 - 19,800	22	360,001 - 410,000	190
19,801 - 20,700	23	410,001 - 450,000	200
20,701 - 21,500	24	450,001 - 500,000	210
21,501 - 22,300	25	500,001 - 550,000	220
22,301 - 23,200	26	550,001 - 600,000	230
23,201 - 24,000	27	600,001 - 660,000	240
24,001 - 24,900	28	660,001 - 720,000	250
24,901 - 25,000	29	720,001 - 780,000	260
25,001 - 28,000	30	780,001 - 840,000	270
28,001 - 33,000	35	840,001 - 910,000	280
33,001 - 37,000	40	910,001 - 970,000	290
		970,001 - 1,050,000	300

(b) Population served calculation. For purposes of determining the population served to determine sampling frequency, the applicable method below shall be used:

1. When the supplier of water serves an area defined by an official census count or a population projection, the most recent census

count or official population projection shall be used; or

2. Where no official figures on population are available on the area served by a supplier of water, the population served shall be considered to be a factor of not less than three and three-tenths (3.3) times the number of residential connections or a factor of not less than three (3) times the total number of all connections, which ever is greater.

(3) Sampling frequency for semipublic water suppliers. Samples of water from semipublic water systems shall be tested, for the purpose of determining coliform density, at least twice per month.

(4) Sampling scheduling. The time at which each public and semipublic water supplier shall take routine samples for the purpose of determining coliform density shall be scheduled by the cabinet. A noncommunity water system shall sample for total coliform bacteria per 100 milliliter twice each month of operation and seasonally operated facilities shall notify the cabinet in writing in advance as to the opening and closing dates covered by such sampling requirements. This frequency may be changed by the cabinet on the basis of subsequent surveys and conditions.

(5) Forwarding samples. The cabinet will, upon request, notify any water supplier of those certified commercial or state laboratories to which samples may be sent for coliform density analysis. The samples shall be forwarded to a certified laboratory by the most expeditious or speedy method available to the water supply.

(6) Sampling points. Samples taken for coliform analysis shall be taken at representative points throughout the water distribution system. Different sampling points shall be designated by the water supply including remote points in the distribution system. When the sample is collected, the free chlorine residual shall be determined and recorded on the form provided with the sample container.

(7) Sample collection, public water systems. The bacteriological samples for public water systems shall be collected by the agency responsible for the distribution of water in bottles prepared and sterilized in accordance with "Standard Methods." The water sample shall be free of any disinfecting agent at the time of its collection. The bacteriological samples collected by a distributor of water for analysis in its own certified laboratory may use containers other than bottles if approved, in writing, by the cabinet.

(8) Analytical techniques for bacteriological contamination. The analysis for the determination of bacteriological contamination shall be determined by either the membrane filter technique or the multiple tube fermentation technique (MPN procedure). The analysis shall be conducted in accordance with "Standard Methods" except that a standard sample size shall be employed. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the five (5) tube most probable number (MPN) procedure (fermentation tube method) shall be five (5) times the standard portion. The standard portion is either ten (10) milliliters or 100 milliliters as described herein.

(9) Maximum bacteriological contaminant level, membrane filter technique. When the membrane filter technique is used, the number of coliform bacteria shall not exceed any of the following:

(a) One (1) per 100 milliliters as the arithmetic mean of all samples examined per month pursuant to subsection (2)(a) of this section, except that, at the division's discretion, systems required to take ten (10) or fewer samples per month may be authorized to modify this requirement and exclude one (1) positive routine sample per month from the monthly calculation if:

1. As approved on a month-to-month basis the cabinet determines and notifies the public water system that no unreasonable risk to health would exist under the conditions of this modification. A notification may be based on, but is not limited to, the following:

a. The system provides and maintains an active disinfectant residual in the distribution system;

b. The potential for contamination as indicated by a sanitary survey; and

c. The history of water quality at the public water system including, but not limited to, MCL or monitoring violations;

2. The supplier initiates a check sample on each of two (2) consecutive days from the same sampling point within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative; and

3. The original positive routine sample is reported and recorded by the supplier pursuant to Sections 13 [12](2) and 14 [13](4) of this regulation. The supplier shall report to the cabinet its compliance with the conditions specified in this paragraph and a summary of the corrective action taken to correct the prior positive sample result. If a positive routine sample is not used for the monthly calculation, another routine sample must be analyzed for compliance purposes. This provision may be used only once during two (2) consecutive compliance periods.

(b) Four (4) per 100 milliliters in more than one (1) sample when less than twenty (20) are examined per month.

(c) Four (4) per 100 milliliters in more than five (5) percent of the samples when twenty (20) or more are examined per month.

(10) Maximum bacteriological contaminant level, multiple tube fermentation technique (MPN procedure).

(a) Ten (10) milliliter standard tube. When the fermentation tube method and ten (10) milliliter standard tube are used, coliform bacteria shall not be present in any of the following: more than ten (10) percent of the tubes in any month pursuant to subsection (2)(a) of this section, except that, at the cabinet's discretion, systems required to take twenty (20) or fewer samples per month may be authorized to exclude one (1) positive routine sample resulting in one (1) or more positive tubes per month from the monthly calculation if:

1. As approved on a case-by-case basis the cabinet determines and notifies the public water system in writing that no unreasonable risk to health existed under the conditions of this modification. A notification may be based on, but not limited to, the following:

a. The system provides and maintains an active disinfectant residual in the distribution system;

b. The potential for contamination as indicated by a sanitary survey; and

c. The history of the water quality at the public water system (e.g., MCL or monitoring

violations);

2. The supplier initiates a check sample on each of two (2) consecutive days from the sampling point within twenty-four (24) hours after notification that the routine sample is positive, and each check sample is negative;

3. The original positive routine sample is reported and recorded by the supplier pursuant to Sections 13 [12](2) and 14 [13](4) of this regulation; the supplier reports to the cabinet its compliance with the conditions specified in this paragraph and reports the action taken to correct the prior positive sample result; if a positive routine sample is not used for the monthly calculation, another routine sample is analyzed for compliance purposes; and this provision is used only once during two (2) consecutive compliance periods;

4. Three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or

5. Three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month, or three (3) or more tubes in more than one (1) sample when less than twenty (20) samples are examined per month; or three (3) or more tubes in more than five (5) percent of the samples when twenty (20) or more samples are examined per month.

(b) 100 milliliter standard sample. When the fermentation tube method and 100 milliliter standard samples are used, coliform bacteria shall not be present in any of the following: more than sixty (60) percent of the tubes in any month; or, five (5) tubes in more than one (1) sample when less than five (5) samples are examined per month; or, five (5) tubes in more than twenty (20) percent of the samples when five (5) or more samples are examined per month.

(11) Small system compliance period. For public water systems that are required to sample at a rate of less than four (4) per month, and semipublic systems, compliance with subsections (9) and (10) of this section shall be based upon sampling during a three (3) month period, except that, at the discretion of the cabinet compliance may be based upon sampling during a one (1) month period because of public safety.

(12) Bacteriological check sampling. The following check sampling levels are established:

(a) Membrane filter technique. When coliform bacteria occur in a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet until the results obtained from at least two (2) consecutive check samples show less than one (1) coliform bacterium per 100 milliliters.

(b) Multiple tube fermentation technique:

1. Ten (10) milliliter tubes. When coliform bacteria occur in three (3) or more ten (10) milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet until the results obtained from at least two (2) consecutive check samples show no positive tubes.

2. 100 milliliter tube. When coliform bacteria occur in all five (5) of the 100 milliliter tubes of a single sample, at least two (2) consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency established by the cabinet until the results obtained from at least two (2) consecutive daily check samples show no positive tubes.

(13) Check sample locations. The location at which the check samples were taken pursuant to subsection (12) of this section shall not be eliminated from future sampling without written approval of the cabinet. The results from all coliform bacterial analyses performed pursuant to this subpart, except those obtained from check samples and special purpose samples, shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance.

(14) Check sample reporting. When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples examined as directed in subsection (12) of this section, the supplier of water shall report that to the division within forty-eight (48) hours.

(15) When a maximum contaminant level set forth in subsection (9) or (10) of this section is exceeded, the supplier of water shall report that to the division and notify the public as prescribed in Section 12 [11] of this regulation. The cabinet may conduct an on-site inspection to assist the operator in determining the cause of the contamination and issue an order which includes a reasonable time period during which all causes of the contamination shall be corrected.

(16) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance with subsection (2)(a), (9), or (10) of this section.

Section 6. [5.] Turbidity Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample for turbidity. All producers of water for public water systems who use surface water sources in whole or in part and those groundwater sources which demonstrate a variable turbidity are subject to the provisions set forth in this section. Systems that purchase water from other systems or obtain their water from turbidity free groundwater sources or semipublic systems are not subject to these provisions.

(2) Sampling frequency. Samples for the determination of turbidity shall be taken one (1) each day at the producing facility except as otherwise provided in this regulation. Turbidity level determinations shall be made within one (1) hour after sample collection.

(3) Sampling point. Samples for the determination of turbidity shall be taken at a representative entry point to the distribution system. Where water is produced by more than one (1) treatment plant for a single system, each plant shall be considered a separate sampling point.

(4) Maximum turbidity limit. The maximum contaminant level for turbidity is one (1) turbidity unit (TU) as determined by a monthly average of daily samples or five (5) turbidity units based on an average of two (2) consecutive

days.

(5) Measurement technique. The measurement for turbidity shall be by the Nephelometric Method as set forth in "Standard Methods," or an alternate method approved in writing by the cabinet.

(6) Excessive turbidity. If the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable but not later than one (1) hour thereafter. If the repeat sample exceeds the maximum allowable limit, the supplier shall report that to the division within forty-eight (48) hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two (2) samples taken on consecutive days exceeds five (5) TU, the supplier of water shall report that to the division and notify the public as directed in Section 12 [11] of this regulation.

(7) Exceptions. Up to five (5) turbidity units may be allowed if the supplier of water can demonstrate to the cabinet that the higher turbidity does not do any of the following:

(a) Interfere with disinfection;

(b) Prevent maintaining an effective disinfectant agent throughout the distribution system; or

(c) Interfere with microbiological determinations.

Section 7. [6.] Inorganic Chemical Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample for inorganic chemicals. All producers of water for public water systems shall sample for the presence of inorganic chemicals. Systems that purchase all of their water from another system or semipublic systems are not required to sample for inorganic chemicals.

(2) Sampling frequency:

(a) Community water systems, surface source. All community water systems utilizing surface water sources shall sample for the presence of inorganic chemicals each year, with the first sampling completed by June 24, 1978.

(b) Community water systems, groundwater source. All community water systems utilizing groundwater as a source of supply shall sample for the presence of inorganic chemicals each three (3) years with the initial sampling completed by June 24, 1979.

(c) All noncommunity water systems. All noncommunity water systems shall sample once each three (3) years with the initial sampling completed by June 24, 1979. The only inorganic chemical for which noncommunity water systems must sample is nitrates.

(3) Sampling point. The sampling point for the determination of inorganic chemicals shall be at any free flowing outlet of the distribution system.

(4) Maximum inorganic chemical limits (except fluoride):

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

Contaminant	Level, milligrams per liter
Arsenic	0.05
Barium	1.
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.
Selenium	0.01
Silver	0.05

(b) The maximum contaminant level for nitrate is applicable to all public water systems. The levels for the other inorganic chemicals apply only to community water systems.

(5) Fluoridation.

(a) Maximum fluoride concentration. When the annual average of the maximum daily air temperatures for the location in which the community water system is situated is the following, the maximum contaminant levels for fluoride are:

Temperature Degrees Fahrenheit	Degrees Celsius	Level, milligrams per liter
53.7 and below	12.0 and below	2.4
53.8 to 58.3	12.1 to 14.6	2.2
58.4 to 63.8	14.7 to 17.6	2.0
63.9 to 70.6	17.7 to 21.4	1.8
70.7 to 79.2	21.5 to 26.2	1.6
79.3 to 90.5	26.3 to 32.5	1.4

(b) The maximum limit for fluoride is applicable to community water systems only.

(c) Fluoridation of public water supplies is covered by 401 KAR 6:020.

(6) Measurement technique. Measurement for inorganic chemicals shall be done in accordance with the techniques mutually approved by the Administrator and the division.

(7) Inorganic chemical limit exceeded (except nitrate):

(a) If the level of any contaminant listed in subsection (4) or (5) of this section (except nitrate) exceeds the maximum contaminant level, the supplier of water shall report to the cabinet within seven (7) days and initiate three (3) additional analyses at the same sampling point within one (1) month.

(b) When the average of the routine sample that exceeds the maximum limit together with the three (3) additional samples as set forth above rounded to the same number of significant figures as the maximum contaminant level for the substance in question exceeds the maximum contaminant level, the supplier of water shall notify the cabinet and give notice to the public as prescribed in Section 12 [11] of this regulation. Monitoring by the suppliers after public notification shall be at a frequency designated by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action is effective.

(8) Nitrate limit exceeded. The maximum contaminant level for nitrate shall be determined on the basis of the mean of two (2) analyses. When a level exceeding the maximum

contaminant level for nitrate is found, a second analysis shall be initiated within twenty-four (24) hours, and if the mean average of the two (2) analyses exceeds the maximum contaminant level, the supplier of water shall report this to the cabinet and shall notify the public as prescribed in Section 12 [11] of this regulation.

(a) Nitrate levels not exceeding twenty (20) mg/l may be allowed in a noncommunity water system if:

1. No water from the system is or will be available to children under six (6) months of age; and

2. There will be continuous posting that nitrate levels exceed ten (10) mg/l and the potential health effects of exposure; and

3. Local and state public health authorities are notified annually of nitrate levels that exceed ten (10) mg/l; and

4. No adverse health effects shall result.

(b) Where the state allows levels of nitrate up to twenty (20) mg/l, public notification will be required when the MCL exceeds twenty (20) mg/l.

(9) Prior sampling accepted. Surface water data acquired since June 24, 1976 and ground water data acquired since June 24, 1974 may be substituted for the initial analyses required by this section at the discretion of the cabinet.

Section 8. [7.] Organic Chemical Sampling, Analytical Techniques and Maximum Contaminant Levels. (1) Who must sample for organic chemicals. A community water system that obtains all or part of its water from surface water sources shall sample for organic chemicals and is subject to the provisions of this section. The cabinet may require a community water system which obtains its water from any groundwater source to sample for organic chemicals.

(2) Sampling frequency. Sampling for organic chemicals shall be done no less than once each three (3) years at a period of the year specified by the cabinet, with the initial sampling completed by June 24, 1978.

(3) Sampling points. The sampling point for the determination of organic chemicals shall be at any free flowing outlet of the distribution system.

(4) Maximum organic chemical limits. The following are the maximum contaminant levels for organic chemicals.

	Level, milligrams per liter
Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10, 10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa hydro-1,4-endo, endo-5,8 - dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2, 2 - bis (p-methoxyphenyl) ethane).	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical Chlorinated Camphene, 67-69 percent chlorine).	0.005
Chlorophenoxys:	
2,4 - D, (2,4-Dichlorophenoxyacetic acid).	0.1
2,4,5-TP Silvex (2,4,5-Trichloro-phenoxypropionic acid).	0.01

(5) Measurement technique. Measurement for the determination of the chlorinated hydrocarbon group shall be made in accordance with "Methods for Organic Chlorine Pesticides in Industrial Effluents." Measurement for the determination of the chlorophenoxy group shall be in accordance with the "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents." Both methods are found in the publication from the Method Development and Quality Assurance Laboratory, Environmental Protection Agency, Cincinnati, Ohio, dated November 28, 1973. Other methods may be mutually approved by the administrator and the division.

(6) Organic chemical limit exceed.

(a) If the results of an analysis for the organic chemicals listed above show that the maximum limits have been exceeded, the supplier of water shall report this information to the cabinet within seven (7) days and initiate three additional analyses within one (1) month.

(b) When the average of the four (4) analyses made above rounded to the same number of significant figures as the maximum contaminant level for the substance in question exceeds the maximum contaminant level, the supplier of water shall report that to the Cabinet's Division of Water and give notice to the public as specified in Section 12 [11] of this regulation. Monitoring after public notification shall be at a frequency determined by the cabinet and shall continue until the maximum contaminant level has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(7) Prior sampling accepted. For the initial analysis required in this section, data for surface water acquired within one (1) year prior to June 24, 1977 and data for ground water acquired within three (3) years prior to June 24, 1977 may be substituted at the discretion of the cabinet.

Section 9. [8.] Trihalomethanes. (1) Definitions. The following definitions are applicable to this section:

(a) "Trihalomethane (THM)" means one (1) family of organohalogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(b) "Total trihalomethanes (TTHMs)" means the arithmetic sum of the concentrations in milligrams per liter of the THM compounds (trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane) rounded to two (2) significant figures.

(c) "Maximum total trihalomethane potential (MTP)" means the maximum concentration of TTHMs produced in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Centigrade (seventy-seven (77) degrees Fahrenheit) or above.

(d) "Disinfection" means the use of chlorine and free chlorine residuals. The use of chloramines, chlorine dioxide and ozone shall be acceptable substitutes for the purpose of eliminating formation of trihalomethanes, with prior approval by the division.

(2) Who must sample for trihalomethanes. Each community public water system serving 10,000 or more persons that adds a disinfectant as part of

its treatment process shall monitor for trihalomethanes. The cabinet shall provide technical assistance in sampling and sample analysis for trihalomethanes. Consecutive community water systems, where there is a seller and one (1) or more purchasers of water and the combined population of the systems involved exceeds 10,000 or more persons, shall be required to sample for trihalomethanes pursuant to Section 2(13) of this regulation as follows:

(a) When a buyer does not practice booster disinfection or alter the water in any way, the seller shall be responsible for monitoring. Sampling shall be done pursuant to subsection (4)(c) of this section wherein the buyer's distribution system shall reflect the longest period of retention.

(b) If a buyer practices booster disinfection or alters the water in any way, monitoring shall be the responsibility of the buyer and sampling shall be done pursuant to subsection (4) of this section. The raw water sample shall be taken at the point of entry into the system of the buyer and ahead of the booster chlorination point.

(c) Any system determined by the division to be the major contributor to excesses in violation of maximum contaminant levels for total trihalomethanes shall notify the public as provided in Section 12 [11] of this regulation.

(3) Sampling frequency. Systems serving 75,000 or more persons are required to have completed one (1) year of sampling and analysis for trihalomethanes on a quarterly basis by November 29, 1981. Systems serving more than 10,000 persons but less than 75,000 persons shall initiate quarterly monitoring by November 29, 1982 and have one (1) year of sampling and analysis completed by November 29, 1983.

(4) Sampling points. Samples shall be taken from a free flowing tap within the distribution system of the supplier on the following basis:

(a) One (1) untreated or raw water sample to determine interference factors.

(b) Three (3) samples shall be taken at points in the distribution system which reflect normal average daily usage or turnover.

(c) One (1) sample shall be taken in the system which reflects the longest time period of retention within the distribution system but shall not be taken on a dead-end.

(d) All samples taken quarterly shall be taken in the same week and at the same designated sample points during each quarter.

(e) The minimum number of samples required for each system shall depend upon the number of treatment plants in the system. Each system shall collect four (4) samples from the distribution system per quarter for each treatment plant. One (1) raw water control sample shall be taken from each plant intake per quarter.

(f) In multiple plant operations, sampling shall reflect the distribution from each plant.

(5) Maximum trihalomethane limits.

(a) The maximum contaminant level for total trihalomethanes is one-tenth (0.10) milligrams per liter (mg/l).

(b) The results of all analyses performed each quarter shall be averaged and reported in a format supplied by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons by the division.

(c) Compliance will be determined on a running annual average of the most recent four (4) quarterly samples.

(6) Reduction in sampling frequency. Upon receipt of a written request and at the discretion of the cabinet, the requirement of a sampling frequency of four (4) samples per quarter per year for each treatment plant used by the system may be reduced by a minimum of one (1) sample for TTHMs per quarter per year. Such reduction in frequency may only be considered after one (1) full year of monitoring in accordance with the original schedule if it has been demonstrated that the water delivered to consumers has been below the TTHM MCL of one-tenth (0.10) mg/l. The minimum single sample for TTHM shall then be taken at a point in the distribution system that reflects maximum residence time. If a minimum single sample per quarter exceeds the MCL for TTHM and is confirmed by at least one (1) check sample the system shall comply with the four (4) samples per quarter sampling frequency for one (1) year before reduced frequency may again be requested. Significant changes in the water source or treatment program may be grounds for requiring a four (4) per quarter schedule of sampling analysis.

(7) Increase in sampling frequency. If quarterly sampling analytical results show a TTHM arithmetic sum above acceptable limits the cabinet may place the system on a monthly monitoring schedule until acceptable levels are achieved for three (3) consecutive months.

(8) Sampling and measurement techniques.

(a) Sampling and analyses made pursuant to this section shall be conducted according to one (1) of the following approved methods:

1. "The Analysis of Trihalomethanes in Drinking Waters by the Purge and Trap Method," Method 501.1 EMSL, EPA, Cincinnati, Ohio.

2. "The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2, EMSL, EPA, Cincinnati, Ohio.

(b) Samples for TTHM shall be dechlorinated upon collection to prevent further production of THMs according to the procedures described in the foregoing two (2) methods. Samples for maximum TTHM potential shall not be dechlorinated and shall be held for seven (7) days at twenty-five (25) degrees Centigrade or above prior to analysis.

(c) The cabinet will accept only analytical data from laboratories which have participated in the U.S. EPA performance evaluation program and which have been certified jointly by the cabinet's designated official and the EPA.

(9) Total trihalomethane levels exceeded. If the average annual TTHM level is exceeded the community water system shall notify the public as set forth in Section 12 [11] of this regulation.

(10) Requirements for making significant treatment modifications. Before a system makes any significant modification in its existing treatment process to achieve compliance with this regulation, the system shall obtain cabinet approval of a detailed plan for such modification. Any plan to modify a disinfection practice shall require the system, at a minimum, to:

(a) Evaluate the water system for sanitary defects and evaluate the source water for bacteriological quality;

(b) Evaluate its existing treatment practices and consider improvements which shall minimize

disinfectant demand and optimize finished water quality throughout the distribution system;

(c) Provide baseline data from water quality surveys of the distribution system. Such data shall include the results from monitoring for:

1. Total coliform and fecal coliform bacteria;
2. Fecal streptococci;
3. Standard plate counts at thirty-five (35) degrees Centigrade and twenty (20) degrees Centigrade;
4. Phosphate;
5. Ammonia nitrogen;
6. Total organic carbon.

(d) Provide additional similar monitoring to assure continued maintenance of optimal bacteriological quality in finished water after unit treatment or disinfection modifications are made.

(e) Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modification.

(f) Provide additional monitoring for chlorate, chlorite and chlorine dioxide which shall be required when chlorine dioxide is used as a disinfectant.

(11) Prior sampling accepted. Trihalomethane sampling analyses completed since November 1, 1980 shall be accepted as part of the initial surveillance scheduling requirements of the cabinet.

(12) Self-monitoring reporting requirements. All laboratories performing monitoring and TTHM analyses for drinking water systems shall hold a valid certification. Results shall be submitted to the cabinet, on a form provided by the cabinet, within thirty (30) days after completion.

(13) Variance procedures for total trihalomethanes.

(a) Applications for a variance from the maximum acceptable contaminant level (MCL) of one-tenth (0.10) mg/l will be considered by the cabinet when the public water system making application presents evidence that:

1. The best treatment technology, treatment techniques or other means generally available for achieving compliance with the MCL are not available.
2. The best treatment method is not technically appropriate or technically feasible for that system.
3. Only marginal reduction in TTHM levels would be realized.

(b) The following technology, treatment techniques or other generally available means for achieving compliance with the MCL for total trihalomethanes are considered as the best available:

1. The use of chloramines as an alternate or supplemental disinfectant or oxidant;
2. Use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;
3. Improved clarification for THM precursor reduction;
4. Moving the point of chlorination to reduce TTHM formation and, where necessary, substituting for the use of chlorine as a preoxidant chloramines, chlorine dioxide or potassium permanganate; and
5. Use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently at dosages not to exceed ten (10) mg/l on an annual average basis.

(c) The cabinet, upon making a finding that information submitted by the applicant system supports a decision that best treatment technology or techniques is not available, shall consider a variance under the following conditions:

1. Granting the variance will not result in an unreasonable risk to health.
2. Prescribes within one (1) year of the date the variance is granted a schedule for:

a. Implementation by the public water system of such quality control measures as the cabinet may require during the period ending on the date compliance with such requirement is established;

b. Increments of progress as related to examination of the technological, economic and reduction feasibility of one (1) or more of the following treatment methods:

(i) Introduction of off-line water storage for THM precursor reduction;

(ii) Aeration for TTHM reduction, where geographically and environmentally appropriate;

(iii) Introduction of clarification where not currently practiced;

(iv) Consideration of alternate sources of raw water; or

(v) Use of ozone as an alternate or supplement disinfectant or oxidant.

(d) In no event shall the cabinet require a system to install or use a treatment method not described in subsection (13)(b) or (c)2b of this section to obtain or maintain a variance from the TTHM rule or in connection with any variance compliance schedule.

Section 10. [9.] Radionuclides. (1) Definitions. The following definitions are applicable to this section:

(a) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(b) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.

(c) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(d) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(e) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

(f) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(2) Who must sample for radionuclides. All producers of water for community water systems shall sample for radionuclides. Community water systems who purchase all of their water from others are not required to sample for radionuclides. The division shall provide technical assistance in sampling and sample analysis for radionuclides.

(3) Sampling frequency. Sampling for radionuclides shall be on a schedule determined

by the division but in no event shall it be less than once each four (4) years for community water systems.

(4) Sampling points. Samples shall be taken from a free flowing tap within the distribution system of the supplier. When a community water system is supplied by two (2) or more sources having different concentrations of radioactivity, samples shall be taken at each source.

(5) Maximum radionuclides limits:

(a) Radium 226, radium 228 and Gross Alpha particle radioactivity. The following are the maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity:

1. Combined radium-226 and radium-228 - 5pCi/l.

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

(b) Beta particle and photon radioactivity from manmade radionuclides. The average annual concentration of beta particle and photon radioactivity from manmade radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four (4) millirem/year. The following are the average annual concentrations assumed to produce a total body or organ dose of four (4) mrem/year:

Radionuclide	Organ	pCi per liter (pCi/l)
Tritium	Total body	20,000
Strontium-90	Bone marrow	8

Except for the radionuclides listed, the concentration of manmade radionuclides causing four (4) mrem/year total body or organ dose equivalents shall be calculated on the basis of a two (2) liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69 as amended August 1963, U. S. Department of Commerce. If two (2) or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four (4) millirem/year.

(6) Sampling and measurement technique. Sampling and measurement shall be in accordance with procedures set forth in Federal Register 28402 (July 9, 1976) Section 141.25 and 141.26 which may be obtained through the division.

(7) Radionuclides limit exceeded. If the average annual maximum contaminant level for radionuclides is exceeded, the supplier of a community water system shall give notice to the cabinet and notify the public as set forth in Section 12 [11] of this regulation. Monitoring at quarterly intervals for gross alpha particle activity, radium 226 and radium 228 and at monthly intervals for manmade radioactivity, depending on which limit is exceeded, shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(8) Prior sampling accepted. Radionuclide sample analysis completed since July 24, 1976 may be substituted for the initial analysis at the discretion of the cabinet.

Section 11. [10.] Variances and Exemptions.

(1) Variances:

(a) Requirements for a variance. The cabinet may grant variances to the maximum contaminant levels in this regulation upon a finding that:

1. Because of characteristics of the raw water sources which are reasonably available to the systems, the system cannot meet the applicable maximum contaminant levels despite application of the best technology, treatment techniques, or other means, which are generally available; and

2. The granting of a variance will not result in an unreasonable risk to the health of any person. A variance may also be granted from the provisions of this regulation or the policy of the cabinet concerning treatment techniques of an applicable primary drinking water regulation if the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

(b) Variance request. A supplier of water may request a variance by submitting a written request to the cabinet. The request shall contain all the information and data concerning the variance request that is required by the cabinet. The request shall include a proposed compliance schedule and a statement that the system shall perform monitoring and other reasonable requirements prescribed by the cabinet as a condition to the variance.

(c) Consideration of variance request:

1. In its consideration of a variance request the cabinet shall consider such factors as the availability and effectiveness of treatment techniques, cost, and other economic considerations such as the cost of implementing other treatment techniques, improving source water quality, or using an alternate source.

2. In considering a variance request to a required treatment technique the cabinet shall consider such factors as the quality of the water source and source protection measures provided by the water system.

(2) Exemptions:

(a) Requirements for an exemption. The cabinet may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable primary drinking water standard upon a finding that due to compelling factors, which may include economic factors, the public water system is unable to comply with such contaminant level or treatment technique requirement or the public water system was in operation on the effective date of such contaminant level or treatment technique requirement and the granting of the exemption will not result in an unreasonable risk to health.

(b) Exemption request. A supplier of water may request an exemption from these regulations by submitting a written request for exemption to the cabinet. The request shall contain all the information and data concerning the exemption request that is required by the cabinet. The request shall include a proposed compliance schedule and relevant analytical results of water quality sampling, including results of relevant tests conducted pursuant to this regulation, and an explanation of the factors such as time or economic factors which prevent

such system from achieving compliance.

(c) Consideration of an exemption request. In its consideration of an exemption request the cabinet may consider such factors as construction, installation or modification of treatment equipment or systems; the time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and economic feasibility of compliance.

(3) Disposition of a variance or exemption request. The cabinet will act on any variance or exemption request submitted within ninety (90) days of receipt of the request, or as soon as possible thereafter.

(a) Variance or exemption denied. If the cabinet decides to deny the application for a variance or exemption, it will notify the applicant of its intention to issue a denial. Such notice will include a statement of reasons for the proposed denial and will offer the applicant an opportunity to present, within thirty (30) days of receipt of the notice, additional information or argument to the cabinet. The cabinet will make a final determination on the request within thirty (30) days after receiving any such additional information or argument. If no additional information or argument is submitted by the applicant, the application shall be denied.

(b) Variance or exemption granted:

1. If the cabinet proposes to grant a variance or exemption, it will notify the applicant of its decision in writing. Such notice will identify the variance or exemption, the facility covered, conditions under which the variance or exemption may be terminated, and will specify the proposed termination date of the variance or exemption, unless otherwise terminated.

2. No variance or exemption shall be effective until the opportunity is provided for a public hearing on the proposed variance or exemption.

(4) Public hearing.

(a) Before a variance, exemption or a schedule proposed by the cabinet may take effect, the cabinet shall provide adequate notice and opportunity for a public hearing on the variance, exemption or proposed schedule. Public notice of the opportunity shall be in a manner consistent with the current applicable regulation of the U.S. Environmental Protection Agency, and shall, in general, follow the procedures set forth in Section 12 [11] of this regulation.

(b) Requests for hearing may be submitted by any interested person to the cabinet within thirty (30) days after issuance of the public notices provided for above, and shall include the following:

1. The name, address, and telephone number of the individual, organization or other entity requesting a hearing;

2. A brief statement of the interest of the person making the request in the proposed schedule and of information that the requesting person intends to submit at such hearing; and

3. The signature of the individual making the request, or the signature of a responsible official of the requesting organization or other entity.

(c) A hearing convened pursuant to this section shall be conducted before a hearing officer designated by the cabinet in accordance with the rules and procedures of the cabinet.

(d) Within thirty (30) days after the termination of the public hearing the cabinet shall, taking into consideration information obtained during such hearing and other relevant information, confirm, revise or rescind the proposed variance, exemption or schedule.

(e) The variance, exemption or schedule shall become effective thirty (30) days after the notice of opportunity for a hearing is given if no request for a hearing is submitted within this period and the cabinet does not determine to hold a public hearing on its own motion.

(5) Revised compliance schedule. When a variance or exemption has been granted the cabinet shall impose such interim control measures as are necessary and shall issue within one (1) year after the variance or exemption is granted a "proposed" schedule for compliance with this regulation. A public hearing shall be held pursuant to the proposed schedule in accordance with the provisions of this section. Within thirty (30) days after the termination of the public hearing the cabinet shall, taking into consideration information obtained during such hearing, revise the proposed schedule as necessary and prescribe the final schedule for compliance and interim measures for the public water system granted a variance or exemption. The schedule shall be in conformance with the current requirements of the U. S. Environmental Protection Agency applicable to this schedule.

(6) Termination of a variance or exemption. Any variance or exemption granted by the cabinet from this regulation shall be terminated at the earliest of the following dates:

(a) The termination date specified at the time the variance or exemption was issued;

(b) At the time the system comes into compliance with this regulation;

(c) At the time the cabinet determines that the system has failed to comply with the finalized schedule;

(d) Upon a finding by the cabinet that the raw water source requires a the specified treatment technique to protect the health of persons served (applicable to a variance only); and

(e) A finding that the water system has failed to comply with monitoring and other requirements prescribed by the cabinet as a condition to the granting of the variance (applicable to a variance only).

Section 12. [11.] Public Notification. (1) Contaminant level exceeded, community water system. If a community water system fails to comply with an applicable maximum contaminant level as set forth in this regulation, fails to comply with applicable monitoring and analytical requirements, is granted a variance or exemption from an applicable maximum contaminant level, or fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, the supplier of water shall notify persons served by the system of the failure or grant by:

(a) Including a notice to this effect in the first set of water bills after such failure, variance or exemption, and in any event by written notice within three (3) months. Such notice shall be repeated at least once every three (3) months so long as the system's failure continues or variance or exemption remains in effect. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of direct mail;

(b) If a community water system has failed to comply with an applicable maximum contaminant level, the supplier of water shall notify the public of such failure, in addition to the notification required by paragraph (a) of this section as follows:

1. Publication on not less than three (3) consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within fourteen (14) days after the supplier of water learns of the failure; and

2. Furnishing a copy of the notice to the radio and television stations, excluding commercial television, serving the area served by the system. Such notice shall be furnished within seven (7) days after the supplier of water learns of the failure.

3. The requirements of subsection (1)(b) of this section may be waived by the cabinet if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.

4. If the area is not served by a daily newspaper of general circulation, notification by newspaper shall instead be given by publication on three (3) consecutive weeks in a weekly newspaper of general circulation serving the area. If no weekly or daily newspaper of general circulation serves the area, notice shall be given by posting the notice in post offices within the area served by the system.

(2) Reports to the cabinet. Any community water system giving public notice pursuant to subsection (1) of this section shall file the following with the cabinet.

(a) A copy of the notice that was included in the water bills or other direct mailing shall be mailed to the cabinet on the same day that this notice was sent to the water system customers together with an affidavit signed by the chief executive officer of the system stating that the copy of the notice was sent to all customers. This procedure shall be repeated at each mailing of the notice as prescribed in subsection (1)(a) of this section.

(b) A copy of the complete page of the newspaper or newspapers in which the notice was published together with an affidavit from the publisher stating the dates on which the notice was published.

(c) A copy of the notice read over the radio or television station together with an affidavit from the station stating the times this announcement was made.

(d) If notice of the failure is given under the provision of subsection (1)(b)4 of this section, an affidavit from the county judge executive of the county in which the system is located that the notice was posted as prescribed in this regulation.

(3) Noncommunity water system violations. If a noncommunity water system fails to comply with an applicable maximum contaminant level fails to comply with an applicable testing procedure, is granted a variance or an exemption from an applicable maximum contaminant level, fails to comply with the requirement of any schedule prescribed pursuant to a variance or exemption or fails to perform any monitoring required, the supplier of water shall give notices by continuous posting of such failure, variance or exemption to the persons served by the system as long as the failure, variance or exemption continues. The form and manner of such notice shall be prescribed by the cabinet, and shall insure that the persons using the system are adequately informed of the failure, variance or exemption.

(4) Form and content of public notices. The public notices given under this section shall be conspicuous and written in a manner to fully inform the users of the system. The notice shall be readable in language and print size and clearly disclose to the population served by the system all relevant facts. The notice shall include any action the public should take as a result of the failure, variance or exemption, and a summary of the steps the system is taking to correct the problem.

(5) Notice to the public required by this section may be given by the cabinet on behalf of the supplier of water.

(6) Where notification by mail is required by subsection (1)(a) of this section but notification by newspaper or to radio or television stations is not required by subsection (1)(b) of this section, the cabinet may order the supplier of water to provide notification by newspaper and by radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public health.

Section 13. [12.] Reports and Records. (1) Monthly reports. The operator of each public water system shall file reports with the cabinet indicating the monthly operational information. These reports shall be on forms provided by the cabinet or approved by it and shall be received at the division no later than ten (10) days after the end of the month for which the report is filed.

(2) Special reports. The supplier of water shall report to the cabinet within forty-eight (48) hours the failure to comply with any drinking water regulations, contained herein including the failure to comply with monitoring requirements.

(3) Analysis in state laboratories. the supplier of water is not required to report analytical results to the cabinet where a state laboratory performs the analyses and reports the results to the cabinet which would normally receive such notification directly from the laboratory.

Section 14. [13.] Record Maintenance. (1) Who shall keep records. All owners or operators of public water and semipublic water systems shall keep on the premises or at a convenient location near the premises the records set forth in this section.

(2) Data summaries. Actual laboratory reports may be kept, or data may be transferred to tabular summary, provided that the following information is included:

(a) The date, place, and time of sampling, and the name of the person who collected the sample;

(b) Whether the sample was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;

(c) Date of analyses;

(d) Laboratory and person responsible for performing analyses;

(e) The analytical technique/method used; and

(f) The results of the analyses.

(3) Availability. The records required by this

section shall be public records as defined in KRS 61.870 to 61.884.

(4) Bacteriological analyses. Records of bacteriological analyses shall be kept at least five (5) years.

(5) Chemical analyses. Records of chemical analyses shall be kept for a period of ten (10) years.

(6) Turbidity analyses. Records of turbidity analyses shall be kept for a period of at least one (1) year.

(7) Records of violations. Records of action taken by the system to correct violation of primary drinking water regulations shall be kept not less than ten (10) years after the last action taken with respect to the particular violation involved.

(8) Records of sanitary surveys. Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system, by a private consultant, or by any local, state or federal agency, shall be kept not less than ten (10) years after completion of the sanitary survey involved, at which time they may be transferred to the cabinet.

(9) Records of variances or exemptions. Records concerning a variance or exemption granted to the system shall be kept not less than five (5) years following the expiration of such variance or exemption.

Section 15. [14.] Other Contaminants. (1) Definition of "other contaminants." The contaminants listed in this section do not, in general, have a direct impact on the health of consumers but their presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier. The maximum limits for these contaminants are commonly referred to as "secondary standards" and are enforced as the other contaminants standards set forth in this regulation, except that the provisions of Sections 11 and 12 [10 and 11] of this regulation do not apply.

(2) Who must sample for "other contaminants." All suppliers of water for public and semipublic drinking water systems shall sample for "other contaminants" at the direction of the cabinet.

(3) New sources of water. An analysis for these contaminants shall be made when a new source of water supply is proposed to the cabinet for preliminary approval. Excessive amounts of these contaminants or excessive costs of their removal may be grounds for rejection of the proposed source of water.

(4) Existing sources of water. Existing producers of water shall sample for and make analysis for the "other contaminants" listed in this section at the frequency prescribed by the cabinet. Treatment shall be adequate to assure that the "other contaminant" level does not exceed the concentration limit set forth in this regulation.

(5) Sampling point. Sample may be taken from a free flowing tap in the distribution system, except hydrogen sulfide (H2S) shall be measured at the entry point to the distribution system.

(6) "Other Contaminant" maximum levels. The following lists the maximum allowable levels of "other contaminants:"

Chemical Symbol	Name	Unit(2)	Maximum Level
Cl	Chloride	mg/l	250.0
–	Color(1)	Platinum Cobalt	15.0
Cu	Copper	mg/l	1.0
–	Corrosivity	–	Noncorrosive
H_2S	Hydrogen Sulfide	mg/l	0.05
Fe	Iron	mg/l	0.3
Mn	Manganese	mg/l	0.05
–	Odor(1)	Threshold Number	3.0
–	Phenols	mg/l	0.001
SO_4	Sulfate	mg/l	250.0
Zn	Zinc	mg/l	5.0
TDS	Total Dissolved Solids	mg/l	500.0

(1) Surface supplies only
(2) Milligrams per liter (mg/l) is the same as parts per million (ppm)

(7) Sample collection and measurement technique. Samples shall be taken and analyzed in accordance with methods set forth in "Standard Methods."

(8) "Other contaminants" maximum limits exceeded. If the "other contaminants" limit as set forth herein is exceeded by a supplier of water, the cabinet may direct that supplier to modify the treatment procedure or to locate a more suitable source of water.

Section 16. [15.] Special Monitoring for Sodium. (1) Who must sample for sodium. Suppliers of water for community public water systems shall collect and analyze one (1) sample per plant at the entry point of the distribution system for the determination of sodium concentration levels.

(2) Sampling frequency.

(a) Community water systems, surface source. Systems utilizing surface water sources in whole or in part shall collect and analyze samples semiannually. Samples shall be collected one (1) time during the wet season and one (1) time during the dry season during a calendar year. The first sampling period shall be completed by March 27, 1983.

(b) Community water systems, groundwater sources. Systems utilizing solely groundwater sources shall collect and analyze samples annually. The first sampling period shall be completed by March 27, 1983.

(c) Samples required. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except the cabinet may consider that multiple wells drawing raw water from a single aquifer to be one (1) treatment plant for determining the minimum numbers of samples. The supplier of water may be required to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(d) Prior analyses accepted. For initial analysis required in this section, data for community water supplies acquired two (2) years prior to March 27, 1983 may be substituted at the discretion of the cabinet.

(e) Analyses for sodium shall be performed by the flame photometric method in accordance with the procedures described in "Standard Methods

for the Examination of Water and Wastewater," 14th Edition, pp. 250-253; or by Method 273.1, Atomic Absorption - Direct Aspiration or Method 273.2, Atomic Absorption - Graphite Furnace, in "Methods for Chemical Analysis of Water and Waste," EMSL, Cincinnati, EPA, 1979; or by Method D1428-64(a) in Annual Book of ASTM Standards, part 31, Water.

(3) Reporting. The supplier of water shall report to the cabinet the results of the analyses for sodium within ten (10) days of the end of the month in which the sample results were received or within ten (10) days following the end of the required monitoring period as determined by the cabinet, whichever of these is first. If more than annual sampling is required the supplier shall report the average sodium concentration within ten (10) days of the end of the month in which the analytical results of the last sample used for the annual average was received.

(4) Acceptable sodium limits. A level of twenty (20) mg/l of sodium shall be considered as an optimum for drinking water. The supplier of water shall notify appropriate local and state public health officials of the sodium levels by written notice within three (3) months. A copy of each notice required to be provided by this paragraph shall be sent to EPA and the state within ten (10) days of its issuance. The supplier of water is not required to notify appropriate local and state public health officials of the sodium levels where the state provides such notices in lieu of the supplier.

(5) Public notification. The provisions of Section 11 of this regulation do not apply to sodium levels unless the water supplier opts to do so voluntarily.

Section 17. [16.] Special Monitoring for Corrosion. (1) Who must monitor for corrosivity. Each community water system which utilizes surface water sources or groundwater sources shall identify specific types of corrosivity-related characteristics within their water distributed for human, domestic or industrial consumption.

(2) Sampling frequency. The supplier shall collect two (2) samples, or more at the request of the division, for analysis from each plant using any surface water source. One (1) sample shall be collected during midwinter and one (1) sample shall be collected during midsummer. The supplier of water shall collect one (1) sample or more if required by the division for analysis from each plant using any groundwater source. The cabinet may consider multiple wells drawing raw water from a single aquifer one (1) treatment plant for determining the minimum number of samples.

(3) Sampling point. Suppliers of water for community public water systems shall collect samples from a representative entry point to the water distribution system for analysis to determine the corrosivity characteristics of the water.

(4) Determination of corrosivity characteristics. Parameters for the determination of corrosivity characteristics shall be pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index in accordance with subsection (5) of this section. The determination of corrosivity characteristics shall include one (1) round of sampling two (2) samples per plant for surface water and one (1) sample per plant for groundwater sources. The cabinet may require more frequent monitoring as appropriate. The cabinet may require monitoring for additional parameters which may indicate corrosivity characteristics, such as sulfates and chlorides.

(5) Langelier Index calculation. Based on the parameters in subsection (4) of this section the Langelier Index shall be calculated pursuant to the latest addition of "Standard Methods for the Examination of Water and Wastewater." In certain cases, the Aggressive Index can be used instead of the Langelier Index. The supplier shall request substitution, in writing, to the division and the division will make the determination. For interpretive purposes the following table of indices shall be used.

Corrosivity Characteristics as Addressed by Indices

Corrosive Characteristics	Langelier Index	Aggressive Index
Highly aggressive	<-2.0	<10.0
Moderately aggressive	-2.0 to 0.0	10.0 to 12.0
Nonaggressive	>0.0	>12.0

(6) Reporting. The results of the analyses for the corrosivity characteristics shall be reported to the cabinet within ten (10) days after the sample results are received. If more frequent sampling is required by the cabinet, the supplier may accumulate the data and report each value within ten (10) days of the end of the month in which the analytical results of the last sample are received.

(a) If the corrosive characteristics derived from the calculation in subsection (5) of this section indicate that the water distributed is highly aggressive the water supply system shall notify the cabinet whether the following materials are present in the distribution system:

1. Lead from piping, solder, caulking, interior lining of distribution mains, alloys, and any other source;
2. Copper from piping, alloys, service lines, or any other source;
3. Galvanized piping, service lines, or any other source;
4. Ferrous piping materials such as cast iron and steel; and
5. Asbestos cement pipe.

(b) In addition, the cabinet may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water including, but not limited to:

1. Vinyl lined asbestos cement pipe;
2. Coal tar lined pipes and tanks.

(7) Measurement techniques. Measurement for corrosive characteristics as listed in subsection (4) of this section shall be conducted in accordance with procedures and methods set forth in "Standard Methods for Examination of Water and Wastewater," 14th Edition or Editions subsequently published. Alternative methods approved by the cabinet may be substituted.

Section 18. [17.] Sampling and Reporting Other Contaminants, Sodium and Corrosivity Characteristics. Analytical results generated by

analyses made pursuant to Sections 15, 16, and 17 [14, 15, and 16] of this regulation shall be determined and reported on:

(a) One (1) sample taken in a volume sufficient to make all analytical determinations required in Sections 15, 16, and 17 [14, 15, and 16] of this regulation; and

(b) The secondary chemical analyses report form (WACQ 010) supplied by the cabinet.

Section 19. [18.] Penalties. Penalties shall be as provided by KRS 224.994.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 14, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Smither

(1) Type and number of entities affected: The proposed amendment establishes fees for review of plans and specifications for new and existing public and semipublic water supplies. The proposed amendment also provides guidelines for filing fees and for payment of all fees. Entities affected are water treatment plants, community distribution systems, noncommunity water systems, and semipublic water systems; these entities currently number 1,100. However, entities that are parts of local governments (cities, counties, special districts) are exempt under KRS 224.033(20).

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs for review of facility plans and specifications will be assessed according to the following project fee schedule: Community public water supplies: a wastewater treatment plant utilizing coagulation, disinfection, filtration, and sedimentation (all components complete treatment) - $775; a water treatment plant utilizing at least disinfection and other treatment component(s) but less than complete treatment - $500; a water treatment plant utilizing only disinfection - $250; a change in design capacity of a water treatment plant involving coagulation, disinfection, filtration, and sedimentation (all treatment components, complete treatment) - $775; a change in design capacity of a water treatment plant involving disinfection and other treatment component(s) but less than complete treatment - $500; a change in design capacity of a water treatment plant involving only disinfection - $100; a change, other than to a water treatment plant, in the structures and appurtenances, except for distribution lines of less than 10,000 feet, of a water supply system - $325; a change to the distribution lines of 10,000 feet or less of a water supply system - $150. Noncommunity public water supplies: a water treatment plant utilizing coagulation, disinfection, infiltration, and sedimentation (all treatment components, complete treatment) - $750; a water supply system serving more than 100 people but not providing complete treatment - $200; a change to a water supply system serving more than 100 people - $100; a water supply system serving 100 people or less but not providing complete treatment - $100; a change to a water supply system serving 100 people or less - $50. Semipublic water supplies: a semipublic water supply facility or a change to a semipublic water supply - $50. A filing fee will be assessed with the submission of plans and specifications for review by the cabinet in the amount of 20 percent of the facility fee. The filing fee will be applied toward the facility fee but is not refundable if the plans and specifications are denied or withdrawn. The applicant will be notified if the plans and specifications are acceptable and advised to submit the remainder of the project fee. Plans and specifications not approved will be returned; reconsideration will require a new submittal with the appropriate filing fee. Applicants are requested to send fees, if mailed, via certified mail. Certified checks or money orders, if used, are to be made payable to the Kentucky State Treasurer.

2. Continuing costs or savings: Continuing costs to water systems are determined by the renewal frequency.

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: The implementation of a fee schedule for public and semipublic water systems is expected to offset the costs of processing plan and specifications reviews.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements will result from the processing of receipts to the Kentucky State Treasury.

(3) Assessment of anticipated effect on state and local revenues: The establishment of a fee schedule for public and semipublic water facilities is expected to have a positive effect on state revenue by offsetting the cost of processing reviews of facility plans and specifications.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to establishing a fee schedule for public and semipublic water facilities are (1) no action and (2) terminating drinking water program primacy and relegating the responsibilities of the program to the U.S. Environmental Protection agency (EPA). The no action option was rejected in favor of the proposed regulation which establishes a mechasnism to recover review processing costs. The program termination option was rejected because administration of drinking water plan and specification reviews by EPA would substantially increase the processing costs to public and semipublic water facilities and decrease program efficiency.

(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: 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: None
TIERING: Was tiering applied? Yes.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Public and semipublic water supplies.
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
LOCAL GOVERNMENT MANDATE: No.
TYPE OF MANDATE: None
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: Fees are established to offset the cost to the Natural Resources and Environmental Protection Cabinet of reviewing plans and specifications for drinking water facilities. Facilities that are part of local governments (city, county, special district) are exempt under KRS 224.033(20).
PROVISION/MECHANICS: Not applicable.
FISCAL EXPLANATION: Not applicable.
PREPARER: Don E. Thomason

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) Not applicable.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendment establishes a fee schedule for reviewing plans and specifications of community, noncommunity, and semipublic water supplies.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The fees which would be established will recover the full costs of reviewing facility plans and specifications for each category of drinking water facilities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 6:040. Water treatment plants; water distribution systems; certification of operators.

RELATES TO: KRS Chapters 223, 224
PURSUANT TO: KRS 224.032(5), 224.033(17)
NECESSITY AND FUNCTION: The secretary is directed to adopt regulations applicable to certification of water treatment operators. This regulation establishes standards for classification of water treatment plants and water distribution systems; qualifications of applicants; examination procedures; duties of the board; and provisions relating to the issuance, renewal, revocation of certificates, fee schedule and other provisions necessary for certification of operators.

Section 1. Definitions. The following terms shall have the meanings set forth below unless the content clearly indicates otherwise:
(1) "Board" shall be the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.
(2) "Cabinet" shall be the Natural Resources and Environmental Protection Cabinet.
(3) "Consulting operator" shall mean a person who is not a direct employee of a water treatment plant or distribution system, but who from time to time is hired under contract to take responsible charge of such system or plant.
(4) "Department" shall mean the Kentucky Department for Environmental Protection.
(5) "Secretary" shall be the Secretary of the Cabinet.
(6) "Certificate" shall mean a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by this regulation.
(7) "Operator" shall mean any person who has responsibility and authority to conduct or supervise the procedures and practices necessary to ensure that the water supply system or any portion thereof is operated in accordance with laws and regulations of the Commonwealth. "Operator" includes all operating personnel who have day-to-day responsibility to make those decisions necessary to ensure that the water produced or distributed meets applicable standards and consulting operators as defined in this regulation. Maintenance personnel and others who do not deal directly with the production or distribution of potable water are not included in the term "operator."
(8) "Public water system" means any system, irrespective of ownership, for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such terms include: the source of supply and all structures and appurtenances used for collection, treatment, storage and distribution facilities under control of the operator of such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "noncommunity water system."
(a) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.
(b) "Noncommunity water system" means a public water system which serves at least fifteen (15) service connections used by individuals for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year but less than year-round.
(9) "Semipublic water supply" means any water supply made available for drinking and/or domestic use which serves more than three (3) families but does not qualify as a public water system.

(10) "Water treatment plant" shall mean that portion of the water supply system which is designed to alter the physical, chemical, or bacteriological quality of the water.

(11) "Water distribution system" shall mean the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer.

Section 2. General Provisions. (1) Each public water system shall be operated by a certified operator at all times. The operator shall hold a valid and effective operator's certificate in a class equal to or higher than the system under his direction. Water treatment systems which operate more than one (1) shift per day may use an operator who is certified in the next lower classification for the additional shifts, provided that the operator with the appropriate classification is available should an emergency arise.

(2) Certified operators are not required by law for semipublic water systems. It is expected that such systems will be operated by competent operators.

(3) A consulting operator may operate a system for a fixed period of time, not to exceed six (6) months, as approved by the board on a case-by-case basis. The decision for assigning the allowable period shall be based on at least the size of the plant or system, any operational problems, and the degree of attention being provided by the consulting operator. A consulting operator shall hold a certificate in a class equal to or higher than the system which is to be under his/her direction.

Section 3. Duties of the Board. In carrying out its responsibilities the board shall:

(1) Examine the qualifications of applicants for certification;

(2) Review and approve all substitutions of education for experience;

(3) Review and assist in the preparation of examinations;

(4) Review the results of examinations;

(5) Recommend qualified applicants for certification by the cabinet;

(6) Maintain records;

(7) Recommend revocation of certificates for operators who fail to comply with applicable law and regulations;

(8) Review the regulations for certification of states which are seeking reciprocity with the Commonwealth; and

(9) Review applications and supporting documents and determine eligibility of applicants for examination and notify them of their status.

(10) Determine the length of time for which a consulting operator may be in responsible charge of a water treatment plant or distribution system.

Section 4. Application for Certification. (1) An operator desiring to be certified shall file application with the board, preceding examination, on an application form provided by the board.

(2) The executive secretary-treasurer of the board shall assemble all the information needed by the board to determine eligibility of the applicant for examination and certification.

Section 5. Examinations. (1) The board and cabinet shall be jointly responsible for preparation of the examinations to be used in determining knowledge, ability and judgment of the applicants.

(2) Examinations shall be conducted at least semiannually at places and times set by the cabinet with suitable method of advance announcements made by the cabinet.

(3) Except in cases which the board may decide represent proper exceptions, all examinations shall be written. All examinations will be graded by the board, or by its designated representative and the applicant notified of the outcome. Applicants will be required to achieve a score of seventy (70) percent in order to pass the examination. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the board or cabinet upon written request by the applicant.

(4) Applicants who fail to pass an examination are not eligible to repeat the examination until a period of ninety (90) days has elapsed.

Section 6. Fees. (1) Fees for certification of water treatment plant and water distribution system applicants for classes I through IV and limited shall be the following:

(a) Initial examination: thirty-five (35) [fifteen (15)] dollars.

(b) Certification by reciprocity: fifteen (15) dollars.

(c) Reexamination for a new certificate or to make up for failure to pass an examination: thirty-five (35) [fifteen (15)] dollars for each reexamination.

(d) Reinstatement of a lapsed certificate: thirty-five (35) [fifteen (15)] dollars plus renewal fee.

(e) Certificate renewal: thirty-five [eight (8)] dollars per year.

(2) For training sessions conducted by the cabinet: five (5) dollars per contact hour. [All fees for consulting operators shall be at a rate twice that in subsection (1) of this section.]

(3) Fees accompanying applications will not be returned to those who fail to pass the examination.

Section 7. Issuance of Certificates. (1) Upon satisfactory fulfillment of the requirements provided herein and upon recommendation of the Board of Certification, the cabinet shall issue a suitable certificate to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency.

(2) Duration and renewal of certificates.

(a) Certificates for all operator classes, except limited, shall be valid for two (2) years after each renewal unless revoked for cause or replaced by one of a higher classification. Certificates of operators in good standing will expire on the last day of February of even-numbered years, but may be renewed without examination upon written application and submission of the applicable renewal fee.

(b) Limited certificates will be renewed annually and only after the cabinet certifies that the holder of the certificate has complied with all requirements for properly operating the facility under his charge.

(c) Certificates which are not renewed before June 1 of even-numbered years will be considered lapsed and may not be renewed without payment of

an additional fee as specified in Section 6 of this regulation.

(3) Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements for the higher classification before a new certificate is issued. Experience under a limited certificate does not count toward fulfillment of qualifications for other classifications.

(4) Certificates shall be valid only so long as the holder uses reasonable care, judgment and application of his/her knowledge in the performance of his/her duties. No certificate will be valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Operators holding certificates in any operator classes, except limited, who terminate their employment as a water treatment plant or water distribution system operator will be considered to have a valid certificate for the unexpired portion of the renewal period. Upon expiration of this period, these certificates may be moved to inactive status, provided the operator continues to pay his certificate renewal fee and maintains proper continuing education credits. An inactive certificate may become active when the operator again is employed by a water treatment plant or distribution system and the operator submits to the board an application for reactivation containing at a minimum the name of the plant or system by which he/she is employed and provided the board determines that all other current requirements for certification are met. Consulting operators are considered to be on inactive status except for periods specifically designated by the board under the provisions of Section 2 of this regulation. Otherwise, the certificate will be automatically invalidated. Limited certificates become invalid immediately if not renewed.

(6) Operators whose certificates have been invalidated may have their certificates reinstated or be issued new certificates after passing an examination in the classification for which they are qualified.

(7) Certificates in a comparable classification may be issued without examination to any person who holds a certificate in any state, territory, or possession of the United States or any country provided the requirements for certification of operators under which the person's certificate was issued do not conflict with any provisions of KRS Chapter 223 and are of a standard not lower than that specified by regulations adopted under said chapter; and, providing further, that reciprocal privileges are granted to certified operators of this state.

(8) Wall certificates shall be prominently displayed in the office of the operator.

(9) Wallet cards showing current certification status shall be carried by the operator at all times while on duty.

(10) Training requirements.

(a) Class II, III, and IV operators and all consulting operators shall complete twelve (12) hours of appropriate board-approved training for certificate renewal. Class I operators shall complete six (6) hours of training for renewal. Such training shall include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. Training hours completed in any given biennium in excess of the minimum requirement necessary for renewal may be carried forward for one (1) renewal period. No training is required for holders of limited certificates.

(b) The board may waive any or all of the requirements of paragraph (a) of this subsection for all or portions of a class of operators as defined in Section 9 of this regulation.

[(c) Requirements of this subsection shall be effective for certification renewal at midnight on February 28, 1988.]

Section 8. Revocation of Certificates. The cabinet may revoke the certificate of an operator following a hearing before the cabinet or its designated representative when it is found that the operator has practiced fraud or deception, that reasonable care, judgment or the application of his/her knowledge was not used in the performance of his/her duties, or that the operator is incompetent, unable or unwilling to perform his/her duties properly.

Section 9. Classification of Water Treatment Plants and Water Distribution Systems. (1) Classification shall be generally in accordance with the following classes. However, the cabinet may make changes in classification in accordance with the needs created by particular complexities of any specific plant or distribution system by reason of special features of design, or by reason of a source of supply that is particularly hazardous or which has characteristics that may make operation more difficult than normal, or a combination of such conditions. Due notice of any such change shall be given to the owner of the treatment plant and/or water distribution system.

(2) Water treatment plants.

(a) Class I.

1. (Class IA-D) All plants using physical treatment and disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population less than 500.

2. (Class IB-D) All plants using disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population less than 500.

(b) Class II.

1. (Class IIA) All plants using physical and chemical treatment including chemical coagulation and/or water softening processes, filtration and disinfection and serving a population less than 3,000.

2. (Class IIB-D) All plants using physical treatment and disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population equal to or greater than 500 but less than 3,000.

3. (Class IIC-D) All plants using disinfection wherein the treatment plant operator is also responsible for the distribution system and which serves a population equal to or greater than 500 but less than 3,000.

(c) Class III.

1. (Class IIIA) All plants using physical and chemical treatment including chemical coagulation and/or water softening processes, filtration and disinfection and serving a population equal to or greater than 3,000 and less than 15,000.

2. (Class IIIB) All plants using physical treatment and disinfection and serving a population equal to or greater then 3,000.

3. (Class IIIC) All plants using disinfection and serving a population equal to or greater than 3,000.

(d) Class IVA. All plants using physical and chemical treatment including chemical coagulation and/or water softening processes, filtration and disinfection and serving a population equal to or greater than 15,000.

(3) Water distribution system.

(a) Class ID. All distribution systems serving a population less than or equal to 1,500.

(b) Class IID. All distribution systems serving a population greater than 1,500 and less than or equal to 15,000.

(c) Class IIID. All distribution systems serving a population greater than 15,000 and less than or equal to 50,000.

(d) Class IVD. All distribution systems serving a population greater than 50,000.

(4) A limited classification is available to water treatment facilities for schools or semipublic water supplies.

(5) Special designation(s) may be added to any certificate when found necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification contained herein.

Section 10. Classification of Water Treatment Plant and Water Distribution System Operators. Nine (9) classes of operators are hereby established and are designated as Class I through Class IV, consulting operator Class I through Class IV, and limited. Each operator classification is intended to relate directly to the corresponding classification of water treatment plant or water distribution system.

Section 11. Operator Qualifications: Experience, Education and Equivalencies. (1) Operators shall be examined by the board as to education, experience, and knowledge as related to the classification of water treatment plants or water distribution systems for which examined. Applicants must pass the required written examinations.

(2) Experience and educational requirements of operators shall be based on the following classifications of plants or systems:

(a) Class IA-D and Class IB-D.

1. Completion of high school or General Educational Development (GED) test; and

2. One (1) year of acceptable operation of applicable treatment plant and distribution system.

(b) Class IIA.

1. Completion of high school or GED; and

2. Two (2) years of acceptable operation of an applicable treatment plant with six (6) months in a Class IIA treatment plant or higher.

(c) Class IIB-D and Class IIC-D.

1. Completion of high school or GED; and

2. For Class IIB-D, two (2) years acceptable operation of a Class IA-D combined treatment and distribution system with six (6) months in a Class IIB-D treatment plant or higher; or

3. For Class IIC-D, two (2) years acceptable operation of a Class IB-D combined treatment and distribution system with six (6) months in a Class IIC-D treatment plant or higher.

(d) Class IIIA.

1. Completion of high school or GED; and

2. Three (3) years of acceptable operation of applicable treatment plant of Class IIA or higher with six (6) months experience in a Class IIIA treatment plant.

(e) Class IIIB.

1. Completion of high school or GED; and

2. Three (3) years of acceptable operation of applicable treatment plant or Class IIB-D or higher with six (6) months experience in a Class IIIB treatment plant.

(f) Class IIIC.

1. Completion of high school or GED; and

2. Three (3) years of acceptable operation of applicable treatment plant of Class IIC-D or higher with six (6) months experience in a Class IIIC treatment plant.

(g) Class IVA.

1. A college degree in a standard curriculum in engineering, allied sciences or equivalent; and

2. At least two (2) years of acceptable operation of Class IIA treatment plant or higher with one (1) year in a Class IVA treatment plant.

(h) Limited classification. Under the provisions of KRS 223.160, an operator of a water treatment facility for a school or for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility provided he has demonstrated that he has the knowledge and experience required to operate properly the particular water treatment facility for which he is responsible.

(i) The qualifications for all consulting operator classifications shall be the same as those of the corresponding operator classifications contained in paragraphs (a) through (g) of this subsection.

(j) The following requirements shall apply to the certification of distribution system operators.

1. Class ID. Completion of high school or general educational development (GED) test; and one (1) year of acceptable operation of a distribution system.

2. Class IID. Completion of high school or GED; and two (2) years of acceptable operation of distribution system with six (6) months in a Class IID distribution system or higher.

3. Class IIID. Completion of high school or GED, three (3) years of acceptable operation of a distribution system of Class IID or higher, and six (6) months experience in a Class IIID distribution system.

4. Class IVD. A high school diploma or GED, and at least two (2) years of acceptable operation of Class II distribution systems or higher with one (1) year in a Class IV distribution system.

(k) For operators who were certified in any classification on March 12, 1985, the requirement for a high school diploma or GED shall not preclude their advancing to the next higher classification than they held on that date.

(3) Where applicable, education may be substituted for a portion of experience requirements as specified below:

(a) No substitution for Class I.

(b) College credits earned in engineering, allied sciences or an associate degree in engineering technology may, as approved by the board, be substituted for experience limited to one (1) year for Class II, two (2) years for Class III, and three (3) years for Class IV. Education applied to the experience requirement cannot also be applied to the educational

requirement.
(c) Where applicable, experience may be substituted for education requirements as specified below:
1. Two (2) years experience in an important phase of operation at a Class II level or above will be considered equivalent to one (1) year of college. Eight (8) years of such experience may be substituted for the requirement of a college degree by a high school graduate or recipient of a GED.
2. Experience applied to education requirements may not also be applied to the experience requirement.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Hornback
(1) Type and number of entities affected: The proposed amendment revises fees for certification of water treatment plant and water distribution system operators for Classes I through IV. Entities affected are individuals certified to operate water treatment plants and water distribution systems; these entities number 2200 to 2300.
(a) Direct and indirect costs or savings to those affected:
1. First year: Costs for certification of water treatment plant and water distribution system applicants will be assessed according to the following: Initial examination - $35; certification by reciprocity - $15; reexamination - $35; reinstatement of lapsed certificate - $35; certificate renewal - $35; training sessions by cabinet - $5 per contact hour.
2. Continuing costs or savings: Continuing costs to certified operators are determined by the renewal frequency.
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: The revision of the fee schedule for operator certification is expected to offset the costs of processing certification applications.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: The revision of the fee schedule for operator certification is expected to have a positive effect on state revenue by offsetting the cost of processing certification applications.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising the fee schedule for operator certification is no action. This option was rejected because current fee levels are not sufficient to cover all processing costs.
(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: 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: None
TIERING: Was tiering applied? No. No cost difference exists in administering certification procedures among Classes I through IV.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Water treatment plants; water distribution systems; certification of operators.
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
LOCAL GOVERNMENT MANDATE: No.
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: The proposed amendment revises the fees set forth in Section 6 for water treatment plant and water distribution system operator certifications to reflect the costs of processing operator certification applications.
PROVISION/MECHANICS: Processing fees for certification of water treatment plant and water distribution system operators are an existing obligation. The proposed change modifies an existing obligation.
FISCAL EXPLANATION: There is no obligation to local governments.
PREPARER: Don E. Thomason

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) Not applicable.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No. Not applicable.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 6:300. Water well drillers certification; examination; fees.

RELATES TO: KRS 223.400 through 223.460, 223.991
PURSUANT TO: KRS 223.420
NECESSITY AND FUNCTION: This regulation contains provisions for the general practice of water well drilling, including application requirements, conduct of examinations and a schedule of fees. The schedule of fees included herein will partially reimburse the cabinet's expenses for this program and implementation of this fee schedule is required by law.

Section 1. Examinations. (1) The water well drillers certification examination shall consist of two (2) parts. The first part shall be the National Water Well Drillers standardized examination. All examinees shall take both the general examination and the speciality examination in their area of practice. This part shall constitute seventy (70) percent of the total value of the examination. The second portion of the examination shall consist of questions relating to applicable laws and regulations and other issues as the cabinet deems necessary.

(2) A passing grade for the examination shall be seventy (70) percent correct answers on the composite examination. Any person who does not obtain a passing grade on the total examination, but scores higher than seventy (70) percent on the first part of the examination, need only take the second portion as defined in subsection (1) of this section and score at least seventy (70) percent thereon for certification.

(3) The examination will be offered only to those persons who have verified to the cabinet that they have two (2) years of water well drilling experience under a certified water well driller.

(4) The cabinet will schedule water well drillers examinations at least twice a year.

(5) Drillers who have passed all applicable portions of the National Water Well Drillers examination previously or who have passed this examination when administered by someone other than the cabinet shall be required to take only the second portion of the examination as defined in subsection (1) of this section. A seventy (70) percent score shall be required for passing.

Section 2. Fees. (1) A nonrefundable fee of twenty-five (25) dollars shall be submitted with each application.

(2) The cabinet will require an advance payment of forty (40) [twenty-five (25)] dollars for each examination administered.

(3) An applicant, upon notification that all requirements have been met for certification, shall remit a certification fee of $250 [100] for initial certification.

(4) The fee for certificate renewal shall be $250 [100] per year.

(5) Certified [All fees shall be in the form of a] checks or money orders shall be payable to the Kentucky State Treasurer.

Section 3. Issuance, Expiration, and Reinstatement of Certificates. (1) All certificates will be valid from the date of issuance until the next June 30th. Renewed certificates will bear as their date of issue July 1 of the appropriate year. Newly issued certificates will bear as date of issuance the date that all certification requirements are deemed fulfilled.

(2) Any certificate for which the renewal fee is not paid within ninety (90) days of the beginning of the certification year, which shall be July 1, shall be considered expired. Such expired certificates may be reinstated without examination within two (2) years of the beginning of the certification year in which they expire by the driller's paying the current year's renewal fee. After two (2) years the certificate is invalid and the driller shall be required to meet all requirements for certification established in this regulation.

Section 4. Wallet Cards. (1) The cabinet will provide upon certificate issuance and again upon each annual renewal a card of suitable size to be carried in a wallet and bearing at least the name and certificate number of the driller and indicating the period for which the card is issued. This wallet card shall be carried by the driller at all times while on a job site.

(2) The cabinet will also provide wallet cards which shall be used by the driller's employees who will at any time be in charge of well construction in the drillers absence. This card shall bear the driller's certification number and signature and shall be carried by such employees at all times on the construction site.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Geary Schindel
(1) Type and number of entities affected: The proposed amendment revises fees for examination and certification of water well drillers. Entities affected are individuals possessing either two years experience under a certified or licensed driller, or a certificate or license from another state for a period of two years. Ten entities per year are expected to be affected by the examination fee. 300 entities per year are expected to be affected by the certification fee.

(a) Direct and indirect costs or savings to those affected:

1. First year: The advance payment required for each examination will increase from $25 to $40. The advance payment required for each

certification will increase from $165 to $400.
2. Continuing costs or savings: Certification renewal must be made annually. After the first year, there are no additional increases in costs to the regulated entities.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None, all water well drillers are equally effected.
(b) Reporting and paperwork requirements: None, annual reporting and paperwork requirement remain the same.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The increase in the examination fee will allow an increase in the recovered costs of the examination. But, the increase is nominal to encourage compliance. The increase will bring in $400 per year. Currently, the examination program costs $500 per year. The increase in the certification fee will allow full program cost recovery, $75,000 per year (300 entities times $250 per entity).
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: The revision of the examination fee is expected to have a positive effect on state revenue by offsetting the cost of conducting and processing water well driller examinations.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to revising the water well drillers examination fee is no action. The no action option was rejected because current fee levels are not sufficient to cover all processing costs.
(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: 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: None
TIERING: Was tiering applied? No. No stratification for tiering exists in the examination of water well drillers.

LOCAL MANDATE IMPACT STATEMENT

SUBJECT/TITLE: Water Well Drillers Certification
SPONSOR: Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.
FISCAL SUMMARY: Not applicable.
MEASURE'S PURPOSE: The proposed amendment revises the examination fee for certification of water well drillers set forth in Section 2 to reflect the costs of processing water well driller certification examinations.
PROVISION/MECHANICS: The processing fee for water well driller certification examinations is an existing obligation. The proposed change modifies an existing obligation.
FISCAL EXPLANATION: There is no obligation to local governments.
PREPARER: Don E. Thomason

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 period from the initial receipt of hazardous waste at the facility until the secretary receives certification of final closure.
(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) "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) "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) "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) "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) "Board" means the Kentucky regional integrated waste treatment and disposal facility siting board (KRS 224.2201).

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

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

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

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

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

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

(22) "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) "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) "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) "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) "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) "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) "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) "Contained landfill" see "solid waste site or facility - contained landfill."

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

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

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

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

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

(42) "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) "Disposal facility" see "hazardous waste site or facility - disposal facility."

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

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

(49) "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) "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) "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) "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) "Explosive gas" means methane (CH_4) in 401 KAR 30:030, Section 1(1).

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

(56) "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) "Final closure":

(a) Of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility [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.

(b) Of a solid waste site or facility means the approved closure of a solid waste site or facility in accordance with the applicable requirements of 401 KAR 47:040 or 401 KAR 47:050 and the environmental performance standards in 401 KAR 30:030.

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

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

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

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

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

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

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

(74) "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) "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) "Industrial furnace" see "hazardous waste site or facility - industrial furnace."

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

(78) "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) "Injection well" see "hazardous waste site or facility - injection well."

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

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

(86) "Lab pack" 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) "Landfarming facility" see "solid waste site or facility - landfarming facility."

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

(89) "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) "Land treatment facility" see "hazardous waste site or facility-land treatment facility."

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

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

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

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

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

(105) "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) "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) "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) "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) "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) "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) "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) "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) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 401 KAR Chapters 34 and 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) "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) "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) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, and/or dispose of waste.

(117) "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) "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) "Pile" see subsection (63)(g) of this section.

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

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

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

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

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

(131) "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) "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) "Residential landfill" see "solid waste site or facility - residential landfill."

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

(135) "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) "Resource recovery" means the recovery of material or energy from waste.

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

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

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

(140) "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) "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) "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) "Scrap metal" see Section 1 of 401 KAR 31:010.

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

(145) "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) "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) "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) "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) "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) "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) "Spent material" see Section 1 of 401 KAR 31:010.

(152) "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) "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) "Storage facility" see "hazardous waste site or facility - storage facility."

(155) "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) "Surface impoundment" see "hazardous waste site or facility - surface impoundment."

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

(159) "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) "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) "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

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

(163) "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) "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) "Transportation" means any off-site

movement of waste by any mode, and any loading, unloading, or storage incidental thereto (KRS 224.005).

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

(167) "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) "Treatment facility" see "hazardous waste site or facility - treatment facility."

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

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

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

(179) "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.

(180) "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) "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) "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit."

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

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

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

Table 1. Acronyms and Abbreviations

Am.	Amended
C	Corrosive waste
CAA	Clean Air Act
CFR	Code of Federal Regulations
cm	Centimeter
cm^2	Centimeter squared
CO	Carbon monoxide
CO_2	Carbon dioxide
CWA	Clean Water Act
DOT	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.

(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
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1988 at 1 p.m. local prevailing time in room G-2 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: The proposed amendment to this regulation makes the state's definition of final closure identical to the federal definition of final closure.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment will not result in any direct and indirect costs or savings to the regulated entities. The proposed amendment to this regulation makes the state definition of final closure identical to the federal definition. The amendment does not change any regulatory requirements; it clarifies a definition used for informational purposes.

2. Continuing costs or savings: There will be no continuing costs or savings to the regulated entities as a result of the proposed amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements as a result of the proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no direct or indirect costs or savings for the promulgating administrative body as a result of the proposed amendment to this regulation. The proposed amendment does not change the regulatory requirements.

2. Continuing costs or savings: There will be no continuing costs or savings for the promulgating administrative body as a result of the proposed amendments.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The proposed amendment to this regulation makes the state definition of final closure identical to the federal definition of final closure. The amendment also clarifies that the definition of final closure applies to solid waste sites or facilities. Alternative:

1. Less stringent: Kentucky cannot be less stringent and maintain equivalency with the federal program.

2. More stringent: The cabinet chose not to adopt more stringent standards than the federal because the federal requirements will adequately protect public health and the environment.

3. Present proposal: The present proposal makes the state definition of final closure identical to the federal and clarifies that the definition of final closure applies to solid waste sites or facilities.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule, or government policy which conflicts, overlaps, or is in duplication.

(a) Necessity of proposed regulation if in conflict: The proposed regulation does not conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation does not conflict.

(6) Any additional information or comments: There are no additional information or comments.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The proposed amendment makes the state definition of final closure identical to the federal definition of final closure and clarifies that this definition applies to solid waste sites or facilities.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendment does not impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate. The proposed amendments adopt requirements which are identical to those standards adopted by the U.S. EPA.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The amendments made to this regulation do not impose additional requirements or responsibilities than those adopted by the U.S. EPA or than those requirements already in effect in the waste management regulations.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 quantity generators and hazardous waste which is recycled.

(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.

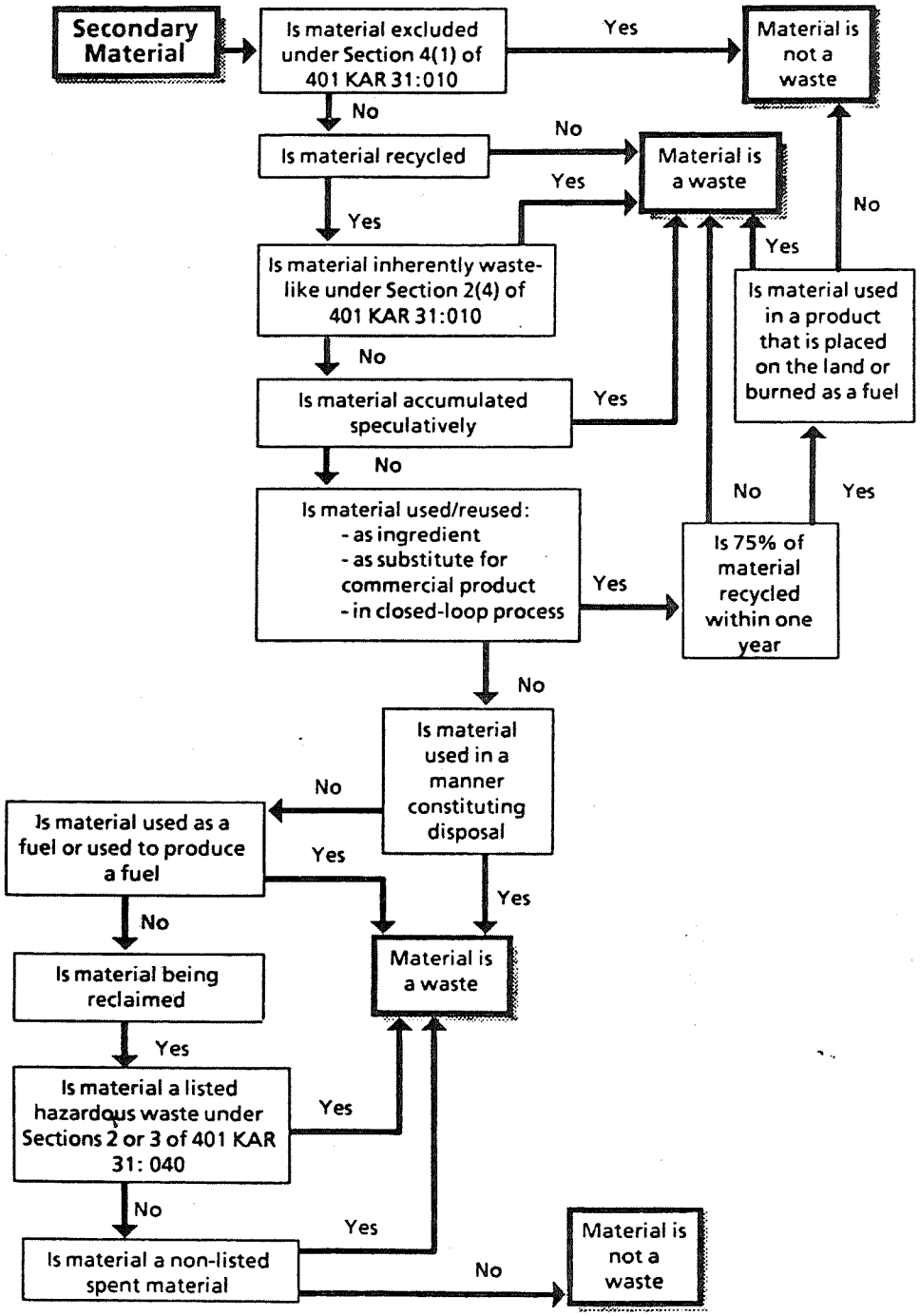
TABLE 1

	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.

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 4 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 from burning any of the materials exempted from regulation by Section 6(1)(c)5-9 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 recover 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 TiO2 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 is not included in the quantity determinations of this chapter and 401 KAR Chapters 32 through 40 and is not subject to any requirements of those regulations. 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, and is subject to the requirements of 401 KAR Chapters 32 through 40.

(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 of 401 KAR 36:050 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 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; 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 an annual [a] notification to the cabinet. After the date of promulgation of this regulation, the owner or operator shall submit an initial notification on a schedule determined by the cabinet. Subsequent annual notifications shall

be submitted to the cabinet at least thirty (30) days before the expiration date shown on the notification; 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: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency

in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: This proposed amendment affects all persons who recycle materials without first storing them. Currently there are 160 recyclers registered in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be a small indirect cost associated with the paperwork for annual registration. Each owner or operator will also pay a $300 fee for registration.

2. Continuing costs or savings: The direct cost for fees and the indirect cost for associated paperwork will reoccur on an annual basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Each owner or operator must complete and submit a registration form annually. No new employees or training would be required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs incurred as a result of the proposed amendments to require annual registration will be recovered by an appropriate fee.

2. Continuing costs or savings: Since the registration is annual, the same costs will be incurred each year. However, the costs will be recovered by a fee.

3. Additional factors increasing or decreasing costs: The maintenance of an accurate data base will reduce time required for staff to identify and correct incorrect data.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on local revenues from promulgation of this regulation. The cabinet will require one additional staff position to process paperwork and prepare data input forms to update the Hazardous Waste Data Management System. However, the costs for annual registration will be recovered by a fee as permitted by KRS 224.871.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: Annual registration of recyclers of recyclable material.

1. Less stringent: The cabinet could have chosen to retain a one time registration; however, the maintenance of accurate information enables the cabinet to notify recyclers of regulatory changes and to maintain an essential understanding of hazardous waste management in Kentucky.

2. More stringent: The cabinet could have chosen to require more frequent registration; however, this would have been overly burdensome to the regulated entities.

3. Present proposal: The proposed amendments require annual registration of hazardous waste recyclers.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, or government policies with which this proposed regulation conflicts, overlaps, or duplicates.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. This proposed regulatory amendment applies to the owners or operators of facilities which recycle recyclable materials. The regulation has not been tiered for recycling of different recyclable materials. Under the Resource Conservation and Recovery Act, all owners and operators of facilities which recycle recyclable materials must follow notification requirements. The consistency provision under which the state is authorized to implement the Resource Conservation and Recovery Act does not allow the state to impose tiering.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The amendment to this regulation requires owners or operators of facilities that recycle materials without first storing them to submit an annual notification to the cabinet on a schedule determined by the cabinet. The federal mandate requires a one-time notification.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The requirement for annual notification by owners or operators of facilities that recycle materials without first storing them is more strict than the requirement in the federal mandate. The federal mandate does not provide for annual notification.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The annual notification requirement will provide the cabinet with more accurate information on owners or operators of facilities that recycle materials without first storing them. It is necessary to maintain this information as accurately as possible because it is used to notify regulated entities of amendments to the

regulations and to send correspondence concerning annual reports to regulated entities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 31:020. Criteria for identifying the characteristics of hazardous waste and criteria for listing.

RELATES TO: KRS 224.864(3), 224.868, 224.876
PURSUANT TO: KRS 13A.210, 224.017, 224.864
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 criteria for identifying the characteristics of hazardous waste. It also establishes the criteria for listing a hazardous waste.

Section 1. Criteria for Identifying the Characteristics of Hazardous Waste. The cabinet shall identify and define a characteristic of hazardous waste in 401 KAR 31:030 only upon determining that:

(1) A waste that exhibits the characteristic may:

(a) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(a) Measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are available to serve generators of waste; or

(b) Reasonably detected by generators of waste through their knowledge of their waste.

Section 2. Criteria for Listing Hazardous Waste. (1) The cabinet shall list a waste as a hazardous waste only upon determining that the waste meets one (1) of the following criteria:

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

(b) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD_{50} toxicity (rat) of less than fifty (50) milligrams per kilogram, an inhalation Lc_{50} toxicity (rat) of less than two (2) milligrams per liter, or a dermal LD_{50} toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated acute hazardous waste.)

[(c) It contains any of the toxic constituents listed in 401 KAR 31:170 unless, after considering any of the following factors, the cabinet concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed:]

[1. The nature of the toxicity presented by the constituent.]

[2. The concentration of the constituent in the waste.]

[3. The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in subparagraph 7 of this paragraph.]

[4. The persistence of the constituent or any toxic degradation product of the constituent.]

[5. The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.]

[6. The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.]

[7. The plausible types of improper management to which the waste could be subjected.]

[8. The quantities of the waste generated at individual generation sites or on a regional or national basis.]

[9. The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.]

[10. Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.]

[11. Such other factors as may be appropriate. Substances will be listed in 401 KAR 31:170 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. (Wastes listed in accordance with these criteria will be designated toxic wastes.)]

(2) The cabinet may list classes or types of waste as hazardous waste if the cabinet has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in KRS 224.005(24)(b).

(3) The cabinet will use the criteria for listing specified in this section to establish the exclusion limits referred to in 401 KAR 31:010, Section 5(3).

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1988 at 1 p.m. local prevailing time in room G-2 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 25, 1988. Send written notification of intent to attend the public

hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: This proposed amendment has the potential to affect all generators of hazardous waste and all owners or operators of hazardous waste storage, treatment or disposal facilities. There are currently 1,528 generators and 73 facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The direct and indirect costs would be variable depending on the number of additional wastes that would be required to be listed by the retention of this provision. The exact costs cannot be determined since the number of new wastes that would be listed would vary depending upon the time and resources required by the cabinet to make a determination for each waste.

2. Continuing costs or savings: There will be no continued costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The listing of additional wastes in Kentucky that are not listed in other states would give a competitive advantage to the generators and facilities in other states. This proposed amendment will make competition with generators and facilities in other states more equal.

(b) Reporting and paperwork requirements: This proposed amendment would decrease paperwork. If the amendment is not enacted and additional wastes were listed, each generator and facility would be required to file a notification with the cabinet, file a permit application, if applicable, and file annual reports.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: By not being required to assess wastes according to the criteria that are to be deleted, the cabinet would realize significant savings. The deleted criteria would require greatly enhanced laboratory facilities as well as extensive toxicological expertise.

2. Continuing costs or savings: There would be continued savings since the cabinet would not be required to analyze the toxic constituents.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet would be required to employ new staff if these criteria are not deleted. Additionally, reports would be required to be generated on each waste.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) The cabinet could have elected to retain the criteria relating to toxic constituents. However, retention of the criteria has the potential to cause Kentucky to list as hazardous wastes which are not listed by the EPA. KRS 224.864 requires that Kentucky's list of hazardous wastes be identical to the EPA's list.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The deleted regulatory provision which required listing of wastes under certain circumstances may have overlapped with KRS 224.864 which provides that the state list shall be identical to the EPA list. Deletion of the provision eliminates any overlap which may have existed.

(a) Necessity of proposed regulation if in conflict: Deletion of the provision eliminates any overlap with KRS 224.864 which may have existed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Deletion of the provision results in harmony with KRS 224.864.

(6) Any additional information or comments: There are no additional information or comments.

TIERING: Was tiering applied? No. Tiering was not applied. All generator and storage, treatment or disposal facilities must use the same criteria to determine if a waste is hazardous.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The state standards for identifying the characteristics of hazardous waste are that the waste may increase illness or mortality and may pose a present or potential hazard to human health or the environment. THe characteristic must be able to be measured by a standardized test and be detected by generators. The state standards for listing a hazardous waste are that the waste exhibits the characteristic of corrosivity, ignitability, EP toxicity or reactivity or meets specified lethal toxicity concentrations or doses. The federal standards for identifying the characteristics of hazardous waste are that the waste may increase illness or mortality and may pose a present or potential hazard to human health or the environment. The characteristic must be able to be measured by a standardized test and be detected by generators. The federal standards for listing a hazardous waste are that the waste exhibits the characteristic of corrosivity, ignitability, EP toxicity or reactivity or meets specified lethal toxicity concentrations or doses. The preceding federal standards are identical to the state standards. Additionally, the federal standards require that any waste containing hazardous constituents be evaluated to determine if the waste will pose a substantial present or potential hazard to human health or the environment.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This proposed amendment will result in the imposition of requirements identical to the federal mandate.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The proposed regulation imposes no additional requirements or responsibilities that are

different from the federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 32:010. General provisions for generators.

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 Natural Resources and Environmental Protection Cabinet to promulgate regulations to establish standards for the generation of hazardous waste. This chapter establishes standards for the generators of hazardous waste. This regulations establishes the applicable general provisions for generators.

Section 1. Purpose, Scope, and Applicability. (1) These regulations establish standards for generators of hazardous waste.

(2) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this regulation with respect to that waste; Section 2 of this regulation for determining whether or not he has a hazardous waste, Section 3 of this regulation for obtaining an identification number; 401 KAR 32:030, Section 5, for accumulation of hazardous waste; 401 KAR 32:040, Section 1(3) and (4), for recordkeeping; 401 KAR 32:040, Section 4, for additional reporting; and, if applicable, 401 KAR 32:050, Section 2, for farmers.

(3) Any person who imports hazardous waste from outside the United States into Kentucky must comply with the standards applicable to generators established in this chapter.

(4) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of 401 KAR 32:050, Section 2 is not required to comply with other standards in this chapter or 401 KAR Chapters 34, 35, and 38 with respect to such pesticides.

(5) A person who generates a hazardous waste as defined by 401 KAR Chapter 31 is subject to the compliance requirements and penalties prescribed in KRS Chapter 224 if he does not comply with the requirements of this chapter.

(6) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this chapter.

(7) A small quantity generator (i.e., one who generates between 100 and 1,000 kg/mo of hazardous waste) must comply with the generator standards established in this chapter.

(8) A limited quantity generator (i.e., one who generates no more than 100 kilograms of hazardous waste a month or less than one (1) kilogram of acute hazardous waste) must comply with the requirements of 401 KAR 31:010, Section 5.

Section 2. Hazardous Waste Determination. A person who generates a waste, as defined in 401 KAR 31:010, Section 2, must determine if that waste is a hazardous waste using the following method:

(1) He should first determine if the waste is excluded from regulation under 401 KAR 31:010, Section 4.

(2) He must then determine if the waste is listed as a hazardous waste in 401 KAR 31:040.

(3) If the waste is not listed as a hazardous waste in 401 KAR 31:040 he must determine whether the waste is identified in 401 KAR 31:030, by either:

(a) Testing the waste according to the methods set forth in 401 KAR 31:030, or according to an equivalent method approved by the secretary; or

(b) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) If the waste is determined to be hazardous, the generator must refer to 401 KAR Chapters 34, 35, and 37 for possible exclusions or restrictions pertaining to management of his specific waste.

Section 3. Registration and Identification Number. (1) A generator must not treat, store, dispose, transport, or offer for transportation, hazardous waste without having registered with the cabinet and received an EPA identification number. Generators shall register annually. After the date of promulgation of this regulation, generators shall submit an initial registration on a schedule determined by the cabinet. Subsequent annual registrations shall be submitted to the cabinet at least thirty (30) days before the expiration date shown on the generator's registration. [Such] Registration shall be filed within ninety (90) days after promulgation or revision of regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as a hazardous waste. [Not more than one (1) such registration shall be required to be filed with respect to the same substance.] The registration shall include:

(a) Known or anticipated types, potential sources, general characteristics, and weights or volumes of hazardous wastes generated annually;

(b) The place of generation and the name and address of a contact agent; and

(c) If the waste is a special waste, generators shall, either individually or collectively as a categorical group, within ninety (90) days after promulgation or revision of regulations under 401 KAR Chapter 31, file a report, according to procedures previously approved by the cabinet, which details, by geographic area, the known or anticipated types, potential sources, general characteristics, and weights or volumes of special wastes generated annually. Not more than one (1) registration shall be required to be filed with respect to the same substance.

(2) A generator who has not received an EPA identification number may obtain one by registering with the cabinet as described above, using forms provided by the cabinet. Upon receiving the request and reviewing the information the cabinet will assign an EPA identification number to the generator.

(3) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(4) Hazardous waste generation and on-site management of hazardous waste must be consistent with registration. Any changes in waste streams,

on-site management methods, or other information submitted on the registration form requires the generator to submit a modified registration form. A modified registration form shall be submitted if a waste stream is added or the name of the contact person or registrant is changed. The registrant shall timely file a modified registration form with the cabinet. A required modification shall be considered timely filed if it is received by the cabinet not later than thirty (30) days following the change requiring the submittal of the modification. [If a modification to a registration is required to add an additional waste stream, or change the name of the registrant or the contact person, the registrant must submit a fee to the cabinet in accordance with Section 3 of 401 KAR 39:010.]

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Writte comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: The proposed amendments to this regulation will affect 917 generators of hazardous waste in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The completion and filing of an annual registration form will result in a small cost. The fee for filing proposed in 401 KAR 39:010 is $300 for one to five waste streams.

2. Continuing costs or savings: The direct cost for fees and the indirect cost for associated paperwork will reoccur on an annual basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The registration form must be completed and filed with the cabinet annually. No additional employees or training would be required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This proposed regulation will have a direct effect on state revenues since 401 KAR 39:010 requires a registration fee for generators. The fee will offset the cost to the cabinet for review of the registration and issuance of a certificate.

2. Continuing costs or savings: The registration fee must be paid annually.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained from the annual registration will offset the cost to the cabinet for review of registration and issuance of certificates. There will be no effect on local revenues from promulgation of this regulation. KRS 224.033 exempts publicly owned facilities from fees promulgated by the cabinet.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. This proposed amendment requires hazardous waste generators to register annually. The cabinet selected an annual registration to provide a more accurate and up-to-date data base on hazardous wate generators in Kentucky. Informtion on hazardous waste generators must be maintained as accurately as possible since it is used when announcements are sent to regulated entities and when correspondence concerning annual reports must be distributed. Additionally, the management of an effective hazardous waste management program in Kentucky requires a thorough and up-to-date knowledge of waste generation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed amendment is not in conflict with nor does it overlap or duplicate any statute, rule, or government policy.

(a) Necessity of proposed regulation if in conflict: The proposed regulation does not conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation does not conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. No tiering was applied to the registration requirement for generators of hazardous waste. KRS 224.864 requires that generators notify the cabinet. All generators must provide the same information to the cabinet and, therefore, no tiering was applied.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The amendments to this regulation are not based on federal standards. The Kentucky

standards for annual generator registration are not more stringent than the federal standards in that fees are not assessed under the federal regulatory system. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the proposed amendments do not impose stricter requirements on the regulated entities than those required by the federal mandate. The proposed amendments require hazardous waste generators to register annually with the cabinet and to pay a fee for such registration. The federal regulations do not contain a fee system.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The proposed amendments to this regualtion will provide the cabinet with a more accurate and up-to-date data base on hazardous waste generators in Kentucky. Information on hazardous waste generators must be maintained as accurately as possible because it is used when announcements on regulatory amendments are sent to regulated entities and when correspondence concerning annual reports must be distributed. Additionally, by monitoring changes in the waste streams, processes employed, and waste minimization efforts by individual generators, the state will be better able to provide required data to the U.S. EPA and to protect the environment and public health.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 32:040. Recordkeeping and reporting.

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. This chapter establishes standards applicable to generators of hazardous waste. This regulation establishes recordkeeping and reporting standards.

Section 1. Recordkeeping. (1) A generator must keep a copy of each manifest signed in accordance with Section 4(3) of 401 KAR 32:020 in addition to the signed copy returned from the designated facility which received the waste. Both copies must be retained on record for at least three (3) years from the date the waste was accepted by the initial transporter.

(2) A generator must keep a copy of each annual report and exception report for a period of at least three (3) years from the due date of the report (March 1).

(3) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with Section 2 of 401 KAR 32:010 for at least three (3) years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) A generator must keep a log showing all facility and equipment inspections as required in Section 6 of 401 KAR 35:020.

(5) 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 2. Annual Reporting. (1) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit annual reports on a form approved by the cabinet according to the instructions on the form. The annual report must be submitted to the cabinet no later than March 1 for the preceding calendar year and must, at a minimum, include the following information:

(a) The EPA identification number, name and address of the generator;

(b) The calendar year covered by the report;

(c) [(a)] A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(d) [(b)] 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.

(e) [(c)] The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year.

(f) [(d)] The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States.

(g) [(e)] A description, EPA hazardous waste number (from 401 KAR 31:030), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number for each such off-site facility to which waste was shipped.

(h) [(f)] The certification signed by the generator or authorized representative.

(2) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with provisions of 401 KAR Chapters 34, 35, 36, and 38. Reporting for exports of hazardous waste outside the United States is not required on the annual report form but shall be accomplished by a separate annual report pursuant to 401 KAR 32:050.

(3) Generators must provide a duplicate copy of the report required in Section 2 of this regulation to the county judge/executive of the county or chief executive officer of an urban county government within which the waste site or facility which will receive waste from the generator is located and to the county judge/executive of the county or chief executive officer of an urban-county government within which the generator is located in order that the county judge/executive or chief executive officer may make the report available to the county law enforcement and emergency services for emergency planning purposes.

Section 3. Exception Reporting. (1) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator must submit an exception report to the cabinet if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The exception report must include:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(b) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

Section 4. Additional Reporting. The secretary may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 401 KAR Chapter 31.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1988 at 1 p.m. local prevailing time in room G-2 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: This proposed amendment affects 917 generators of hazardous waste in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Each generator already has a name, address and an EPA identification number. There are no direct or indirect costs associated with putting these items on the annual report. The year to which the report applies is printed on the report form.

2. Continuing costs or savings: There will be no continued costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendment adds four items to a report which is already required to be submitted to the cabinet. The information, readily accessible to the generator, is the name, address and EPA identification number of the generator and the year to which the report applied.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings. The cabinet currently prints and distributes annual report forms each year. The report is revised each year to incorporate the correct dates. The name, address and EPA identification numbers are currently required as a means to identify each generator.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet chose to include the name, address, identification number and report year as required items in the generator annual report. These items are required by the federal regulations and are a mandatory part of the program delegation to the state.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, or government policies conflict, overlap, or duplicate the proposed requirement.

(a) Necessity of proposed regulation if in conflict: The proposed requirements do not conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed requirements do not conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? No. Tiering was not applied. All generators are required to submit reports to the cabinet by KRS 224.864.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The requirements that generator reports contain the generator name, address and EPA identification number and the calendar year of the report are found at 40 CFR 262.41(a)(1) and (2). Section 2(a) and (b) contain requirements identical to the federal requirements.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by

the federal mandate? (Explain in detail) The proposed amendments to Section 2 contain requirements identical to the federal requirements.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional or more stringent standards are required of generators.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 Closure. (1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 2 through 6 of 401 KAR 34:070 and applicable closure requirements in Section 9 of 401 KAR 34:180, Section 8 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.

(a) The estimate must equal the cost of final closure at the point in the facility's active 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) days prior to the anniversary 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. The adjustment shall be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product 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 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:

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

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

(b) If an owner or operator established a trust fund as specified in Section 3 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:

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

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

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have been if annual payments were made as specified in subsection (3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this regulation 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 person authorized to conduct partial or final closure may request reimbursements for partial or final 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 the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. 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 issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued by a circuit court or other court of competent jurisdiction pursuant to KRS [Chapter] 224.866, 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 n 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 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 the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. 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 at least ninety (90) percent of 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 at least ninety (90) percent of 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 from 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 in accordance with the approved closure plan, 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 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: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1988 at 1 p.m. local prevailing time in room G-2 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: The proposed amendments to this regulation do not change any of the requirements of this regulation, therefore no entities are affected by the amendments. The wording changes contained in the amendments make the state regulation identical to the federal regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to affected entities because the proposed amendments do not change any of the closure financial requirements; the amendments cite a specific reference to KRS Chapter 224 and add language to specify that reimbursements may be requested for "partial or final closure expeditures" instead of "closure expenditures."

2. Continuing costs or savings: There are no continuing costs or savings for affected entities because the proposed amendments do not change any of the closure financial requirements. The proposed amendments add a specific reference to KRS Chapter 224 and specify that reimbursements may be requested for "partial or final" closure expenditures.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There

are no additional factors increasing or decreasing costs as the proposed amendments do not make any changes to the closure financial requirements and therefore do not affect the costs associated with this regulation.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements a a result of the proposed amendments to this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no direct or indirect costs or savings to the promulgating administrative body as a result of the proposed amendments to this regulation. The proposed amendments do not change the requirements of this regulation, therefore there will be no effect on the promulgating administrative body.

2. Continuing costs or savings: The promulgating administrative body will experience no continuing costs or savings as a result of the proposed amendments to this regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendments to this regulation do not change any of the closure financial requirements. The amendments make the state language identical to the federal language. Due to the nature of the amendments, it was unnecessary to consider alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule, or government policy which is in conflict, overlaps, or is in duplication.

(a) Necessity of proposed regulation if in conflict: The proposed regulation does not conflict with any statute, rule or government policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation is not in conflict with any statute, rule or government policy.

(6) Any additional information or comments: There are no additional information or comments.

TIERING: Was tiering applied? No. This regulation applies to all permitted hazardous waste treatment, storage, or disposal facilities.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The amendments to this regulation adopt language to make the state regulation identical to the federal regulation at 40 CFR 264.143(a)(10) and they cite a specific reference to KRS Chapter 224.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendments do not impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The proposed amendments do not impose additional requirements or responsibilities on the regulated entities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

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 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 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 constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground 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. 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

(c) 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

(d) 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); and

(g) 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.

(3) Amendment of plan. The owner or operator may amend the 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.

(4) Notification of partial closure and final

closure.

(a) The owner or operator must submit the 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.

(c) The owner or operator must submit his closure plan to the director no later than fifteen (15) days after:

1. Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

2. Issuance of a judicial decree or final order under KRS 224.033, 224.081, and 224.867 to cease receiving hazardous wastes or close.

(d) 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 the plan no later than thirty (30) days from 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 must assure that the approved plan is consistent with Sections 2, through 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 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 to begin closure before November 19, 1981, he was required to 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 is later, the owner or operator must treat, remove from the unit or facility, or dispose of on site, all hazardous wastes in accordance with the approved closure plan. The director may approve a longer period if the owner or operator 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 person will recommence operation of the hazardous waste management unit or the facility within one (1) year; 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 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 closure period if the owner or operator 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 reasonable likelihood that he or another person will recommence operation of the

hazardous waste management unit or the facility within one (1) year; 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 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.

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.

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, 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 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.

Section 7. 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. Postclosure Care and Use of Property. (1)(a) Postclosure care for each hazardous waste management unit subject to the requirements of Sections 8 through 11 of this regulation must begin after completion of closure of the unit and continue for thirty (30) years after that date. It must consist of at least the following:

1. 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. Maintenance and monitoring of waste containment systems 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.

(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 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:

(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 the containment system, or the function of the facility's monitoring systems, unless the director 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. (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. Postclosure Plan; Amendment of Plan. (1) Written plan. By May 19, 1981, the owner or operator of a hazardous waste disposal unit 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 8 through 11 of this regulation.

(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 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 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 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, and 401 KAR 35:230; and

2. The function of the monitoring equipment 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

(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.

(4) Amendment of plan. The owner or operator may amend the postclosure plan any time during the active life of the 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.

(5) The owner or operator of a 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. The owner or operator must submit the 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 under KRS Chapter 224 to cease receiving wastes or close.

(6) 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 the plan no later than thirty (30) days from 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 postclosure 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 postclosure plan. The director must ensure that the approved postclosure plan is consistent with Sections 8 through 11 of this regulation. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. If an owner or operator planned to begin closure before November 19, 1981, he was required to submit the postclosure plan by May 19, 1981.

(7) The postclosure plan and length of the postclosure care period may be modified any time prior to 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. 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. Postclosure Notices. (1) No later than sixty (60) days after 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 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 7 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 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 9(7) of this regulation.

The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8(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. Certification of Completion of Postclosure Care. 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.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1988 at 1 p.m. local prevailing time in room G-2 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: The proposed amendment to this regulation has no impact on any regulated entities. The amendment does not change any of the closure or postclosure requirements. The amendment corrects a previous omission of a phrase, thereby making the state language identical to the federal language.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct and indirect costs or savings to those affected by this regulation. The proposed amendment does not change any of the requirements of the regulation; it does nothing to affect the costs or savings realized by regulated entities. The amendment makes the state language identical to the federal language.

2. Continuing costs or savings: There will be no continuing costs or savings as a result of the proposed amendment. The proposed amendment does not change any of the requirements for closure and postclosure, therefore, there is no effect on costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements a a result of the proposed amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no direct or indirect costs or savings realized by the promulgating administrative body. The proposed amendment makes the state language identical to the federal language; it does not change any of closure and postclosure requirements. Therefore, the promulgating administrative body will experience no direct or indirect costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings experienced by the promulgating administrative body.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment to this regulation makes the state language identical to the federal language. The amendment does not change any of the closure or postclosure requirements for interim status facilities. Due to the nature of the amendment it was unnecessary to consider alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule, or government policy which is in conflict, overlaps, or is in duplication.

(a) Necessity of proposed regulation if in conflict: The proposed regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation is not in conflict with any other provisions.

(6) Any additional information or comments: There is no additional information or comments.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The proposed amendment makes the state language identical to the federal language at 40 CFR 265.118(f). The proposed amendment does not change any of the closure or postclosure requirements for interim status facilities.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendment does not impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate. The amendment makes the state language identical to the federal language.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The proposed amendment does not impose additional requirements or responsibilities on the regulated entities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 35:090. Closure financial requirements (IS).

RELATES TO: KRS 224.033, 224.071, 224.830 through 224.877, 224.994

PURSUANT TO: KRS 13A.210, 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 hazardous waste sites or facilities qualifying for interim status. This regulation establishes the closure financial requirements.

Section 1. Cost Estimate for Facility Closure. (1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 2 through 6 of 401 KAR 35:070 and 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 35:250, and Section 5 of 401 KAR 35:260.

(a) The estimate must equal the cost of final closure at the point in the facility's active 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 35:070; 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 (1)(e) of 401 KAR 35:080). 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 by the sale of hazardous wastes, facility structures or equipment, land, or other facility assets at the time of partial or final closures.

(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) days prior to the anniversary 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 7(3) of this regulation. The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent 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 a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than thirty (30) days after the director has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (2) of this section.

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

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

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

Section 2. Financial Assurance for Facility Closure. An owner or operator of each facility

must establish financial assurance for closure of the facility. He must choose from the options as specified in Sections 3 through 8 of this regulation.

Section 3. Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by establishing a closure trust fund which conforms to the requirements of this section and submitting an originally signed duplicate of the trust agreement to the director. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The trust agreement must be executed on the form provided by the cabinet containing wording identical to the wording specified in Section 1 of 401 KAR 34:140 and the trust agreement must be accompanied by a formal certification of 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 twenty (20) years beginning with October 8, 1982, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

(a) The first payment must be made by October 8, 1982, except as provided in subsection (5) of this section. The first payment must be at least equal to the current closure cost estimate (see Section 1 of this regulation), except as provided in Section 9 of this regulation, divided by the number of years in the pay-in period.

(b) Subsequent payments must be made no later than thirty (30) days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

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

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

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value the fund would have been if annual payments were made as specified in subsection (3) of this section.

(5) If the owner or operator establishes a closure trust fund after having used one (1) or more alternate mechanisms specified in this regulation, his first payment must be at least the amount that the fund would have contained if the trust fund were established initially and annual payments made according to specifications of subsection (3) of this section.

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

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.

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

(9) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsections (7) and (8) of this section, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final 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. No later than sixty (60) days after receiving bills for partial or final closure activities, the director will instruct the trustees to make reimbursements in those amounts as the director specifies in writing, if the director determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. 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 11 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 to the owner or operator 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 11 of this regulation.

Section 4. Surety Bond Guaranteeing Payment into a Closure Trust Fund. (1) An owner or operator may satisfy the requirements of this regulation by obtaining a surety bond which

conforms to the requirements of this section and submitting the bond to the director. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The surety bond must be executed on the form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:144.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this regulation must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the director. This standby trust fund must meet the requirements specified in Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the surety bond; and

(b) Until the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating of Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current closure cost estimates;

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

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

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

(a) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(b) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an order to begin final closure issued by the secretary becomes final, or within fifteen (15) days after an order to begin final closure is issued 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 9 of this regulation.

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

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

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

Section 5. Closure Letter of Credit. (1) An owner or operator may satisfy the requirements of this regulation by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by submitting the letter to the director. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter of credit must be identical to the wording specified in Section 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. This standby trust fund must meet the requirements of the trust fund specified in Section 3 of this regulation, except that:

(a) An originally signed duplicate of the trust agreement must be submitted to the director with the letter of credit; and

(b) Unless the standby trust fund is funded pursuant to the requirements of this regulation, the following are not required by these regulations:

1. Payments into the trust fund as specified in Section 3 of this regulation;

2. Updating the Schedule A of the trust agreement (see Section 1 of 401 KAR 34:140) to show current closure cost estimates;

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

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

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA identification number, name, and address of the facility, and the amounts of funds assured for closure of the facility by the letter of credit (see Section 1 of 401 KAR 34:152 for an example).

(5) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 120 days before the current expiration date, the issuing institution notifies both the

owner or operator and the director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the director have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued for at least the amount of the current closure cost estimate except as provided in Section 9 of this regulation.

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

(8) Following a final administrative determination pursuant to KRS 224.033 that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the director may draw on the letter of credit.

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

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 6. Closure Insurance. (1) An owner or operator may satisfy the requirements of this regulation by obtaining closure insurance which conforms to the requirements of this section and by submitting a certificate of such insurance to the director. By October 8, 1982, the owner or operator must submit to the director a letter from the insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this section to the owner or operator. By January 8, 1983, the owner or operator must submit the certificate of insurance to the director or establish other financial assurance as specified in this regulation. Each insurance policy providing primary coverage must be issued by an insurer who is licensed to transact the business of insurance in the Commonwealth of Kentucky except as KRS 304.11-030 provides otherwise. Each insurance policy providing excess coverage must be issued by an insurer who is licensed to transact the business of insurance in a state.

(2) The certificate of insurance must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:156.

(3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in Section 9 of this regulation. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

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

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the director. 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 the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. 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 reimbursement of such amounts as he deems prudent until he determines, in accordance with Section 11 of this regulation, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the director does not instruct the insurer to make such reimbursements, he will provide to the owner or operator 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) Interim status is terminated or revoked; or

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

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

(e) The premium due is paid.

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

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

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation; or

(b) The director releases the owner or operator from the requirements of this regulation in accordance with Section 11 of this regulation.

Section 7. Financial Test and Corporate Guarantee for Closure. (1) An owner or operator may satisfy the requirements of this regulation by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of either paragraph of this subsection:

(a) The owner or operator must have:

1. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

2. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and 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 at least ninety (90) percent of 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 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 from the owner's and operator's chief financial officer (see 40 CFR 144.0(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) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subsection (3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to October 8, 1982 and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant.

The extension will end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by October 8, 1982, a letter to the director. This letter from the chief financial officer must:

(a) Request the extension;

(b) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(c) Specify for each facility to be covered by the test the EPA identification number, name, address and current closure and postclosure estimates to be covered by the test;

(d) Specify the date ending the owner's or operator's last complete fiscal year before October 8, 1982;

(e) Specify the date, no later than ninety (90) days after the end of such fiscal year, when he will submit the documents specified in subsection (3) of this section; and

(f) Certify that the year-end financial statements of the owner or operator for such fiscal year will be submitted by an independent certified accountant.

(5) After the initial submission of items specified in subsection (3) of this section, the owner or operator must send updated information to the director within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (3) of this section.

(6) If the owner or operator no longer meets the requirements of subsection (1) of this section, he must send notice to the director of intent to establish alternate financial assurance as specified in this regulation. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide alternate financial assurance within 120 days after the end of such fiscal year.

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

(8) The director may disallow use of this test on the basis on qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subsection (3)(c) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this regulation within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in subsection (3) of this section when:

(a) An owner or operator substitutes alternate financial assurance as specified in this regulation;

(b) The director releases the owner or operator from the requirements of this regulation by terminating the financial requirements in accordance with Section 11 of this regulation.

(10) An owner or operator may meet the requirements of this regulation by obtaining a written guarantee, hereafter referred to as the "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (1) through (8) of this section and must comply with the terms of the corporate guarantee. The corporate guarantee must be executed on a form provided by the cabinet containing wording identical to the wording specified in 401 KAR 34:165. The corporate guarantee must accompany the items sent to the director as specified in subsection (3) of this section. The terms of the corporate guarantee must provide that:

(a) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plans and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in Section 3 of this regulation in the name of the owner or operator.

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

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

Section 8. Cash Account and Certificates of Deposit. (1) An owner or operator may satisfy the requirements of this regulation by submitting to the director a bond guaranteeing compliance with KRS Chapter 224 and regulations promulgated pursuant thereto. The bond is to be supported by a cash account or certificate(s) of deposit. The cash account or the certificate(s) of deposit are to be held in escrow pursuant to an escrow agreement. The bank or financial institution holding the cash account or certificate(s) of deposit in escrow must be regulated and examined by a federal or state agency.

(2) The bond must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 1 of 401 KAR 34:168. The escrow agreement for the cash account or certificate(s) of deposit must be executed on a form provided by the cabinet which has wording identical to the wording specified in Section 2 of 401 KAR 34:168.

(3) The cabinet must be the beneficiary of the

escrow agreement for the cash account or certificate(s) of deposit. The director must be empowered to draw upon the funds if the owner or operator fails to perform closure or 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 9 of this regulation.

(5) After each interest period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual evaluation of the cash accounts or the certificate(s) of deposit. If the value of the cash accounts or the certificate(s) of deposit is less than the amount of the new estimate, the owner or operator, within sixty (60) days of the change in the cost estimate, must either deposit an amount into the cash account or the certificate(s) of deposit so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(6) If the value of the cash account or the certificate(s) of deposit is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the director for release of the amount in excess of the current closure cost estimate.

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

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

(9) After beginning final closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the director. Within sixty (60) days after receiving bills for closure activities, the director will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, the director will instruct the trustee to make reimbursement in such amounts as the director specifies in writing. If the director has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Section 11 of this regulation, that the owner or operator is no longer required to maintain financial assurance for closure.

Section 9. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this regulation by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, insurance, certificate(s) of deposit and cash accounts. The mechanisms must be as specified in Sections 3, 4, 5, 6, and 8, respectively, of this regulation, except that it is the combination of mechanisms rather than each single mechanism which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The director may use any or all of the mechanisms to provide for closure of the facility.

Section 10. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this regulation to meet the requirements of this regulation for more than one (1) facility. Evidence of financial assurance submitted to the director must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

Section 11. Release of the Owner or Operator from the Requirements of this Regulation. Within sixty (60) days after receiving certifications from the owner or operator and an independent professional engineer who is registered in Kentucky that final closure has been completed in accordance with the approved closure plan, 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 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: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1988 at 1 p.m. local prevailing time in room G-2 of the Capital Plaza Tower in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: The proposed amendment to this regulation does not change any of the closure financial requirements. The proposed amendment to this regulation inserts a word to make the state language identical to the federal language. This amendment has no effect on any regulated entity.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct and indirect costs or savings to the regulated entities because this proposed amendment does not change any of the closure financial requirements. The amendment corrects the omission of a word in Section 11 thereby making the state language identical to the federal language.

2. Continuing costs or savings: There will be no continuing costs or savings for the regulated entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements as a result of the proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no direct or indirect costs or savings for the promulgating administrative body. The proposed amendment does not change any of closure financial requirements; it does nothing to affect costs or savings.

2. Continuing costs or savings: There will be no continuing costs or savings for the promulgating administrative body.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amendment to this regulation does not change any of the closure financial requirements. The amendment inserts a word to make the state language identical to the federal language. Due to the nature of the amendment it was unnecessary to consider alternatives.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule, or government policy which conflicts, overlaps, or is in duplication.

(a) Necessity of proposed regulation if in conflict: The proposed regulation does not conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation does not conflict with any provisions.

(6) Any additional information or comments: There are no additional information or comments.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The proposed amendment to this regulation does not change any of the closure financial requirements. The amendments makes the state language identical to the federal language at 40 CFR 265.143(h).

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendment does not impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The proposed amendment does not impose additional requirements or responsibilities on the regulated entities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:010. Generator registration fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fees for the registration of hazardous waste generators.

Section 1. Applicability. This regulation applies to all generators of hazardous waste in Kentucky who are required by Section 3 of 401 KAR 32:010 to register with the cabinet.

Section 2. Annual Registration Schedule and Schedule of Fees for Application for Registration. (1) Generators of hazardous waste who are required by Section 3 of 401 KAR 32:010 to register with the cabinet shall register

annually on a scheudle determined by the cabinet. All applications for registration as a hazardous waste generator of more than 100 kilograms in a calendar month shall be accompanied by the nonrefundable [appropriate] fee set forth below:

(2) [(1)] The fee for registration as a hazardous waste generator shall be based on the number of hazardous waste streams generated according to the following schedule:

Number of Waste streams	Registration Fee
1-5	$300 [200]
6-10	350 [250]
11-15	400 [300]
16-20	450 [350]
21-25	500 [400]
26-30	550 [450]
30 or more	600 [500]

(3) [(2)] Modification of registration [fee]. No fee is charged if a registrant modifies his registration by making a name change or change to any other information [desires to increase by an additional hazardous waste the number of hazardous wastes he generates, the fee for the processing of such modification shall be fifty (50) dollars. A modification fee will also be required if the name of the company or the authorized contact person changes].

Section 3. Submittal of Fee. The appropriate fee as established in Section 2(2) of this regulation shall be submitted to the cabinet with the application for registration. The check shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: Approximately 350 full quantity generators and 570 small quantity generators of hazardous waste will be affected by the proposed amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost will be $300 per year for generators with one to five waste streams; $350, for generators with six to ten waste streams; $400, for generators with 11 to 15 waste streams; $450, for generators with 16-20 waste streams; $500, for generators with 21 to 25 waste streams; $550, for generators with 26 to 30 waste streams; and $600 for generators with 31 or more waste streams.

2. Continuing costs or savings: The registration fee must be paid annually.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Each full and small quantity gnerator will be required to fill out a registration form each year.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The revised registraton fees would result in a savings to the cabinet. The fees would recover the expense incurred in the review of registration forms and issuance of certifications.

2. Continuing costs or savings: The annual registration would result in savings to the cabinet.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained through this regulation will go directly in the state's agency receipts fund to be distributed to the cabinet. The fees will offset the cost to the cabinet for review of the registration form and issuance of the certificate. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: Amount of the genrator fee. The dollar amount of the generator fees are based on the cabinet's expense for reviewing the registration form and issuing the certificate. To charge less would cause the cabinet to absorb the expense of each registration. To charge more would place an unnecessary financial burden on generators. Charging a single fee for all generators would place an unfair financial burden on smaller facilities.

(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: 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: The generator registration fees are based on the cabinet's expense for reviewing generator registrations and issuing certificates. The expense is derived from the personnel time and other resources involved in processing generator registrations. Salaries used for the fee

determinations were the midpoint salary for each job classification plus 18 percent for fringe and 31.5 percent for overhead. All salaries plus fringe and overhead were less than $20 per hour. In addition to time to review the application for completeness, time was allotted for verification of information and maintenance of the correct information in the Division's data management systems.

TIERING: Was tiering applied? Yes. This regulation was tiered to apply only to hazardous waste generators in Kentucky and the fee is tiered based on the number of waste streams.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The amendments to this regulation require full and small quantity hazardous waste generators to register annually with the cabinet and pay an annual registration fee. The federal regulatory system does not include any provision for fees. KRS 224.871 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the annual registration fee required of hazardous waste generators in Kentucky is a requirement not found in the federal mandate.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. KRS 224.871 requires the cabinet to promulgate regualtions requiring the payment of reasonable fees for hazardous waste registration certificates and permits. This regulation requires hazardous waste generators to register annually. This requirement will provide the cabinet with a more accurate and up-to-date data base on hazardous waste generators in Kentucky. Information on hazardous waste generators must be maintained as accurately as possible because it is used when announcements on regulatory amendments are sent to regulated entities and when correspondence concerning annual reports must be distributed. Additionally, by monitoring changes in the waste streams, processes employed, and waste minimization efforts by individual generators, the state will be better able to provide required data to the U.S. EPA and to protect the environment and public health. Furthermore, by having access to the more accurate information, the cabinet will be able to access emergency plans to determine if they need to be changed and to better determine the hazards in case of an accident.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:020. Delisting and exemption fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fees for a petition to delist a hazardous waste and for applications for specific exemptions.

Section 1. Applicability <u>of</u> [for] Delisting Fees. A petition to delist a hazardous waste in accordance with Section 1 of 401 KAR <u>31:060</u> [31:062] shall be accompanied by payment of a fee of <u>$6,000 for each hazardous</u> [2,000 per] waste petitioned. If a hazardous waste has been granted a temporary exclusion and is listed in Section 3 of 401 KAR 31:070 and the generator petitions to have that waste delisted in accordance with Section 1 of 401 KAR 31:040, then a payment of <u>$3,000</u> [1,000] per waste shall accompany the petition to delist.

Section 2. Applicability for Exemption Fees. An application for an exemption of a hazardous constituent in a permit in accordance with Section 4(2) of 401 KAR 34:060 or an application to establish alternate concentration limits in accordance with Section 5(2) of 401 KAR 34:060 shall require submittal of a fee to the cabinet. The fee charged shall be the cost of the review. [The cost shall not exceed $30,000 for the first constituent reviewed and $7,500 for each additional constituent reviewed.] All fees collected shall be used to defray the costs for performing the required review activities to determine whether or not the exemption shall be granted or the alternate concentration limit established. [Such fees shall be deposited in the Division of Waste Management's Agency Receipt Account.]

Section 3. Submittal of Fee. The fee for delisting shall be submitted to the cabinet with the petition for delisting. The fee for an application for a specific exemption shall be submitted upon the cabinet's request at the completion of the review. The checks <u>shall</u> [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: This regulation affects hazardous waste generators and hazardous waste management facilities required to monitor groundwater in Kentucky. There are currently 912 generators and 73 storage, treatment and disposal facilities registered with the cabinet.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be a cost of $6,000 to those seeking a delisting for a waste or a cost of $3,000 for a petition concerning a waste subject to a temporary exclusion. This is a one time cost. The direct cost for a facility applying for an exemption to establish an alternate concentration limit for constituent is to be the cost of the review. The maximum fees are deleted.

2. Continuing costs or savings: There will be no continuing costs.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing the costs.

(b) Reporting and paperwork requirements: The proposed amendments do not increase or decrease reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A savings will result due to the revision of this regulation to more adequately cover review costs. The proposed amendments remove maximum fees which could have been less than the actual cost of review.

2. Continuing costs or savings: There are no continued costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: The fees from this regulation will increase the revenue to the state. The increased revenue will recover the cost of review of the delisting and exemption fee. There will be no effect on local revenues from promulgation of this regultion. KRS 224.033 prohibits the cabinet from assessing fees to publicly owned facilities.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: This fee is being amended to increase the fee for petitioning to delist a waste. The cabinet will recover the actual expenses for reviewing delist petitions. The cabinet is required by statute to charge a fee to cover the cost of reviewing petitions. A lesser fee would cause the cabinet to absorb the review expense. A higher fee would not reflect the costs to review the petition. The maximum amount which may be charged for exemption of a hazardous waste in a permit has been deleted. The charge shall be the cost of the review. A lesser fee would cause the cabinet to absorb the expense.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The proposed amendments do not conflict with or overlap or duplicate statute, rules, or govenment policy.

(a) Necessity of proposed regulation if in conflict: The proposed amendments do not conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed amendments do not conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No, this regulation is not tiered, but applies to those hazardous waste generators who wish to petition to delist a particular waste or to exempt a hazardous constituent in a permit. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of fees related to the administrative cost.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The proposed amendments to this regulation increase the fees which must accompany delisting petitions or applications for exemptions. The federal reguations do not contain a fee schedule for hazardous waste management. KRS 224.033(20) states that the cabinet may provide by regulation for a resonable schedule of fees for the cost of processing applications for pemits, exemptions, and partial exemptions.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The proposed amendments impose requirements on regulated entities that the federal mandate does not contain. Fees must accompany delisting petitions and applications for exemptions. The federal regulations do not provide for a schedule of fees.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. The fees imposed by this regulation are used to defray the costs for performing the required review activities.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:030. Part B treatment, storage, or disposal facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13A.210, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for Part B permits for treatment, storage, or disposal facilities.

Section 1. Applicability. This regulation applies to all treatment, storage, or disposal facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

Section 2. Filing Fees. Any owner or operator who submits an application for a permit for a treatment, storage, or disposal facility shall submit with the application a nonrefundable filing fee in the amount of $6,800.

Section 3. [2.] Review Fees. Any owner or operator who submits [Schedule of Fees for Part B Permit Applications and Permit Renewals for Treatment Facilities. A fee shall be required in order to obtain] a permit application for [the construction and/or the operation of] a hazardous waste treatment, storage, or disposal facility or [and] for a permit renewal shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. [The fee will include a Review of General Facility Requirements Fee of $4,000 assessed for each facility. The Review of General Facility Requirements Fee will be charged once per permit application and will not be charged in duplicate or triplicate for an application for any combination of treatment, storage and disposal activities for the same facility if application for all activities is made at the same time.] The review [A] fee shall [will] be the sum of the unit fees charged for each type of hazardous waste management [regulated] unit at the facility. The incinerator unit fee shall be paid once for each different type of incinerator unit at the facility. The types of incinerator units are liquid injection, rotary kiln, fluidized bed and multiple hearth. The unit fees shall be [are as follows]:

(1) Incinerator - $19,400 [4,250];
(2) Waste piles - $12,200 [3,000];
(3) Surface impoundments - $14,000 [3,000]; [and]
(4) Tanks - $11,000; [2,700];
(5) Containers - $7,700;
(6) Land treatment - $15,800; and
(7) Landfills - $15,000.

Section 4. RCRA Facility Assessment Fees. Any owner or operator who submits an application for a treatment, storage, or disposal facility shall submit with the application a nonrefundable RCRA Facility Assessment Fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The RCRA Facility Assessment Fee shall be $11,500.

Section 5. [3.] Submittal of Fees. All fees shall be paid by check or money order [The $4,000 Review of General Facility Requirements Fee shall be submitted to the cabinet with the permit application. The cabinet shall notify the applicant of the additional amount owed. All checks should be] made payable to the Kentucky State Treasurer.

Section 6. Repeal. 401 KAR 39:040, Storage facility fees, and 401 KAR 39:050, Disposal facility fees, are repealed.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director
(1) Type and number of entities affected: This regulation affects hazardous waste treatment, storage or disposal facilities. There are currently 73 facilities in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: The costs to the facilities will vary depending on the type of facility. Most facilities, especially the larger facilities, will find it more expensive to obtain a permit. The fees will vary depending on the combination of units at a given facility.
2. Continuing costs or savings: There is no continuing cost or savings.
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: This regulation should result in a savings to the cabinet. The new facility permitting fees would recover the expense of reviewing the permit application. Thus, the cabinet would not be required to absorb the expense of reviewing the application.
2. Continuing costs or savings: There is no continuing cost or savings.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained through this regulation will increase the revenue to the state. There will be no effect on local revenues from promulgation of this regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: Treatment, storage and disposal facility fees. The dollar amount of the treatment, storage or disposal facilities permitting fees are based on the cabinet's expense for reviewing the permit application and issuing the permit. To charge less would cause the cabinet to absorb the expense of each permit issued. KRS 224.871 requires the cabinet to promulgate regulations to collect fees for permits and certifications issuance. The fees are to reflect the cost of review and issuance.
(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: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: The data from which the fees in this regulation are based were derived from personnel time and resources needed to review and issue these permits. The filing fee is based on the resources and staff required: (1) to determine completeness of the application, (2) to conduct an initial site visit to inspect the facility to confirm data for different units, (3) to issue a public notice and to hold a public hearing. The total time for all clerical, administrative and technical staff to perform these tasks were 272 hours. The salaries used to calculate the costs were the midpoint salaries for each job classification plus 32 percent for fringe and overhead. All salaries were less than $25 per hour including fringe and overhead. Travel costs were based on the amount charged by the state motor pool for each mile traveled. ($0.21 per mile). The review fees are based on the resources and staff required to perform a technical review of the application, to hold associated meetings, and to prepare the draft permit or denial. The total time for all clerical, administrative and technical staff to perform these tasks for each unit type are: surface impoundment - 810 hours; land treatment - 910 hours; waste piles - 720 hours; containers - 450 hours; incinerator - 1,145 hours; tanks - 640 hours; landfill - 875 hours. The RCRA facility assessment, RCRA facility investigation and corrective measures plan are new requirements resulting from the 1984 amendments of the Resource Conservation and Recovery Act (RCRA). Corrective action for releases of hazardous waste and/or hazardous constituents into the environment are required of all existing facilities for both RCRA units and solid waste management units at a facility. The RCRA facility assessment and RCRA facility investigation are required and are designed to determine whether a release of hazardous waste or hazardous constituents occurred. The RCRA facility assessment includes the costs for preliminary file review, a site visit, a sampling visit and associated documentation. The total for technical and clerical time to perform a RCRA facility assessment is 496 hours. The purpose of a RCRA Facility Assessment (RFA) is to identify releases or likely releases of hazardous waste (as defined in 401 KAR 34:040) or hazardous constituents (as defined in 401 KAR 34:070) requiring further investigations. The RCRA facility assessment is composed of three essential parts: the preliminary review, the visual site investigation and the sampling visit. The preliminary review involves the review of documents and written reports and meeting with relevant individuals. The visual site inspection is an activity carried out at the facility and includes obtaining visual evidence of unit characteristics, contamination migration pathways, releases and exposure potential. Prior to the sampling visit, a sampling plan must be developed. After the results of the sampling visit have been obtained, a RCRA facility assessment report is prepared and sent to the U.S. Environmental Protection Agency. The state and the U.S. Environmental Protection Agency jointly sign a letter to be sent to the facility indicating the results of the RCRA facility assessment. If the RCRA assessment indicates that a release has occurred, a RCRA facility investigation may be required to quantify the release and determine if corrective action is necessary.
TIERING: Was tiering applied? Yes. This regulation is tiered to apply varying fees based on the type of treatment, storage or disposal units at each facility.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation contains the fee schedule for Part B permit applications for treatment, storage, or disposal facilities. The federal regulations do not contain a fee schedule. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the provision for fees in this regulation is also not found in the federal regulations. The cabinet is authorized by KRS 224.871 to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.
3. If the proposed regulation imposes additional requirements or responsibilities,

justify the imposition of these stricter standards, requirements or responsibilities. The cabinet assesses fees for Part B permit applications to defray the costs associated with review of these applications. KRS 224.871 provides that the cabinet may establish fees for hazardous waste permits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:060. Short-term fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
PURSUANT TO: KRS 13A.210, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for short-term permits.

Section 1. Applicability. This regulation applies to facilities which require emergency permits[, trial burn permits] and land treatment demonstration permits.

Section 2. Fees. The fees for short-term permits are as follows:
(1) Emergency permits - $750 [250];
[(2) Trial-burn permits - $2,000;] and
(2) [(3)] Land treatment demonstration - $5,500 [3,500].

Section 3. Submittal of Fees. The appropriate fee for short-term permits shall be submitted to the cabinet with the permit application. The check shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director
(1) Type and number of entities affected: This regulation involves two types of short-term permits which will affect different entities. Land treatment demonstration permit fees affect land treatment facilities. There are currently 2 in Kentucky. Emergency permit fees could affect anyone in Kentucky who handles hazardous materials. Emergency permits are required for hazardous materials/waste spills.
(a) Direct and indirect costs or savings to those affected:
1. First year: The cost to facilities will be the direct cost of obtaining the permit. The costs will be $750 for emergency permits and $5,500 for land treatment demonstration permits.
2. Continuing costs or savings: None. The short-term permits are issued on a one-time-only basis; there are no continuing costs.
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: This regulation will result in a savings to the cabinet. The amount of the fee ($750 for emergency permits and $5,500 for land treatment demonstration permits) will recover the cost to the cabinet for permit review.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained for the issuance of short-term permits will increase the state revenue. There will be no effect on local revenues from promulgation of this regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Amount of fee charged for a permit. Alternative: 1. Less stringent: The cabinet could have been less stringent by charging a smaller fee. However, a smaller fee would place a financial burden on the cabinet. The cabinet has statutory authority to charge a reasonable fee to recover the cost of permit application review.
2. More stringent: The cabinet rejected more stringent alternatives because the it would place a financial burden on smaller facilities.
3. Present proposal: The present proposal will recover the expense to the cabinet for the review of the permit application for land treatment demonstration permits and emergency permits. The cabinet believes that these fees are equitable and adequate.
(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: Not applicable.
(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The date on which these fees are based were derived from the personnel time and additional resources needed to issue these permits.

TIERING: Was tiering applied? Yes. This regulation applies tiered fees to varying hazardous waste management facilities in Kentucky which are eligible for short-term permits.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The requirements in this regulation are not based on any standards contained in the federal mandate. Facilities which require emergency or land treatment demonstration permits must pay a fee to receive the permit. The federal regulations do not provide for a fee schedule. KRS 224.871 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; this regulation imposes fees for emergency permits and land treatment demonstration permits. The federal mandate does not provide for a fee system. KRS 224.871 gives the cabinet authority to establish fees for the processing, review and issuance of certificates and permits.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The fee for emergency or land treatment demonstration permits is assessed to defray the cost of the review activities associated with the processing and issuance of the permit.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:070. Modification fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871

PURSUANT TO: KRS 13A.210, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. The purpose of this regulation is to establish fees for modification of permits for hazardous waste management.

Section 1. Applicability. [(1)] This regulation applies to all owners and operators of hazardous waste facilities in Kentucky who apply for [require] a modification to their hazardous waste management permit as specified in Section 2 of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

[(2) In the event modification of a permit is required as a result of changes in Kentucky Statute or the Hazardous Waste Management Regulations, no modification fee shall be imposed.]

Section 2. Minor Modifications. A nonrefundable fee of $300 [fifty (50) dollars] per minor modification shall [must] be submitted to the cabinet with the application for minor modification. Minor modifications are defined in Section 2 of 401 KAR 38:050.

Section 3. Major Modifications. Major modifications are defined in Section 2 of 401 KAR 38:040. Subsection (1) of this section sets forth the nonrefundable major modification fees for the addition of one (1) or more new waste streams and for the addition or modification of one (1) or more of the following units: tanks, surface impoundments, waste piles, incinerators, containers, land treatment units or landfill cells. Subsection (2) of this section sets forth the major modification fees for any major modification which does not meet the criteria of subsection (1) of this section. The incinerator units in subsections (1) and (2) of this section shall be paid once for each different type of incinerator unit at the facility. The types of incinerator units are liquid injection, rotary kiln, fluidized bed and multiple hearth.

(1) This subsection sets forth the major modification fees for the addition of one (1) or more new waste streams [and for the addition of one (1) or more of the following units: tanks, surface impoundments, waste piles, incinerators, containers, land treatment units or landfill cells].

(a) For the addition of new waste [- $1,500;

(b)] for treatment, storage or disposal facilities:

1. Tanks - $4,000 [1,900];
2. Surface impoundments - $5,000 [2,500];
3. Waste piles - $4,500 [2,500];
4. Incinerators - $6,500; [3,250.]

[(c) For storage facilities:]

5. [1.] Containers - $3,500 [2,100];

[2. Tanks - 1,900;]
[3. Surface impoundments - 2,500;]
[4. Waste piles - 2,500.]
[(d) For disposal facilities:]
[1. Surface impoundments - $2,500;]

6. [2.] Land treatment - $5,500; and [3,600;]
7. [3.] Landfills - $5,500 [4,000].

(b) For the addition or substantial modification of treatment, storage or disposal units (expansions, structural changes, or process changes in a unit shall be considered substantial modifications):

1. Tanks - $13,250;
2. Containers - $10,700;
3. Incinerators - $20,000;
4. Landfills - $16, 250;
5. Land treatment - $16,250;
6. Waste piles - $14,000; and
7. Surface impoundments - $16,000.

(2) This subsection sets forth the major modification fees for any major modification which does not meet the criteria of subsection (1) of this section.

(a) For treatment, storage, or disposal facilities:

1. Tanks - $6,000 [825];
2. Surface impoundments - $7,000 [900];
3. Waste piles - $6,500 [900];
4. Incinerators - $8,500; [1,275.]
[(b) For storage facilities:]
5. [1.] Containers - $5,500 [800];
[2. Tanks - 825;]
[3. Surface impoundments - 900;]
[4. Waste piles - 825.]
[(c) For disposal facilities:]
[1. Surface impoundments - $1,125;]
6. [2.] Land treatment - $7,500; and [1,375;]
7. [3.] Landfills - $7,500 [1,500].

(b) This paragraph sets forth the major modification fees for RCRA facility investigations and corrective action for solid waste management units (if applicable) at a facility in accordance with Section 12 of 401 KAR 34:060. These fees shall be:

1. RCRA facility investigation - $14,500;
2. Corrective action - $29,000.

(c) This paragraph sets forth the fees for modification of detection, compliance, and corrective action programs at a regulated unit as contained in Sections 9, 10, and 11 of 401 KAR 34:060. These fees shall be:

1. Change from detection to compliance monitoring - $6,000;
2. Change from compliance to corrective action - $8,000;
3. Modification of detection, compliance or corrective action program - $5,000.

Section 4. Submittal of Fees. The appropriate fee shall be submitted to the cabinet with the application for modification. The checks shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director
(1) Type and number of entities affected: Any facility required by regulation to hold a permit is affected when the permit is required to be modified. There are 73 storage, treatment, and disposal facilities in Kentucky.
(a) Direct and indirect costs or savings to those affected:
1. First year: There will be a direct cost to the facility in the amount of the required modification fee. The actual amount of the fee would not be less than $300 for a minor modification nor more than $29,000 for a major modification for corrective action. A scale of fees for different modifications is included in the regulation.
2. Continuing costs or savings: The facility would be required to pay the fee each time the permit required modification.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None. There are no new paperwork requirements in this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: This regulation should result in a savings to the cabinet. The new permit modification fees would recover the expense of reviewing the permit modification application so that the cabinet would not be required to absorb the review expense.
2. Continuing costs or savings: The cabinet would collect the fee each time a permit modification is required.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this regulation. The fees obtained by the promulgation of this regulation would increase the state revenue. There will be no effect on local revenues from promulgation of this regulation.
(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) Amount of fee for permit modification. Alternative: 1. Less stringent: The cabinet could have chosen to be less stringent by assessing a smaller fee. However, this alternative was rejected because the cabinet has statutory authority to recover the cost of permit reviews.
2. More stringent: The cabinet could have chosen to be more stringent by assessing more than the full cost for review of the application. However, this would have been in conflict with KRS 224.871.
3. Present proposal: In the present proposal the cabinet will assess the actual cost of reviewing the application. This makes the amount of the fee low enough to allow Kentucky companies to remain competitive with surrounding states. It also allows the state to recover the expense of reviewing the application as provided in KRS 224.871.
(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: The proposed amendments do not conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed

amendments do not conflict.

(6) Any additional information or comments: The data in this regulation were based on the personnel time and other resources required to issue these permits. A RCRA (Resource Conservation and Recovery Act) facility investigation is required by the U.S. EPA under the auspices of the corrective action provisions of the hazardous and solid waste amendments of 1984. These provisions for corrective action (Sections 3004(u), (v), and 3008(h)) required for both RCRA units and solid waste management units at a facility regardless of when the release took place, require the facility to investigate and remedy contamination. Section 12 of 401 KAR 34:060 requires corrective action for waste management units. The RCRA facility assessments and investigations are to determine if corrective action is necessary. If the RCRA facility assessment warrants further evaluation of a site, a RCRA facility investigation is required. The RCRA facility investigation does not provide detailed quantification of a release but will provide sufficient information to individuals that a release occurred. The RCRA facility investigation fee includes the design and development of the RCRA facility investigation monitoring plan, soil, air and water monitoring and site visits. Total staff hours for the RCRA facility investigation are 857 hours. The cost for the hours are based on midpoint salaries for each job classification plus 32 percent fringe and overhead. The hourly costs are in all cases less than $25 per hour. Corrective action measures are required at all sites at which there has been a release of hazardous waste or hazardous constituents to the environment and a threat to human health and the environment is probable. A plan must be developed to determine the extent of the release and to design the appropriate corrective measures. Because of the time required to develop a corrective action plan (several years) and the federal statutory deadlines for permit issuance, permits may be issued with compliance schedules for corrective action. Thus, the fee for corrective action is included as a permit modification fee. A total of 1,611 hours in clerical, administrative and technical time is required to review and approve a corrective action plan. The salaries are based on midpoint salaries of each job classification plus 32 percent fringe and overhead. The fee also includes costs for sampling all media and for site visits.

TIERING: Was tiering applied? Yes. This regulation applies tiered fees to hazardous waste management facilities required by regulation to hold a permit in Kentucky.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The modificiation fees contained in this regulation are not based on any federal standards. The federal regulations do not contain provisions for fees. KRS 224.871 authorizes the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste permits and certificates.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the federal regulations do not contain provisions for fees. The cabinet is authorized by KRS 224.871 to promulgate regulations requiring the payment of fees for hazardous waste permits.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The fees assessed in this regulation are used to defray the costs associated with the review of permit modifications. The cabinet has statutory authorization to establish a fee schedule for hazardous waste permits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:080. Recycling fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for recyclers of hazardous waste.

Section 1. Applicability. This regulation applies to all persons considered to be recyclers in accordance with the criteria contained in Section 1 of 401 KAR 35:010 and 401 KAR Chapter 36.

Section 2. Schedule of Fees for Recycling. An annual fee shall be required in order to register as a recycler of hazardous wastes. The fee to register as a hazardous waste recycler is $300 [200]. Generators who generate less than 100 kg of hazardous waste in a calendar month (i.e., limited quantity generators) shall be exempt from the registration fee for recycling activities.

Section 3. Submittal of Fees. The required fees shall be submitted to the cabinet with the permit application. All checks shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be

cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: This regulation affects 160 hazardous waste recyclers in the state which have notified the cabinet.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be a direct cost of $300 per hazardous waste recycler for their initial registration.

2. Continuing costs or savings: The registration is an annual registration. The fee is $300.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Recyclers will be required to fill out a registration form and submit it to the cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The $300 registration fee will cover the cost of reviewing and processing the registration and therefore, the cabinet should not incur any additional costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: All fees collected from this regulation will increase the state revenue. However, the fees are calculated to reflect the cost for review of the registration and issuance of the certificate. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) $300 registration fee. Alternative: 1. Less stringent: If Kentucky had chosen to charge less for the review of the registration application, the fee would not cover the cost of the review.

2. More stringent: It was unnecessary for Kentucky to charge more for review because $300 will cover the review expense.

3. Present proposal: The present fee of $300 was chosen because it fairly represents the review costs. KRS 224.871 requires the cabinet to promulgate fee regulations equalling the cost of review.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The registration fees are based on the cabinet's expense for reviewing and processing recycler registrations. These expenses include personnel time and the additional resources necessary to process the registrations.

TIERING: Was tiering applied? No. This regulation does not tier the recycling fee. All recyclers of recyclable materials are required to register with the cabinet, thus all recyclers constitute one class of hazardous waste activity.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to registration fees. KRS Chapter 224 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits. The proposed amendments to this regulation increase the registration fee for hazardous waste recyclers to $300. The amendments require that generators pay an annual registration fee which must be submitted to the cabinet with the registration form.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the proposed amendments to this regulation do not impose stricter requirements on regulated entities. Under the federal regulations, no fees are assessed.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The amendments to this regulation impose additional requirements on hazardous waste recyclers. They will be required to register annually and pay a $300 registration fee. The annual registration requirement will provide the cabinet with more accurate information on hazardous waste recyclers. This information must be maintained as accurately as possible because it may be used in the distribution of announcements concerning regulatory amendments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 39:090. Postclosure fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

PURSUANT TO: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste

registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities.

Section 1. Applicability. This regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of 401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an [a construction or] operation permit for a landfill [as] required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:030[, 39:040, or 39:050].

Section 2. Filing [Schedule of] Fees [for Postclosure Permits]. Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable filing fee in the amount of $2,000 [A fee shall be required in order to obtain a permit for postclosure of a hazardous waste site or facility. The fee for a postclosure permit is $7,000].

Section 3. Review Fee. Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The review fee shall be $7,000.

Section 4. [3.] Submittal of Fees. (1) The [required] fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: The proposed amendments apply to all owners and operators of hazardous waste facilities that require a postclosure permit. Currently 7 facilities will be required to pay a postclosure permit fee.

(a) Direct and indirect costs or savings to those affected:

1. First year: A direct cost of $2,000 will be charged for each filing fee. These fees include personnel and other resource costs for application receipt, site visit and documentation. A fee of $7,000 will be charged for technical review of each postclosure permit application.

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. This regulation establishes a filing fee for postclosure permit applications.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. This proposed regulation will cause a savings for the promulgating administrative body. The fee charged will adequately cover the costs associated with a postclosure permit.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There will be a direct effect on state revenues from promulgation of this proposed amendment. The fees obtained would increase the state revenues. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: (a) This proposed regulation establishes filing and review fees for postclosure permits. Alternative:

1. Less stringent: The cabinet could have chosen to be less stringent by assessing a smaller fee. However, this alternative was rejected because the cabinet has statutory authority to recover the cost of permit review.

2. More stringent: The cabinet could have chosen to be more stringent by assessing more than the full cost for review of the application.

3. Present proposal: In the present proposal the cabinet will assess the actual cost of reviewing the application. This makes the amount of the fee low enough to allow Kentucky companies to remain competitive with companies in surrounding states. It also allows the state to recover the expense of reviewing the application.

(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: 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: The data in this regulation were based on the personnel time and other resources required to issue the permit.

TIERING: Was tiering applied? No. This regulation does not tier the postclosure fee requirements for land disposal hazardous waste sites or facilities. Land disposal hazardous waste sites or facilities constitute one class of hazardous waste site or facility.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) The postclosure fees contained in this regulation are not based on standards in the federal regulations. The federal regulations do not contain provisions for fees. KRS 224.871 provides that the cabinet may promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the postclosure fee requirements imposed by this regulation are not based on federal standards. The cabinet is authorized by KRS 224.871 to promulgate regulations requiring the payment of fees for hazardous waste registration certificates and permits.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The postclosure fees imposed by this regulation are assessed to defray the costs associated with the review of postclosure permits. The cabinet has statutory authority to promulgate regulations requiring the payment of fees for hazardous waste permits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 47:060. Permit fees.

RELATES TO: KRS 224.846, 224.855
PURSUANT TO: KRS 13A.210, 224.033
NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes standards for solid waste sites or facilities. The purpose of this regulation is to establish a fee schedule for the issuance and modification of solid waste disposal permits or variances.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each solid waste site or facility required to apply for a permit, permit renewal or exemption except publicly-owned facilities.

Section 2. Filing Fees. (1) Any owner or operator may submit a preliminary application for a solid waste facility permit, permit modification, or variance for initial review and shall include with the preliminary application a check or money order for the filing fee determined by the schedule below: [without payment of any fee.]

Preliminary Application Type	Fee
Preliminary application review to determine site suitability	$500
Preliminary permit modification application review to determine site suitability for expansion	$500
Preliminary request for variance of design criteria	$500

(2) Any owner or operator who submits an application for a permit to construct for new solid waste facility sites or for expansions to existing facility sites shall include with the application a check or money order for the filing fees determined by this subsection. [in the amount of $1,000 payable to the Kentucky State Treasurer. This fee does not apply to landfarming applications.]

(a) The filing fees listed below for construction permit applications shall be submitted with the initial application.

Solid Waste Facility Type	Fee
Inert landfill	$2,500
Residential landfill	$5,000
Contained landfill	$5,000
Residual landfill	$2,500
Landfarming facility	$2,500

(b) Upon notification by the cabinet that the application is complete in accordance with Section 3(4) of 401 KAR 47:020, the owner or operator shall submit the fees for technical review of the construction permit application. The fees for technical review are listed below:

Solid Waste Facility Type	Fee
Inert landfill	$1,500
Residential landfill	$3,500
Contained landfill	$5,000
Residual landfill	$2,500
Landfarming facility	$3,000

(3) Upon notification by the cabinet that the construction application is technically in compliance with the requirements of 401 KAR 47:040 for sanitary landfills or 401 KAR 47:050 for landfarming, any owner or operator who submits an application for a permit to operate shall include with the application a check or money order in the amount of the filing fee, assessed in accordance with the [provisions set forth in subsection (4) of this section, payable to the Kentucky State Treasurer.]

[(4) Filing fee for the original permit to operate shall be determined by the] following schedule:

Solid Waste Facility Type	Fee
Contained landfill	$800
Residual landfill	$500
Residential landfill	$500
Land farming facility	$500
Inert landfill	$200

(4) Any owner or operator who submits an application for renewal of an existing solid waste facility permit shall include with the application a check or money order in an amount equal to the number of years for which the facility permit will be renewed multiplied by the amounts listed below:

Solid Waste Facility Type	Amount per year
Inert landfill	$ 300
Residential landfill receiving less than 200 tons per day	$ 500
Residential landfill receiving 200 or more tons per day	$3,000
Contained landfill	$3,000
Residual landfill	$ 500
Landfarming facility	$ 300

(5) Any owner or operator who submits an application for a solid waste facility permit [exemption, variance, major] modification [or renewal] shall include with the application a check or money order for the fee listed below: [in the amount of $250 payable to the Kentucky State Treasurer. Any request for permit modification or issuance of a variance that does not require prior administrative review and analysis before approval can be granted will receive a letter of acknowledgment and will not require the payment of a fee.]

(a) $1,000 for modifications involving operating methods or proposed closure.

(b) Fifty (50) dollars for modifications for additional wastes not listed in the approved permit application.

(c) $500 for a variance from an existing permit requirement.

(d) $500 for change of ownership of an existing permitted facility.

(6) Any owner or operator who submits an application for the following permits shall include a check or money order as listed below:

(a) $500 for application for approval of a permit by rule granted pursuant to Section 1 of 401 KAR 47:020 or Section 1 of 401 KAR 47:050.

(b) $1,000 for application for closure of a solid waste site not under a current solid waste facility permit.

(7) [(6)] Filing fees are not refundable if an application for a permit, modification, or variance [or exemption] is denied or an application is withdrawn after the review is initiated.

(8) Submittal of Fees. The required fees shall be submitted to the cabinet with the preliminary application or application. All checks or money orders shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1988 at 1 p.m. local prevailing time in the Auditorium of the New State Office Building at Clinton and High Streets in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted to the address below. Written comments will be accepted until the end of the comment period, which will be the close of business on August 24, 1988. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kay Harker, Supervisor, Program Development Branch, Division of Waste Management, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Donald F. Harker, Jr., Director

(1) Type and number of entities affected: All private solid waste facilities that require a permit will be affected. KRS 224.033(20) prohibits the assessment of fees on public facilities for the issuance of permits. Therefore, the proposed amendments do not affect public solid waste facilities. There are currently 1 contained, 27 residential, 5 residual, and 30 inert private landfills and 8 private landfarming facilities operating in Kentucky. The proposed amendments to the permit fees will affect these existing facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost for permit renewals, modifications, and other permit issuance activities for the first year will be approximately $100,000. Approximately 28 landfills will apply for permit renewal during fiscal year 1989. The preliminary application fees to determine suitability for a new or expanded solid waste site includes costs for review of the application, a minimum of one site visit, meetings, phone calls, and clerical support. The major costs are the site visit and review of the application. The fee filed with the initial application covers the following items: the cost of review of the application to determine if all requirements of the regulations have been addressed, the cost of public notice, the cost of development of an executive summary submitted to the county judge executive and members of the fiscal court, and associated meetings.

2. Continuing costs or savings: Additionally, less than 10 landfills will apply for permit renewal or close each succeeding year. Approximately $40,000 will be generated from solid waste permits each year.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There will be no extra reporting and paperwork requirements a a result of the promulgation of these amendments.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The state will receive revenues consistent with the actual cost of review of applications. The state will receive an estimated $98,000 in fiscal year 1989.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: The proposed amendments to the solid waste permit fees will generate approximately $40,000 in revenue for the cabinet each year. There will be no effect on local revenues from promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative: KRS 224.033(20) allows the cabinet to establish by regulations a fee or fee schedule for the cost of processing applications for permits. Alternative fees were not considered. The fees proposed by these amendments reflect the costs for processing applications including the administrative costs of a hearing.

1. Less stringent: Not applicable.

2. More stringent: Not applicable.

3. Present proposal: The current fee structure became effective in 1982. The fees were based on estimates of the amount of time required to review preliminary, construction, and operating permits for solid waste facilities. The cabinet has amended this regulation to reflect the true cost for review and issuance of permits as determined by several years of experience.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The data in this regulation were based on the personnel time and other resources required to issue these permits.

TIERING: Was tiering applied? Yes. The fee schedules are tiered based upon the type of solid waste facility.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) Fees are not assessed under the federal regulatory system, thus there is no comparable mandate suggested or contained in the federal regulations with regard to permit fees. KRS Chapter 224 provides that the cabinet shall establish fees for the processing, review and issuance of certificates and permits.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No; the proposed amendment to this regulation does not impose stricter requirements on regulated entitites. Under the federal regulations, no fees are assessed.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. The amendments to this regulation provide for increases in existing fees and new fees for permits by rule and permits to close currently unpermitted sites. These fees are charged in accordance with KRS 224.033(20). KRS 224.033(20) states that the cabinet may establish fees for the cost of processing applications for permits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:015. Documents incorporated by reference.

RELATES TO: KRS 224.320, 224.330, 224.340

PURSUANT TO: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of documents referred to within these regulations.

Section 1. Code of Federal Regulations. (1) The following documents from the "Code of Federal Regulations" which are in effect as of October 1, 1987, are incorporated herein by reference:

(a) 40 CFR 50:

1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

2. Appendix B: Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High Volume Method).

3. Appendix C: Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Nondispersive Infrared Photometry).

4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.

6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

8. Appendix H: Interpretation of the National Ambient Air Quality Standards for Ozone.

9. Appendix J: Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

10. Appendix K: Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(c) 40 CFR 60:

1. Appendix A: Reference Methods:

a. Method 1 - Sample and Velocity Traverses for Stationary Sources.

b. Method 2 - Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).

c. Method 2A - Direct Measurement of Gas Volume through Pipes and Small Ducts.

d. Method 2B - Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators.

e. Method 3 - Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and Dry Molecular Weight.

f. Method 3A - Determination of Oxygen and Carbon Dioxide Concentrations in Emissions from

Stationary Sources (Instrumental Analyzer Procedure).

g. Method 4 - Determination of Moisture Content in Stack Gases.

h. Method 5 - Determination of Particulate Emissions from Stationary Sources.

i. Method 5A - Determination of Particulate Emissions from the Asphalt Processing and Asphalt Roofing Industry.

j. Method 5B - Determination of Nonsulfuric Acid Particulate Matter from Stationary Sources.

k. Method 5D - Determination of Particulate Matter Emissions from Positive Pressure Fabric Filters.

l. Method 5E - Determination of Particulate Emissions from the Wool Fiberglass Insulation Manufacturing Industry.

m. Method 5F - Determination of Nonsulfate Particulate Matter from Stationary Sources.

n. Method 6 - Determination of Sulfur Dioxide Emissions from Stationary Sources.

o. Method 6A - Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide Emissions from Fossil Fuel Combustion Sources,

p. Method 6B - Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions from Fossil Fuel Combustion Sources.

q. Method 6C - Determination of Sulfur Dioxide Emissions from Stationary Sources (Instrumental Analyzer Procedure).

r. Method 7 - Determination of Nitrogen Oxide Emissions from Stationary Sources.

s. Method 7A - Determination of Nitrogen Oxide Emissions from Stationary Sources - Ion Chromatographic Method.

t. Method 7B - Determination of Nitrogen Oxide Emissions from Stationary Sources (Ultraviolet Spectrophotometry).

u. Method 7C - Determination of Nitrogen Oxide Emissions from Stationary Sources - Alkaline - Permanganate/Colorimetric Method.

v. Method 7D - Determination of Nitrogen Oxide Emissions from Stationary Sources - Alkaline - Permanganate/Ion Chromatographic Method.

w. Method 7E - Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure).

x. Method 8 - Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources.

y. Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources.

z. Method 10 - Determination of Carbon Monoxide Emissions from Stationary Sources.

aa. Method 10A - Determination of Carbon Monoxide emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries.

bb. Method 11 - Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.

cc. Method 12 - Determination of Inorganic Lead Emissions from Stationary Sources.

dd. Method 13A - Determination of Total Fluoride Emissions from Stationary Sources - SPADNS Zirconium Lake Method.

ee. Method 13B - Determination of Total Fluoride Emissions from Stationary Sources - Specific Ion Electrode Method.

ff. Method 14 - Determination of Fluoride Emissions from Potroom Roof Monitors for Primary Aluminum Plants.

gg. Method 15 - Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources.

hh. Method 15A - Determination of Total Reduced Sulfur Emissions from Sulfur Recovery Plants in Petroleum Refineries.

ii. Method 16 - Semicontinuous Determination of Sulfur Emissions from Stationary Sources.

jj. Method 16A - Determination of Total Reduced Sulfur Emissions from Stationary Sources (Impinger Technique).

kk. Method 16B - Determination of Total Reduced Sulfur Emissions from Stationary Sources.

ll. Method 17 - Determination of Particulate Emissions from Stationary Sources (In-stack Filtration Method).

mm. Method 18 - Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.

nn. Method 19 - Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates from Electric Utility Steam Generators.

oo. Method 20 - Determination of Nitrogen Oxides, Sulfur Dioxide, and Diluent Emissions from Stationary Gas Turbines.

pp. Method 21 - Determination of Volatile Organic Compounds Leaks.

qq. Method 22 - Visual Determination of Fugitive Emissions from Material Processing Sources.

rr. Method 24 - Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.

ss. Method 24A - Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings.

tt. Method 25 - Determination of Total Gaseous Nonmethane Organic Emissions as Carbon.

uu. Method 25A - Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

vv. Method 25B - Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer.

ww. Method 27 - Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test.

2. Appendix B: Performance Specifications:

a. Performance Specification 1 - Specifications and test procedures for opacity continuous emission monitoring systems in stationary sources.

b. Performance Specification 2 - Specifications and test procedures for sulfur dioxide and nitric oxides continuous emission monitoring systems in stationary sources.

c. Performance Specification 3 - Specifications and test procedures for oxygen and carbon dioxide continuous emission monitoring systems in stationary sources.

d. Performance Specification 4 - Specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources.

e. Performance Specification 5 - Specifications and test procedures for TRS continuous emission monitoring systems in stationary sources.

3. Appendix C: Determination of Emission Rate Change.

4. Appendix F: Quality Assurance Procedures: Procedure 1 - Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination.

(d) 40 CFR 61.

1. Appendix B: Test Methods:

a. Method 101 - Determination of particulate and gaseous mercury emissions from chlor-alkali

plants (air streams).
b. Method 101A - Determination of particulate and gaseous mercury emissions from sewage sludge incinerators.
c. Method 102 - Determination of particulate and gaseous mercury emissions from chlor-alkali plants (hydrogen streams).
d. Method 103 - Beryllium screening method.
e. Method 104 - Reference method for determination of beryllium emissions from stationary sources.
f. Method 105 - Determination of mercury in wastewater treatment plant sewage sludges.
g. Method 106 - Determination of vinyl chloride from stationary sources.
h. Method 107 - Determination of vinyl chloride content of in-process wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.
i. Method 107A - Determination of vinyl chloride content of solvents, resin-solvent solution, polyvinyl chloride resin, resin slurry, wet resin, and latex samples.
j. Method 108 - Determination of particulate and gaseous arsenic emissions.
k. Method 108A - Determination of arsenic content in ore samples from nonferrous smelters.
l. Method 111 - Determination of polonium - 210 emissions from stationary sources.
2. Appendix C: Quality Assurance Procedures:
a. Procedure 1 - Determination of adequate chromatographic peak resolution.
b. Procedure 2 - Procedure for field auditing GC analysis.
(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of Official Analytical Chemists is incorporated herein by reference:
(1) Method 9 - Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the Association of Official Analytical Chemists, 11th Edition.
(2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20014; Phone (202) 245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate "Book of ASTM Standards" in which the standard appears from the American Society for Testing and Materials are incorporated herein by reference:
(1) ASTM Standards:
(a) A 99-66(71) Standard Specification for Ferromanganese.
(b) A 100-69(74) Standard Specification for Ferrosilicon.
(c) A 101-73 Standard Specification for Ferrochromium.
(d) A 482-66(71) Standard Specification for Ferrochrome-Silicon.
(e) A 483-64(74) Standard Specification for Silicomanganese.
(f) A 495-64(70) Standard Specification for Calcium-Silicon and Calcium-Manganese-Silicon.
(g) D 86-82 Standard Method for distillation of Petroleum Products.
(h) D 240-76 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.
(i) D 322-67(77) Standard Test Method for Gasoline Diluent in Used Gasoline Engine Oils by Distillation.
(j) D 323-82 Test Method for Vapor Pressure of Petroleum Products (Reid Method).
(k) D 388-84 Standard Specification for Classification of Coals by Rank.
(l) D 396-84 Standard Specifications for Fuel Oils.
(m) D 737-75 Standard Test Method for Air Permeability of Textile Fabrics.
(n) D 1072-80 Standard Method for Total Sulfur in Fuel Gases.
(o) D 1137-53(75) Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer.
(p) D 1475-60(80) Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.
(q) D 1644-75 Standard Test Methods for Nonvolatile Content of Varnishes.
(r) D 1826-64(75) Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.
(s) D 1945-64(73) Standard Method for Analysis of Natural Gas by Gas Chromatography.
(t) D 1946-67(72) Standard Method for Analysis of Reformed Gas by Gas Chromatography.
(u) D 2015-66(72) Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.
(v) D 2267-83 Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography.
(w) D 2369-73 Standard Test Method for Volatile Content of Paints.
(x) D 2382-83 Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-precision Method).
(y) D 2504-83 Standard Test Method for Noncondensable Gases in C_3 and Lighter Hydrocarbon Products by Gas Chromatography.
(z) D 2584-68(79) Standard Test Method for Ignition Loss of Cured Reinforced Resins.
(aa) D 2880-78 Standard Specification for Gas Turbine Fuel Oils.
(bb) D 2879-83 Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperatures of Liquids by Isoteniscope.
(cc) D 3031-81 Standard Test Method for Total Sulfur in Natural Gas by Hydrogenation.
(dd) D 3176-74 Standard Method for Ultimate Analysis of Coal and Coke.
(ee) D 3178-73 Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke.
(ff) D 3246-81 Standard Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.
(gg) D 3431-80 Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons.
(hh) D 4084-82 Standard Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method).
(ii) E 123-78 Standard Specification for Apparatus for Determination of Water by Distillation.
(jj) E 168-67(77) Standard Recommended Practices for General Techniques of Infrared Quantitative Analysis.
(kk) E 169-63(81) Standard Recommended Practices for General Techniques of Ultraviolet Quantitative Analysis.

(11) E 260-73 Standard Recommended Practice for General Gas Chromatography Procedures.

(2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

(1) T624 os-68 - Analysis of Soda and Sulfate - White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute).

(2) Copies may be obtained from: TAPPI, 1 Dunwood Park, Atlanta, Georgia 30341.

Section 5. EPA. The following documents from the U. S. EPA are incorporated herein by reference:

(1)(a) Guideline on Air Quality Models (Revised), EPA-450/2-78-027R, OAQPS No. 1.2-080R, July, 1986, And Supplement A to the Guideline on Air Quality Models (Revised), July 1987.

(b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.

(c) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.

(d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.

(e) Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA-450/2-77-026, OAQPS No. 1.2-082, October, 1977.

(f) Guidelines for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height, EPA 450/4-81-003, PB 82-145327, July, 1981.

(g) Guidelines for Fluid Modeling of Atmospheric Diffusion, EPA-600/8-81-009, PB 81-201410, April, 1981.

(2) Copies may be obtained from: U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 and the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22161.

Section 6. American Association of State Highway and Transportation Officials. The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

(1) AASHTO T 59-78 Standard Method of Test for Testing Emulsified Asphalt.

(2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capitol Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

(1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."

(2) Single copies may be obtained from:

(a) General Services Administration Regional Offices; or

(b) Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division for Air Quality. The following documents from the Kentucky Division for Air Quality are incorporated herein by reference:

(1)(a) Kentucky Method 50: Kentucky Division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."

(b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of Total Gaseous Organic Emissions from Stationary Sources."

(c) Kentucky Method 91: Kentucky Division of Air Pollution Control Reference Method 91, "Alternate Test Method for the Determination of Total Gaseous Organic Emissions from Stationary Sources."

(d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."

(e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."

(f) Kentucky Method 150(F-1): Kentucky Division of Air Pollution Control Reference Method 150(F-1), "Visual Determination of Intermittent Opacity Emissions from Stationary Sources."

(2) Copies may be obtained from: Division for Air Quality, Technical Services, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institute is incorporated herein by reference:

(1) Voluntary Product Standard PS 59-73 - Prefinished Hardboard Paneling. This reference is also numbered ANSI A135.5-1973 (American National Standards Institute).

(2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 10. American Public Health Association. The following document from the American Public Health Association, American Water Works Association and Water Pollution Control Federation is incorporated herein by reference:

(1) Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980:

(a) Method 209A. Total Residue Dried at 103-105C.

(b) Method 209C. Total Filtrable Residue Dried at 103-105C.

(2) Copies may be obtained from: American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

Section 11. American Petroleum Institute. The following document from the American Petroleum Institute is incorporated herein by reference:

(1) API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Second Edition, February 1980.

(2) Copies may be purchased from: American Petroleum Institute, 1220 L Street N.W.,

Washington, D.C. 20005.

Section 12. Availability. Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division for Air Quality Control:

(1) Director's Office, Division for Air Quality Control, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(2) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;

(3) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 843-5475;

(4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411 [371-0598];

(5) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(6) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(7) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 14, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William C. Eddins, Director

(1) Type and number of entities affected: This regulation incorporates by reference the methods required for demonstrating compliance with the regulations of the Division for Air Quality. This regulation is being amended to add Supplement A to the Guideline on Air Quality Models (Revised), which sources are required to follow in performing modeling to demonstrate compliance with the division's regulations. Simply incorporating this supplement to the modeling guideline does not affect any sources or other entities. Any impact would occur in the individual regulation where the modeling guideline is required.

(a) Direct and indirect costs or savings to those affected: Any costs or savings would be the result of the requirement of an individual regulation; not because of this regulation adopting by reference Supplement A.

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: There are no reporting and paperwork requirements due to the amendment to this regulation.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since this regulation is merely incorporating the supplement which the U.S. EPA has added to its guideline on modeling.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, rule, regulations, or governmental policy which is in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.

(6) Any additional information or comments: In the Federal Register of January 6, 1988 (53 FR 396), the U.S. EPA promulgated amendments to its regulations for the Prevention of Significant Deterioration (PSD) which required that sources which perform modeling to demonstrate compliance with the PSD regulation must use models that were approved in the Guideline on Air Quality Models (Revised) (1986) and Supplement A (1987). Since the division has already incorporated by reference the Guideline on Air Quality Models (Revised) to be used for all modeling, the division is only adding Supplement A to this regulation. Supplement A adds or amends four models which sources may use in demonstrating compliance with applicable requirements as follows:

1) Adds the Rough Terrain Diffusion Model (RTDM) as a third level screening model for estimating air quality impact from stationary point sources in rural complex terrain.

2) Amends the Industrial Source Complex (ISC) Model to include a downwash algorithm as an alternative approach.

3) Adds the Offshore and Coastal Dispersion (OCD) Model as a preferred model to be listed in Appendix A of the modeling guideline.

4) Adds AVACTA II Model as an alternative model in Appendix B of the modeling guideline, which may be considered for use on a case-by-case basis.

TIERING: Was tiering applied? No. Tiering was not applied because this amendment only adopts by reference a supplement to a document which is already adopted by reference.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) In the Federal Register of January 6, 1988 (53 FR 396), the U.S. EPA amended its regulations for the Prevention of Significant Deterioration (PSD) to include a Supplement A

(1987) to the Guideline on Air Quality Models (Revised) (1986), so that any modeling performed for the purpose of PSD shall meet those requirements. 40 CFR 51, Appendix S requires the use of an approved model for purposes of new source review in nonattainment areas, and the State Implementation Plan requires the use of modeling to demonstrate that ambient standards are maintained. The division is amending this regulation to incorporate by reference Supplement A to the document which specifies the models which may be used and conditions under which modeling is performed for these regulations which require modeling.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) No

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Proposed Amendment)

401 KAR 50:036. Permit and exemption fees.

RELATES TO: KRS 224.320, 224.330, 224.340 [Chapter 224]

PURSUANT TO: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 permits the Natural Resources and Environmental Protection Cabinet to prescribe regulations establishing a schedule of fees for the costs of processing applications for permits authorized by KRS Chapter 224 and for exemptions or partial exemptions. This regulation defines the assessment of fees applicable to stationary air contaminant sources for issuance of permits to construct, permits to operate and exemptions. This regulation also establishes permit requirements in addition to those requirements of 401 KAR 50:035 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required to have a permit by 401 KAR 50:035 except for publicly owned sources. The provisions of this regulation shall apply to permit applications submitted on or after the effective date of this regulation. Permit applications submitted prior to the effective date of this regulation shall be subject to this regulation as in effect on May 6, 1981.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the same meaning given them in 401 KAR 50:010.

(1) "Air pollution control equipment" means any mechanism, device, or contrivance used to control or prevent air pollution.

(2) "Construction permit fee" means a fee assessed by the cabinet according to the schedule in Section 4 of this regulation for the cost of processing applications for construction permits. ["Capital cost" means the estimated monetary resources which will have to be expended to make a proposed air contaminant source operational including the cost of installation, real estate, buildings, pollution abatement equipment, and any other equipment necessary for the operation of an air contaminant source.]

(3) "Level I model" means any of the following models as specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015: PTMAX, PTPLU2, or PTDIS, or any model approved by the U.S. EPA for use in place of these models. ["Category I source" means any stationary source or modification to which 401 KAR 51:016E applies.]

(4) "Level II model" means any model specified in the "Guideline on Air Quality Models" or approved for use of the U.S. EPA, other than a Level I model. ["Category II source" means any source that is not a Category I source but has a potential to emit of 100 tons per year or more of any one (1) pollutant.]

(5) "Operating permit fee" means a fee assessed by the cabinet according to the schedule in Section 5 of this regulation for the cost of processing applications for operating permits. ["Category III source" means any source that is not a Category I or Category II source.]

(6) "Pollutant" means any air contaminant reviewed by the cabinet for the purpose of issuing a permit required by 401 KAR 50:035, except for toxic air pollutants listed in 401 KAR 63:022, or potentially hazardous material or toxic substances. ["Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.]

(7) "Potentially hazardous material or toxic substance" means any pollutant the emission of which would cause a source to be subject to 401 KAR 63:020.

(8) [(7)] "Publicly owned facility" means any facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

(9) "Toxic air pollutant" means any substance listed in 401 KAR 63:022.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to construct shall include with the application a [certified check or money order in the amount of the] filing fee in the amount of $705. Filing fees shall be in the form of a check or money order, [assessed in accordance with the provisions set forth in subsection (2) of this section,] payable to the Kentucky State Treasurer.

[(2) Filing fee for permit to construct shall be determined by the following schedule:]

[Capital Cost of Proposed Construction Fee
(Millions of Dollars)

500 or more	$2,500
100 up to 500	$1,500
50 up to 100	$1,000
10 up to 50	$ 750
1 up to 10	$ 250
Less than 1	$ 50]

(2) [(3)] Any owner or operator who submits an application for a permit to operate or an application for an exemption shall include with the application a [certified] check or money order, payable to the Kentucky State Treasurer, in the amount of $410 [250].

(3) [(4)] Filing fees are not refundable if a permit or exemption is denied or an application is withdrawn.

(4) [(5)] Filing fees shall be applied toward the permit or exemption fee assessed in Sections 4, 5, and 7 of this regulation.

Section 4. Construction Permit Fees. (1)(a) Every owner or operator who is issued a permit to construct shall be assessed a construction permit fee by the cabinet in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the permit can be issued, the cabinet shall so notify the applicant and send a bill for the permit fee. The permit fee shall be paid within thirty (30) days of the billing date by [and shall be a certified] check or money order for the indicated amount payable to the Kentucky State Treasurer. The permit shall be issued by the cabinet upon receipt of the total amount of the permit fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(2) Fees shall be determined by summing the applicable base fee in paragraph (a) of this subsection with all [other] applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee [for each of the following category of sources] shall be derived from the number of affected facilities and the number of pollutants that are reviewed by the cabinet in the issuance of the permit and shall be determined by the formula in Appendix A to this regulation, except that the construction permit base fee shall not exceed $10,000. [:]

[1. Category III source: $400.]

[2. Category II source or sources subject to Title 401, Chapter 57: $1,000.]

[3. Category I source: $1,650.]

(b) Component fees. The component fees for each additional task [addition] necessary to complete the evaluation of the permit shall be:

1. Air quality analysis reviewed (each model): [$150 each application.]

a. Level I model: $50.

b. Level II model, except for permits requiring the application of 401 KAR 51:017: $150.

c. Level II model for permits requiring the application of 401 KAR 51:017: $350.

2. Air quality analysis performed for verification purposes (each model):

a. Level I model: $100.

b. Level II model except for permits requiring the application of 401 KAR 51:017: $200.

c. Level II model for permits requiring the application of 401 KAR 51:017: $1,840.

3. [2.] Lowest achievable emission rate (LAER), reasonably available control technology (RACT), or best available control technology (BACT) determination: $225 [150] each determination [application].

4. [3.] Preconstruction monitoring reviewed: $1,600 [: $610].

5. Review of an application for a major source or major modification: $650.

6. Review of an application with toxic air pollutants emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources; as determined in Appendix B to this regulation.

7. Review of an application with potentially hazardous material or toxic substances: $60 for any permit issued to a source with one (1) or more potentially hazardous materials or toxic substances.

Section 5. Operating Permit Fees. (1) Every owner or operator issued a permit to operate shall be assessed an operating permit fee by the cabinet in accordance with the provisions set forth in this section. Upon making the determination that the permit will be issued, the cabinet shall so notify the applicant and send a bill for the permit fee payable by [certified] check or money order to the Kentucky State Treasurer within thirty (30) days of the billing date. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit. The permit shall be issued by the cabinet upon receipt of the permit fee.

(2) Operating permit fees shall be determined by summing the base fee in paragraph (a) of this subsection with all [other] applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee [for each of the following categories of sources] shall be determined by the formula in Appendix C to this regulation, except that the operating permit base fee shall not exceed $10,000. [:]

[1. Category III source; operating permit not preceded by a construction permit or permit following exemption expiration: $500.]

[2. Category III source; operating permit following a construction permit for initial construction or an amendment to an operating permit following reconstruction, modification, or alteration: $330.]

[3. Category I and II sources and sources subject to Title 401, Chapter 57; operating permit not preceded by a construction permit or permit following exemption expiration: $1,100.]

[4. Category I and II sources and sources subject to Title 401, Chapter 57; operating permit renewal or operating permit following a construction permit for initial construction or an amendment to an operating permit following reconstruction, modification, or alteration: $750.]

(b) Component fees. The component fee for each additional task [addition] necessary to complete the evaluation of the permit shall be as follows, except that no fees shall be charged for tests or monitoring unless such tests or monitoring are a prerequisite for issuance of the permit:

1. Stack test or equivalent: $1,505 [1,300] each test.

2. Air quality analysis: as specified in Section 4(2)(b)1 or 2 of this regulation, as applicable [$150 each application].

3. Review of an application for a major source or for a major source following a major modification: $250.

4. Review of an application with toxic air pollutants emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources: as determined in Appendix B to this regulation.

5. Review of an application with potentially hazardous material or toxic substances: $60 for any permit issued to a source with one (1) or more potentially hazardous materials or toxic substances.

[(3) The provisions of this section shall apply with respect to fees for temporary operating permits except that:]

[(a) The fee as determined by subsection (2)(a) of this section shall be multiplied by the ratio of the length of time covered by the temporary operating permit to three (3) years.]

[(b) Operating permit fees are due in full within thirty (30) days of the billing date by the cabinet.]

Section 6. Duplicate Permit Fee. Upon application for the issuance of a duplicate permit, the duplicate permit shall be issued by the cabinet upon receipt of a $300 [fifty (50) dollar] fee by [certified] check or money order payable to the Kentucky State Treasurer.

Section 7. Exemption Fees. (1) Any owner or operator granted an exemption by the cabinet pursuant to KRS 224.073 shall be assessed an exemption fee. Upon determining that the exemption can be granted, the cabinet shall so notify the applicant and send a bill for the exemption fee. The exemption fee shall be paid within thirty (30) days of the billing date, and shall be paid by [certified] check or money order, payable to the Kentucky State Treasurer. Failure by the applicant to pay the exemption fee on or before the due date shall result in the forfeiture of the filing fee and denial of the exemption. The exemption shall be granted by the cabinet upon receipt of the total amount of the exemption fee and any applicable penalties.

(2) Exemption fees shall be determined by summing the applicable base fee in Section 5(2)(a) of this regulation and all applicable component fees from Section 5(2)(b) of this regulation.

APPENDIX A TO 401 KAR 50:036
CONSTRUCTION PERMIT BASE FEE

The base fee for processing construction permit applications shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Base Fee} = \$500\ (1 + F/4)(1 + P/8)$$

Where:

F ≡ Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$$P = \sum_{i=1}^{F} n_i$$

≡ The sum of all pollutants emitted from each affected facility reviewed for issuance of the permit.

n_i = Number of pollutants reviewed at the ith affected facility.

APPENDIX B TO 401 KAR 50:036
TOXIC AIR POLLUTANT COMPONENT FEE

The component fee for toxic air pollutants shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Component Fee} = \$50\ (TP)(1 + AF/4)$$

Where:

TP ≡ Number of toxic air pollutant emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources which were reviewed for issuance of the permit.

$$AF = \sum_{i=1}^{TP} n_i$$

≡ The sum of all toxic air pollutants emitted from each facility reviewed for issuance of the permit.

n_i = Number of affected facilities where the ith toxic air pollutant was reviewed.

APPENDIX C TO 401 KAR 50:036
OPERATING PERMIT BASE FEE

The base fee for processing operating permit applications shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Base Fee} = \$380\ (1 + F/20)(1 + P/40)$$

Where:

F ≡ Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$$P = \sum_{i=1}^{F} n_i$$

≡ The sum of all pollutants emitted from each affected facility reviewed for issuance of the permit.

n_i = Number of pollutants reviewed at the ith affected facility.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing to receive oral or written comments on this proposed amendment has been scheduled for August 24, 1988, at 1 p.m. in the Auditorium of the New

State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this hearing shall notify in writing at least five days prior to the public hearing: Mr. Russell Barnett, Deputy Commissioner, Department for Environmental Protection, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601. Written comments will also be accepted if they are received in Mr. Barnett's office by 4:30 p.m. on August 24, 1988.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William C. Eddins, Director

(1) Type and number of entities affected: This regulation prescribes the fees for processing applications for the issuance of construction and operating permits and exemptions for the division. It is being amended to change the amount of the fees and the basis for the fee structure in order to better represent the amount of time that is required for the review of the different types of permits. All sources that are issued permits by the division will be affected by these amendments. During 1987, approximately 400 permits were issued to sources, some of which were to the same sources.

(a) Direct and indirect costs or savings to those affected: Under these amendments, the average construction permit fee will increase from $640 to $2,250 and the average operating permit fee will increase from $360 to $650, while the minimum construction permit fee will increase from $400 to $705 and the minimum operating permit fee will increase from $330 to $410.

1. First year: The first year costs for each source are the costs for obtaining the construction or operating permit; the average construction permit fee will increase from $640 to $2,250 and the average operating permit fee will increase from $360 to $650.

2. Continuing costs or savings: There are no continuing costs for any one source associated with continuing operations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: No changes due to these amendment; sources are already required to submit information for the division to act on a permit application.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Presently, the division is collecting approximately $200,000 per year for reviewing applications resulting in the issuance of about 200 construction and 200 operating permits. The cost of those reviews to the division is approximately $600,000 per year. These proposed revisions will recover those costs, thus resulting in a gain of about $400,000 per year in agency receipts.

1. First year: The division will gain approximately $400,000 in agency receipts the first full year that these amendments are implemented. The division's permit billing system will need to be reprogrammed to accommodate these proposed amendments. The charge for programming is about $35 - $45 per hour; the division estimates that it would take around 100 hours for the Department of Information Systems to make the necessary programming changes.

2. Continuing costs or savings: The division will gain approximately $400,000 per year in agency receipts. There are no other continuing costs or savings to the division.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: None due to these amendments.

(3) Assessment of anticipated effect on state and local revenues: These proposed amendments will increase state revenues by approximately $400,000 per year; those receipts are designated as agency receipts and will be directed to the division's budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The division considered just raising the amount of each fee based on inflation and the increased costs associated with issuing permits, but such an increase would have placed a greater burden on smaller operations. This selected procedure will allow smaller sources with one affected facility or one pollutant to pay a smaller fee than a source with many affected facilities and different pollutants, which requires a more extensive review by the division.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication between this regulation and any statute, rule, regulation, or governmental policy.

(a) Necessity of proposed regulation if in conflict: This regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This regulation is not in conflict.

(6) Any additional information or comments: The existing fees charged by the Division for Air Quality for the processing of permit applications were established in 1981. Since that time increasing personnel costs, additional responsibilities for the review of toxic air pollutants, and an increase in the number of permit applications and registration forms which, when processed, reveal that no permit is required, have added extensively to the expenses of the division. None of the additional expenses, however, are recovered through the existing permit application processing fee. The shortfall is exacerbated by the fact that the existing fee never was intended to recover all of the costs of processing permit applications. During 1987, it cost more than $900,000 to operate the division's Permit Review Branch. During that same year, the permit application processing fee recovered approximately $200,000. The division does not propose in these amendments to recover all of its costs for processing permit fee applications. Approximately 35% of the operation of the Permit Review Barnch is directed toward processing registration forms and permit applications for which no permit is required, responding to inquiries, and conducting other business that does not result in the issuance of a permit. Neither those costs nor the costs incurred by other branches for participating in compliance demonstrations necessary for the issuance of operating permits are included for recovery. The amendments are designed, however, to recover approximately $600,000 per year to offset the remaining 65% of the costs within the Permit

Review Branch and incidental costs to other branches. In addition to increasing the overall amount of funds collected by the permit application processing fee, the division also is proposing to distribute the fees more equitably among applicants. The existing regulation creates three categories of applications, charging more for applications in Category I than for those in Categories II or III, and more for those in Category II than for those in Category III. The additional fees for Category I and Category II applications were intended to recover additional costs resulting from their being subject to new source review and prevention of significant deterioration requirements. During 1987, only three construction permit applications and fifteen operating permit applications fell into those categories. The remaining applications (approximately 380) were designated as Category III. Applications in Category III vary widely in their complexity and in the amount of time necessary to process them, but all of them were assessed the same processing fee. Thus smaller sources pay an unfair share of the permit processing fees when compared to larger sources. In order to distribute the fees more equitably among applicants, the division proposes in these amendments to increase the cost for processing applications requiring the review of more facilities and more pollutants. The methods for calculating those costs are contained in Attachment 1 (for construction permits) and Attachment 2 (for operating permits) included with this document. A maximum base fee for both construction and operating permits has been set at $10,000. Finally, component fees have been calculated for processing tasks pertinent to some, but not all, applications. The component fees will be added to the permit application processing base fees as appropriate, and also are contained as attachments to this document. Estimations of the fees that will be generated by these amendments were made by applying their provisions to 152 construction pemits received and issued in 1987 (permit applications received in 1986 but issued in 1987 or received in 1987 but issued in 1988 were not included). Operating permit fees were calculated from the construction permit and information in the source file. Results from the sample indicated total receipts of approximately $600,000 when extrapolated for an estimated annual issue rate of 200 construction and 200 operating permits. The average construction permit fee under the proposed amendments will be approximately $2,250, including component fees, and the average operating permit fee will be $650, including the major source component fee, but not the stack test component fees. Fees generated from construction permit applications will be approximately $450,000, those generated by operating permits will be approximately $130,000. Fees generated by the stack test component fees will be approximately $30,000. The amendments will result in a minimum construction permit fee of approximately $705, and a minimum operating permit fee of approximately $410. The largest permit fee observed in the sample data was $10,250 for a construction permit. Six other construction permit fees from among the 152 included in the sample cost $10,000. The largest fee for an operating permit observed in the sample data was approximately $3,200. The largest component fee that would have been charged for a source in 1987 under the proposed amendments would have been approximately $12,000 for eight stack tests performed. Under the existing regulation, that source was charged $10,100 for the eight stack tests.

ATTACHMENT 1:
CONSTRUCTION PERMIT FEE BASE COST

A. Cost Determination for Application Containing One Facility with One Pollutant

Permit Processing Task	Units	Rate*	Cost
Correspondence	2 hr.	$25/hr.	$ 50
Typing	2 hr.	15/hr.	30
Logging, acknowledgment letter	1 hr.	15/hr.	15
Preliminary review	4 hr.	25/hr.	100
Additional information requests (preparation)	2 hr.	25/hr.	50
Additional information requests (typing and transmittal)	2 hr.	15/hr.	30
Review and incorporation of additional information	2 hr.	25/hr.	50
Emission calculations (each)	2 hr.	25/hr.	50
Determination			
Write-up	2 hr.	25/hr.	50
EIS	2 hr.	25/hr.	50
Clerical	2 hr.	15/hr.	30
Managerial review	3 hr.	30/hr.	90
Amendments & corrections	2 hr.	25/hr.	50
Retyping	2 hr.	15/hr.	30
Distribution	2 hr.	15/hr.	30
TOTAL	32 hr.**	---	$705

*Rate includes salary, 18% fringe benefits, and 35% indirect costs, rounded to $5.
**Permit reviewer, 18 hours; clerical support, 11 hours, managerial review, 3 hours.

B. The total fee for the processing of a construction permit application is calculated by multiplying a constant ($500) by a complexity factor as follows: (1 + affected facilities/4)(1 + the sum of the different nontoxic pollutants at each affected facility/8) such that the cost for processing a permit having one affected facility with one pollutant will approximately equal the base fee listed above ($705) and so that the cost for processing applications having additional nontoxic pollutants and affected facilities will reflect the additional processing time. Any appropriate component fees are added to that product (see Attachment 3: Component Fees).

ATTACHMENT 2:
OPERATING PERMIT FEE BASE COST

A. Cost Determination for Application Containing One Facility with One Pollutant

Permit Processing Task	Units	Hourly Rate*	Cost
Logging, acknowledgment letter	1 hr.	$15	$ 15
Compliance inspection			
Preparation	1 hr.	25	25
Travel	—	--	50
Inspection	1 hr.	25	25
Inspection report			
Write report	1 hr.	25	25

Final review	1 hr.	25	25
Clerical	2 hr.	15	30
Permit application review			
Emission calculations	1 hr.	25	25
Write memo and permit	2 hr.	25	50
Clerical	1 hr.	15	15
EIS	2 hr.	25	50
Managerial review	2 hr.	30	60
Distribution	1 hr.	15	15
TOTAL	16 hr.**	---	$410

*Rate includes salary, 18% fringe benefits, and 35% indirect costs, rounded to $5.
**Permit reviewer, 9 hours; clerical support, 5 hours, managerial review, 2 hours.

B. The total fee for the processing of an operating permit application is calculated by multiplying a constant ($380) by a complexity factor as follows: (1 + affected facilities/20)(1 + the sum of the different nontoxic pollutants at each affected facility/40) such that the cost for processing a permit having one affected facility with one pollutant will approximately equal the base fee listed above ($410) and so that the cost for processing applications having additional nontoxic pollutants and affected facilities will reflect the additional processing time. Any appropriate component fees are added to that product (see Attachment 3: Component Fees).

ATTACHMENT 3:
MAJOR SOURCE OR MAJOR MODIFICATION
CONSTRUCTION COMPONENT FEE
-Cost Determination-

Permit Processing Task	Units	Hourly Rate*	Cost
Preapplication conference (average cost)	--	--	$ 50
Ad preparation of preliminary determination	1 hr.	$ 25	25
Notification of preliminary determination	2 hr.	25	50
Public hearing (average cost)	--	--	125
Review and transmittal of comment	2 hr.	25	50
Evaluation of comment responses	3 hr.	25	75
Managerial review	3 hr.	30	90
Clerical preparation	2 hr.	15	30
Final review	2 hr.	25	50
Clerical distribution	2 hr.	15	30
Ad preparation for final determination	1 hr.	25	25
Notification for final determination	2 hr.	25	50
TOTAL	20 hr.**	---	$650

*Rate includes salary, 18% fringe benefits, and 35% indirect costs, rounded to $5.
**Permit reviewer, 12 hours; clerical support, 5 hours, managerial review, 3 hours.

MAJOR SOURCE OR MODIFICATION
OPERATING PERMIT COMPONENT FEE
-Cost Determination-

Per Application: $250*
*Represents average time expenditure of ten hours per major source application for review of facilities not contained on construction permit, at a rate of $25 per hour.

AIR QUALITY ANALYSIS COMPONENT FEE
-Cost Determination-

I. Review Air Quality Modeling Analyses
   A. Level 1 Models:* $50.
   B. Level 2 Models Except for PSD: $150.
   C. Level 2 Models for PSD: $350.

II. Performing Air Quality Modeling Analyses
   A. Level 1 Models:* $100.
   B. Level 2 Models Except for PSD: $200.
   C. Level 2 Models for PSD:** $1,840.

*The following Air Quality Models, included in the "Guideline on Air Quality Models (Revised)" are Level 1 Models for the purposes of this regulation: PTMAX, PTDIS, PTPLU2, and such models as may be approved by the U.S. EPA in place of these models. All other Air Quality Models included in the "Guideline on Air Quality Models (Revised)" and such other Air Quality Models as may be approved for use by the U.S. EPA are Level 2 Models for the purposes of this regulation.
**The Division for Air Quality performs Level 2 Air Quality Modeling Analyses for PSD permit applications only to confirm modeling analyses contained in the application. Applications without modeling analyses will not be accepted.

BEST AVAILABLE CONTROL TECHNOLOGY (BACT),
REASONABLE AVAILABLE CONTROL TECHNOLOGY (RACT),
AND LOWEST ACHIEVABLE EMISSION RATE (LAER)
REVIEW COMPONENT FEE
-Cost Determination-

Proposal review:	$ 75
Literature review:	150
TOTAL	$225

TOXIC POLLUTANTS SIGNIFICANCE DETERMINATION
COMPONENT FEE
-Cost Determination-

Per Application: $50 x (Total Number of Significant Toxic Pollutants) x (Sum of the Number of Facilities from which Toxic Pollutants are Emitted)

POTENTIAL TOXIC AND HAZARDOUS MATERIALS
DETERMINATION COMPONENT FEE
-Cost Determination-

Per application subject to 401 KAR 63:020: $60.

STACK TEST OR EQUIVALENT COMPONENT FEE
-Cost Determination-

Permit Component Task	Units	Rate	Cost
Personnel time, 3 persons (travel, observation, and review)	60 hr.	$ 20	$1,200
Clerical time	2 hr.	15	30
Lodging, 3 persons	1 day/ person	35	105
Board, 3 persons	2 days/ person	15/day	90
Average auto expenses (2 autos)	400 miles	$.20/ mile	80
TOTAL	---	---	$1,505

TIERING: Was tiering applied? Yes. Tiering is used throughout this regulation. The amount of

the permit fee is dependent upon the size and type of the source, and the different types of reviews which are required to be performed on the permit. One example is a permit with ten affected facilities will have a larger permit fee than a permit with only two affected facilities. Another example is that there is a modeling component fee to be added to permits that require the use of modeling, and that component fee is based on the type of model that is performed.

FISCAL NOTE: This regulation does not relate to any aspect or any service of local government; therefore a fiscal note is not required.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation, as authorized by KRS 224.033(20), provides for the collection of fees to recover the costs of issuing construction and operating permits and applies to all permits issued by the cabinet pursuant to 401 KAR 50:035. Section 110 of the Clean Air Act compiles the Administrator of the U.S. Environmental Protection Agency to approve State Implementation Plans which, among other mandatory provisions, require that owners or operators of major stationary sources pay a fee sufficient to cover "...the reasonable costs of reviewing and acting upon any application for such a permit..." and "...the reasonable costs...of implementing and enforcing the terms and conditions of any such permit..."

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) The federal statute provides for states to recover costs for issuing permits to major sources, and this regulation satisfies that provision. The federal statute also provides for states to recover the costs for implementation and enforcement of those permits. Kentucky's statute does not allow the cabinet to recover those costs, therefore this regulation is not more stringent than the federal mandate. The federal statute does not address minor sources, therefore this regulation is not more stringent.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. There are no stricter standards, requirements, or responsibilities.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:015. Documents incorporated by reference.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS Chapter 13A, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to adopt regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for incorporation by reference of documents referred to in these regulations and other documents relied on by the cabinet in implementing the permanent regulatory program.

Section 1. Reclamation Advisory Memoranda. The following Reclamation Advisory Memoranda (RAM) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. Where there is a conflict between these documents on a particular item, the document of later date shall prevail.

[(1) RAM No. 33, "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982.]

[(2) RAM No. 35, "Permanent Program Transition Application," May 14, 1982.]

[(3) RAM No. 46, "Status Report on Transition Application Review," August 25, 1982.]

[(4) RAM No. 48, "Lands Unsuitable for Mining Program Information Resource Center," September 14, 1982.]

[(5) RAM No. 53, "Procedures and Priorities for Review of Transition Comprehensive Applications," November 17, 1982.]

[(6) RAM No. 55, "Initial Completeness Requirements for Transition Comprehensive Applications," December 1, 1982.]

(1) [(7)] RAM No. 56, "Overlapping Permits," December 1, 1982.

[(8) RAM No. 57, "Applicant Changes to Transition Applications," December 1, 1982.]

[(9) RAM No. 58, "Priority I Deadline for Sediment Structure Compliance Demonstrations," February 14, 1983.]

[(10) RAM No. 62, "Extension of Priority II Technical Submission Date," April 12, 1983.]

[(11) RAM No. 63, "Submission of Sediment Structure Compliance Demonstration Data and Other Technical Data," April 22, 1983.]

[(12) RAM No. 65, "Submission of Transitioned Application, Priority II, III, and IV Applications," June 10, 1983.]

[(13) RAM No. 66, "Submission of Sediment Pond Compliance Demonstrations for Priority I Transitioning Permits," August 5, 1983.]

[(14) RAM No. 68, "Submission of Priority II Data," September 23, 1983.]

[(15) RAM No. 72, "Submission of Technically Complete Applications, Priority III and IV," November 29, 1983.]

(2) [(16)] RAM No. 73, "Delayed Filing of Performance Bonds on Technically Acceptable Applications for Transitioning Permanent Program Permits," February 6, 1984.

(3) [(17)] RAM No. 75, "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(4) [(18)] RAM No. 76, "Revision to RAM No. 73: Maximum Period of Bond Deferral Reduced from 5 Years to 3 Years," April 2, 1984.

(5) [(19)] RAM No. 77, "Reinstatement of Small Operator Assistance," April 2, 1984.

(6) [(20)] RAM No. 78, "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

Section 2. Technical Reclamation Memoranda. The following Technical Reclamation Memoranda (TRM) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained

from the cabinet.
(1) TRM No. 1, "Existing Structures," October 22, 1982.
(2) TRM No. 9, "Revegetation Standards for Success," February 1, 1983.

Section 3. Penalty Assessment Manual. The following document issued by the cabinet is incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. "Penalty Assessment Manual," July 1983.

Section 4. Documents Referred to Within These Regulations. The following documents which are referred to within 405 KAR Chapters 7 through 24 are incorporated by reference for the purposes of 405 KAR Chapters 7 through 24.
(1) "Standard Methods for the Examination of Water and Wastewater," fourteenth edition, 1976. Prepared by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies may be obtained from American Public Health Association, 1015 Eighteenth Street NW, Washington, D.C. 20036.
(2) "Methods for Chemical Analysis of Water and Wastes," March 1979, U.S. Environmental Protection Agency. Copies may be obtained from U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, 26 W. St. Clair Street, Cincinnati, Ohio 45268.
(3) "Soil Taxonomy," Agriculture Handbook 436, 1975, U.S.D.A. - Soil Conservation Service. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(4) "Soil Survey Manual," Agriculture Handbook No. 18, 1951, U.S. Department of Agriculture. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(5) "ASTM STANDARD D388-77, Standard Specification for Classification of Coal by Rank," 1977, American Society for Testing and Materials. Copies may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
(6) "Environmental Criteria for Electric Transmission Lines," 1970, U.S. Department of the Interior, U.S. Department of Agriculture. Copies may be obtained from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
(7) REA Bulletin 61-10, "Protection of Bald and Golden Eagles from Powerlines," 1972 U.S. Department of Agriculture. Copies may be obtained from the U.S. Department of Agriculture, Washington, D.C.
[(8) Technical Release No. 60, "Earth Dams and Reservoirs," 1976, U.S.D.A. - Soil Conservation Service. Copies may be obtained from U.S. Soil Conservation Service, Washington, D.C.]
[(9) "Kentucky Standard and Specification for Pond (378)," 1978, U.S. Soil Conservation Service. Copies may be obtained from the Soil Conservation Service, 333 Waller Ave., Lexington, KY.]
(8) [(10)] ANSI S1.4-1971, "Specification for Sound Level Meters," 1971, American National Standards Institute, Inc. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY.
(9) [(11)] AASHTO T99-74, "Standard Methods of Test for the Moisture-Density Relations of Soils Using 5.5 lb. (2.5 Kg) Rammer and a twelve (12) in. (305 mm) Drop," 1974, American Association of State Highway and Transportation Officials. Copies may be obtained from American Association of State Highway and Transportation Officials, 444 N. Capitol Ave., Washington, D.C. 20001.

Section 5. Permit Application Review Procedures. The following Permit Application Review Procedures (PARP) issued by the cabinet are incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet.
(1) PARP No. 2, "Lands within 100 feet, measured horizontally, of a cemetery," April 18, 1983.
(2) PARP No. 6, "Advertising Schedule Variance," July 29, 1983.
[(3) PARP No. 11, "Condition of Issuance for Transitioning Underground Permits," November 15, 1983.]

Section 6. Policy Memorandum. The following policy memorandum issued by the cabinet is incorporated herein by reference for the purposes of 405 KAR Chapters 7 through 24. Copies may be obtained from the cabinet. Departmental Policy Memorandum No. 81-003, "Conflict of Interest," June 19, 1981.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk
(1) Type and number of entities affected: The proposed changes to Section 1 and 5 of this regulation will remove outdated, obsolete documents that are no longer applicable to the permanent program for coal mining. Because these documents serve no purpose, their deletion will not affect any entitites. The changes to Section 4 will remove two technical documents on the design and constrution of impoundments. These

changes complement the proposed changes to the department's regulations on permanent and temporary impoundments (405 KAR 16:100 and 18:100) being promulgated concomitant with this amendment. In effect, deletion of these two documents will have little effect on any entitiies. In fiscal year 1986-87 the department issued 589 permanent program permits and the department anticipates that future permitting activities will continue at about this same level.

(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): There will not be any additional factors that would increase or decrease costs to the affected entities, and the amendment should not affect competition between the entities.
(b) Reporting and paperwork requirements: There will be no changes to reporting and paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: There will not be any additional factors that would increase or decrease costs to the cabinet.
(b) Reporting and paperwork requirements: The cabinet's paperwork will not change in response to this amendment.
(3) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the requirements of KRS Chapter 13A, there were no alternatiave methods of implementing these changes other than by promulgation of this amendment.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate this amendment.
(a) Necessity of proposed regulation if in conflict: Since no conflict exist, this item is not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.
(6) Any additional information or comments: No additional information or comments.
TIERING: Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all permittees under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 816.49 and 817.49.

2. State compliance standards. This amendment deletes reference to two documents of the Soil Conservation Service regarding construction of ponds and dams. These two documents are as follows: 1) Technical Release No. 60, "Earth Dams and Reservoirs" and 2) "Kentucky Standard and Specification for Ponds" (No. 378).

3. Minimum or uniform standards contained in the federal mandate. The federal regulation has deleted reference to the two SCS documents.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:020. Definitions and abbreviations.

RELATES TO: KRS Chapter 350
PURSUANT TO: KRS Chapter 13A, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in KAR Title 405, Chapters 7 through 24.

Section 1. Definitions. Unless otherwise specifically defined or otherwise clearly indicated by their context, terms in KAR Title 405, Chapters 7 through 24 shall have the meanings given in this regulation.
(1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.
(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.
(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.
(4) "Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain

information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(5) [(4)] "Affected area" means any land or water which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) [(5)] "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(7) [(6)] "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations. [seeking a permit from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.]

(8) [(7)] "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, where required, seeking approval for coal exploration. [for the issuance for exploration approval or a permit.]

(9) [(8)] "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the cabinet has determined that they comply with KRS Chapter 350 and either 405 KAR 16:100; 405 KAR 16:060, Section 10; and 405 KAR 16:210 or 405 KAR 18:100; 405 KAR 18:060, Section 10; and 405 KAR 18:220.

(10) [(9)] "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) [(10)] "Area" as used in KAR Title 405, Chapter 24, means a geographic unit in which the criteria alleged in the petition pursuant to 405 KAR 24:020, Sections 3 and 4 and 405 KAR 24:030, Section 8, occur throughout and form a significant feature.

(12) [(11)] "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other such methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(13) [(12)] "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or run off outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with KAR Title 405, Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

(14) [(13)] "Cabinet" means the Natural Resources and Environmental Protection Cabinet.

(15) [(14)] "Cemetery" means any area where human bodies are interred.

(16) [(15)] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) [(16)] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of KAR Title 405, Chapters 7 through 24 where such activity may cause any

disturbance of the land surface or may cause any appreciable effect upon land, air, water or other environmental resources.

(18) [(17)] "Coal mine waste" means coal processing waste and underground development waste.

(19) [(18)] "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) [(19)] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(21) [(20)] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(22) [(21)] "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(23) [(22)] "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(24) [(23)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(25) [(24)] "Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and Title 450, Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval should be issued. ["Complete application" means an application for exploration approval or permit, which contains all information required under KRS Chapter 350 and Title 405, Chapters 7 through 24.]

(26) [(25)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of land use categories.

(27) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface - and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(28) [(26)] "Date of primacy" means the effective date of the Secretary of Interior's unconditional or conditional approval of Kentucky's permanent regulatory program under Section 503 of the 1977 Surface Mining Control and Reclamation Act (P.L. 95-87). The effective date of the subject approval was May 18, 1982.

(29) [(27)] "Day" means calendar day unless otherwise specified to be a working day.

(30) [(28)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(31) [(29)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) [(30)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by KAR Title 405, Chapter 10 is released.

(33) [(31)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) [(32)] "Downslope" means the land surface below the projected outcrop of the lowest coal-bed being mined along each highwall.

(35) [(33)] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(36) [(34)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(37) [(35)] "Excess spoil" means spoil material disposed of in a location other than the coal extraction area, provided that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(38) [(36)] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to January 18, 1983.

(39) [(37)] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the

area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

(40) [(38)] "Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(41) [(39)] "Federal lands program" means a program established by the Secretary of the Interior pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, 91 Stat. 445 (30 USC Section 1201 et seq.)) to regulate surface coal mining and reclamation operations on federal lands.

(42) [(40)] "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(43) [(41)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(44) [(42)] "Fragile lands" means [geographic] areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged [or destroyed] by surface coal mining operations. Examples of fragile lands [These lands may] include[, but are not limited to,] uncommon geologic formations [features], paleontological sites, National Natural Landmarks [sites], valuable habitats for fish or [and] wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or [and] plants, [wetlands,] environmental corridors containing a concentration of ecologic and aesthetic features, and [state-designated nature preserves and wild rivers,] areas of recreational value due to high environmental quality[, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources other than coal].

(45 [(43)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(46) [(44)] "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1)] or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(47) [(45)] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(48) [(46)] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency or office of the unit which, directly or through another unit of government, finance construction.

(49) [(47)] "Grazing land" means grassland and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of grazing operations which are adjacent to or an integral part of these operations is also included.

(50) [(48)] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(51) [(49)] "Half-shrub" means a perennial plant with a woody base whose annually-produced stems die back each year.

(52) [(50)] "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(53) [(51)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(54) [(52)] "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties [or cultural districts, places, structures or objects, including but not limited to sites] listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, archaeological [and paleontological] sites, properties having religious or cultural significant to Native Americans or religious groups, and properties [cultural or religious districts, places, or objects, or sites] for which historic designation is pending.

(55) [(53)] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or paragraph (a)2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Land that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall

outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(56) [(54)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, run-off, evaporation, and changes in ground and surface water storage.

(57) [(55)] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(58) [(56)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(59) [(57)] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(60) [(58)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and that is small in relation to the permit area (surface operations area for underground mining activities).

(a) Where an extension includes new areas from which coal will be removed, it will be considered as an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Where an extension is for new areas not involving extraction of coal, it will be considered an incidental boundary revision only if the extension is no more than ten (10) percent of the permit area acreage (surface operations area acreage for underground mining activities) or two (2) acres, whichever is greater.

(c) Cumulative acreage added by successive revisions may not exceed the above limitations.

(61) [(59)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Lands used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included.

(c) Commercial agriculture activities including pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants for sale or resale.

(62) [(60)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(63) [(61)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface run-off and groundwater discharge.

(64) [(62)] "Irreparable damage to the environment," as used in 405 KAR 8:010, Sections 13(5) [(4)] and 14(9) only, means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or KAR Title 405 Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(65) [(63)] "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land, and may be identified in combination when joint or seasonal uses occur.

(66) [(64)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(67) [(65)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(68) [(66)] "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(69) [(67)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(70 [(68)] "Notice of violation" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(71) [(69)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(72) [(70)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(73) [(71)] "Operations" means surface coal mining and reclamation operations, all of the premises, facilities, roads and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or removal of coal.

(74) [(72)] "Operator" means any person, partnership, or corporation engaged in surface coal mining and reclamation operations.

(75) [(73)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice; or any violation of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(76) [(74)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(77) [(75)] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(78) [(76)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.

(79) [(77)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off. The term does not include "intermittent stream" or "ephemeral stream."

(80) [(78)] "Performance bond" means a surety bond, collateral bond, [cash bond, letter of credit] or a combination thereof; or a bond submitted pursuant to the Kentucky bond pool; [,] by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, KAR Title 405, Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(81) [(79)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(82) [(80)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(83) [(81)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(84) [(82)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or KAR Title 405, Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and KAR Title 405, Chapters 7 through 24 are satisfied.

(85) [(83)] "Person" means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization, or any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(86) [(84)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(87) [(85)] "Petitioner" means a person who submits a petition under KAR Title 405, Chapter 24 to designate a specific area as unsuitable for all or certain types of surface coal mining and reclamation operations, or who submits a petition under KAR Title 405, Chapter 24 to terminate such a designation.

(88) [(86)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snow melt, sleet, or hail in a specified period of time.

(89) [(87)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have historically been used for cropland as that phrase is defined above.

(90) [(88)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(91) [(89)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(92) [(90)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing and pattern; and the stream channel conditions on the permit area and adjacent areas.

(93) [(91)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(94) [(92)] "Public building" means any

structure that is owned or leased, and principally used by a governmental agency for public business or meetings. [by a public agency or used principally for public business, meetings or other group gatherings.]

(95) "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(96) [(93)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(97) [(94)] "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved or held open to the public because of that use.

(98) [(95)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(99) [(96)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation.

(100) [(97)] "Reclamation" means the reconditioning and restoration of areas affected by surface coal mining operations as required by KRS Chapter 350 and KAR Title 405, Chapters 7 through 24 under a plan approved by the cabinet.

(101) [(98)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(102) [(99)["Recurrence interval" means the interval of time in which an event is expected to occur once, on the average.

(103) [(100)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the cabinet. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

(104) [(101)] "Refuge pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(105) [(102)] "Renewable resource lands" means georgaphic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, such lands to include aquifers and aquifer recharge areas. [aquifers and areas for the recharge of aquifers and other undergroundwaters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.]

(106) [(103)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings. Also included is land used for support facilities such as vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(107) [(104)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to KAR Title 405, Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(108) [(105)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(109) [(106)] "Secretary" means the Secretary of the Cabinet for Natural Resources and Environmental Protection.

(110) [(107)] "Sedimentation pond" means a primary sediment controlled structure designed, constructed and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water run-off to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce run-off volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(111) [(108)] "Significant, imminent environmental harm" is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(112) [(109)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(113) [(110)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(114) [(111)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by a lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(115) [(112)] "Soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(116) [(113)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mine coal, that are excavated during surface coal mining and reclamation operations.

(117) [(114)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(118) [(115)] "Steep slope" means any slope of more than twenty (20) degrees.

(119) [(116)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other such activities, or to remove more than 250 tons of coal. [impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.]

(120) [(117)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(121) [(118)] "Surety bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky where the surface or underground coal mining operation subject to the indemnity agreement is located.

(122) [(119)] "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(123) [(120)] "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Such activities shall not include the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, except that noncommercial use shall not include the extraction of coal by one (1) unit of an integrated company or other business entity which uses the coal in its own manufacturing or power plants; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or the extraction of, or intent to extract, 250 tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for the purpose of commercial use or sale; or coal exploration. Surface coal mining operations shall also include the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. This definition includes the terms "strip mining of coal" and the surface effects of underground mining of coal as defined in KRS Chapter 350.

(124) [(121)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(125) [(122)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(126) [(123)] "Temporary diversion" means a diversion of a stream or overland flow which is

used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(127) [(124)] "Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

(128) [(125)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(129) [(126)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(130) [(127)] "Toxic-mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(131) [(128)] "Transfer, assignment or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(132) [(129)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(133) [(130)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads; aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(134) [(131)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(135) [(132)] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or permit conditions.

(136) [(133)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(137) [(134)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(138) [(135)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(139) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(140) [(136)] "Willful violation" means an act or omission which violates the Surface Mining Control and Reclamation Act (P.L. 95-87), KRS Chapter 350, the regulations of KAR Title 405, Chapters 7 through 24, or any permit condition, committed by a person who intends the result which actually occurs.

Section 2. Abbreviations. As used in KAR Title 405, Chapters 7 through 24, the following abbreviations shall have the meanings given below:

ac - acre
CFR - Code of Federal Regulations
dB - decibels
FDIC - Federal Deposit Insurance Corporation
FSLIC - Federal Savings and Loan Insurance Corporation
Hz - hertz
KAR - Kentucky Administrative Regulations
KPDES - Kentucky Pollutant Discharge Elimination System
KRS - Kentucky Revised Statutes
l - liter
mg - milligram
MRP - mining and reclamation plan
MSHA - Mine Safety and Health Administration
NPDES - National Pollutant Discharge Elimination System
OSM - Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior
SCS - Soil Conservation Service
SMCRA - Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), as amended
USDA - United States Department of Agriculture
USDI - United States Department of the Interior
U.S. EPA - United States Environmental Protection Agency

USGS - United States Geological Survey.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: The definition changes in this amendment will potentially effect coal exploration operations, persons applying for permits to mine coal, and persons concerned with designating area as unsuitable for mining. As of May 1988, there were 608 coal exploration operations in effect in Kentucky. In fiscal year 1986-87 the department issued 589 permanent program permits and the department anticipates that future permitting activities will continue at about that same level. Since 1982 the cabinet has received 15 petitions for designating lands as unsuitable for mining; of these 15 petitions, one has been approved.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment revises existing definitions used in Kentucky's regulatory program for coal mining; it clarifies other coal mining definitions; and it adds a few heretofore undefined terms. Most of these changes and additions are being made for clarity, rather than because of a substantive change in how the cabinet interprets a particular definition. Any additional costs incurred as a result of this amendment will be tied to how the definitions are applied, rather than to any specific cost or savings directly attributable to this rulemaking; however, the cabinet does not anticipate any direct or indirect cost or savings as a result of this amendment.

2. Continuing costs or savings: As noted above, the cabinet does not anticipate that affected entities will incur any direct or indirect cost or savings as a result of this amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The cabinet does not anticipate that there will be any additional factors increasing or decreasing cost, not does the cabinet anticipate that the amendment will effect competition.

(b) Reporting and paperwork requirements: The amendment neither lessens nor increases existing reporting and paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet anticipates that neither direct nor indirect costs or savings will be incurred as a result of this amendment.

2. Continuing costs or savings: The cabinet anticipates that neigher direct nor indirect costs or savings will be incurred as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no any additional factors that will increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: The cabinet does not expect that its reporting and paperwork duties will change as a result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment should not effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there was no alternative to adoption of these changes other than by promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The cabinet knows of no statute, administrative regulations or governmental policy that conflicts, overlaps, or duplicates the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts are known, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts are known, this item is not applicable.

(6) Any additional information or comments: The cabinet would like to note that the definition of the term "wetland" was drafted to harmonize with the Food Security Act, the Emergency Wetlands Resources Act, and the recommendations of the Kentucky Environmental Quality Commission and the EQC Wetlands Advisory Committee.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment, since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all permittees under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 701.5, 30 CFR 761.5, and 30 CFR 762.5.

2. State compliance standards. The proposed amendment adopts new definitions for the terms

"administratively complete application," "applicant," "application," "complete and accurate application," "cumulative impact area," "fragile lands," "historic lands," "performance bond," "public buiding," "publicly-owned park," "renewable resource lands," "substantially disturb," and "wetlands."

3. Minimum or uniform standards contained in the federal mandate. The federal mandate defines all of the terms identified in item 2, with the exception of the term "wetland." The definition of "wetlands" proposed in this amendment is consistent with the Food Security Act, the Emergency Wetlands Resources Act, and the recommendations of the Kentucky Environmental Quality Commission and the EQC Wetlands Advisory Committee.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required under the federal mandate. The definitions proposed in this amendment are consistent with the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because the amendment does not contain stricter standards or additional or different responsibilities or requirements, this item is not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:030. Applicability.

RELATES TO: KRS 350.010, 350.028, 350.057, 350.060, 350.151, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This regulation designates Title 405, Chapters 7 through 24 as applicable to all coal exploration and surface coal mining and reclamation operations, and specifies those activities to which Title 405, Chapters 7 through 24 do not apply. This regulation reflects the jurisdiction of the cabinet over coal exploration and surface coal mining and reclamation operations and sets forth certain nonjurisdictional activities.

Section 1. Applicability. Title 405, Chapters 7 through 24 apply to all coal exploration and surface coal mining and reclamation operations, except any surface coal mining and reclamation operations which, together with any related operation, affected an [has or will have an affected] area of two (2) acres or less, which were conducted pursuant to a two (2) acre or less permit issued by the cabinet, which were commenced on or before June 5, 1987, and on which mining ceased on or before November 7, 1987, in which case the provisions of Title 405, Chapter 26 and KRS 350.060(13) shall apply.

(1) For purposes of this regulation, where a segment of a road is used for access or coal haulage by more than one (1) surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two (2) or more operations which are deemed related pursuant to subsection (2) of this section shall be considered as one (1) operation for the purposes of this subsection.

(2) Except as provided in subsection (3) of this section, surface coal mining operations shall be deemed related if they occur within twelve (12) months of each other, are physically related, and are under common ownership or control.

(a) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five (5) aerial miles of both operations.

(b) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

1. The same person;

2. Two (2) or more persons, one (1) of whom controls, is under common control with, or is controlled by the other; or

3. Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(c) For purposes of this subsection [paragraph], "control" means: ownership of fifty (50) percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one (1) person the ability in fact or in law to direct what the other does; or any relationship which gives one (1) person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of subsection (2) of this section, the cabinet may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to Section 3 of this regulation, that two (2) or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in subsection (2)(b) of this section, the cabinet concludes in writing that the operations are not of the type which SMCRA was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of KRS Chapter 350 or Title 405, Chapters 7 through 24.

(4) The exemption provided by this section applies only to operations with an affected area of less than two (2) acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

Section 2. Coal Extraction Incidental to Government Financed Construction. (1)(a) Coal extraction which is an incidental part of government-financed construction is exempt from KRS Chapter 350 and Title 405, Chapters 7

through 24, except subsection (2) of this section shall apply.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this subsection shall not proceed until a permit has been obtained from the cabinet.

(c) Reclamation of abandoned mined lands funded under Title IV of SMCRA[,] shall be deemed government-financed construction.

(2) Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two (2) acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Section 3. Exemptions. (1) The cabinet may on its own initiative and shall, within a reasonable time of a request from any person who intends to extract coal, make a written determination whether the operation is exempt from Title 405, Chapters 7 through 24. Where appropriate, exemptions shall be recognized for:

(a) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of or intent to extract 250 tons of coal or less by any person by [surface coal mining operations] within twelve (12) successive calendar months;

(c) The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction; and

[(d) Surface coal mining and reclamation operations of two (2) acres or less covered by Title 405, Chapter 26; and]

(d) [(e)] The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds (16 2/3) percent of the tonnage of minerals removed for purposes of commercial use or sale. OSM guidelines on implementing this exemption published at 49 FR 19338 are hereby incorporated by reference. Copies may be obtained from the department. The cabinet may require such information from the applicant as the cabinet deems necessary to decide whether the extraction of coal is "incidental" to the extraction of other minerals and to decide whether the other mineral is being extracted for commercial use or sale. This may include, but is not limited to: information regarding the applicant's prior involvement in coal mining operations and mining operations for the other mineral; geologic information for the proposed mining area; mining and engineering plans for the excavation; evidence of the existence of a generally acknowledged regional, state, or national market for the mineral being sought; and a description of the commercial nature of the mineral. Coal extraction shall not be considered to be "incidental" unless removal of the coal seam is physically necessary for the extraction of the other mineral.

(2) The cabinet shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the cabinet shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption.

(3) If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination[,] shall not be cited for violations which occurred prior to the date of the reversal. This subsection shall not apply to two (2) acre permits.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: The federal Surface Mining Control and Reclamation Act of 1977 established national provisions for the regulation of coal mining. However, nested within that Act was a provision that exempted coal mines of two (2) acres or less from regulatory jurisdiction. This two-acre exemption remained in SMCRA as well as in Kentucky's statutes and regulations until May 7, 1987, when President Reagan signed into law Public Law 100-34. Public Law 100-34 removed the two-acre exemption from SMCRA. It established a timetable for phasing in the exemption and, in Section 201(d), it preempted all inconsistent laws and

regulations. This amendment has been drafted to comport with Public Law 100-34. The provisions and time frames contained in the amendment are consistent with the P.L. 100-34 law and federal regulations designed to implement that law. since P.L. 100-34 was written to supersede inconsistent state laws and regulations, this amendment in and of itself will have no effect on any entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Because this amendment will not effect any entities, there will not be any attendant costs or savings.

2. Continuing costs or savings: Because this amendment will not effect any entities, there will not be any attendant costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not any additional factors that would increase or decrease costs, and there will not be any effects on competition.

(b) Reporting and paperwork requirements: This amendment does not impose any new paperwork or reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will not incur any savings or additional costs as a result of this amendment.

2. Continuing costs or savings: The cabinet will not incur any savings or additional costs as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are not any additional factors that would increase or decrease costs.

(b) Reporting and paperwork requirements: This amendment will not impose any additional reporting or paperwork requirements on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not effect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: In light of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or governmental policy conflicts with, overlaps, or duplicates this amendment. House Bill 657 of Kentucky's 1988 Regular Session removed the two-acre exemption from Kentucky's Surface Mining Law.

(a) Necessity of proposed regulation if in conflict: Because a conflict does not exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Because a conflict does not exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment, since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all permittees under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 100-34, signed into law by President Reagan on May 7, 1987, and 30 CFR 700.11, as revised by federal register 52 FR 21228 et seq., published June 4, 1987.

2. State compliance standards. The proposed amendment would remove the regulatory exemption for coal mines of two-acres or less. The amendment would mandate compliance with permanent program requirements, except for permitted two-acre operations that were commenced on or before June 5, 1987 and on which mined ceased on or before November 7, 1987.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate has removed the two-acre regulatory exemption for the following: "(1) any surface coal mining operations commencing on or after June 6, 1987; and (2) any surface coal mining operations conducted on or after November 8, 1987." (52 FR 21229.)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because the amendment does not propose stricter standards or additional or different responsibilities or requirements, this item is not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 7:090. Hearings.

RELATES TO: KRS 224.033, 224.081, 224.083, 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990

PURSUANT TO: KRS Chapter 13A, 224.033, 350.020, 350.028, 350.255, 350.465, 350.610

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This regulation sets forth hearing, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program.

Section 1. Applicability. This regulation shall govern the conduct of all hearings by the cabinet for the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of

noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) and (4); orders to abate and alleviate; determinations on performance bond amount, duration, release, and forfeiture; and all other matters which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and KAR Title 405, Chapters 7 through 24.

Section 2. Construction. This regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this regulation.

Section 3. Proposed Penalty Assessment and Request for Hearing. (1) The cabinet shall notify any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel of [within] the department [of Surface Mining Reclamation and Enforcement].

(2) In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining and reclamation operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. Where a violation has been cited against a person conducting coal exploration operations, in determining the amount of the penalty, consideration shall be given to the above factors as applicable.

(3)(a) The cabinet shall mail, certified [postage prepaid], its notice of the proposed penalty assessment, together with copies of applicable worksheets, to the person to whom the notice or order was issued or that person's representative, within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) Failure by the cabinet to serve the [any] proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

1. Proves actual and substantial prejudice as a result of the delay; and

2. Makes a timely written objection to the delay. An objection shall be timely only if made on or before the last date to request a hearing under subsection (4)(b) of this section [of the preliminary hearing, or if the preliminary hearing is waived, on or before the date of the formal hearing].

(4)(a) The person to whom a proposed penalty assessment was sent who chooses not to contest the fact of the abated violation or the assessment shall pay the proposed penalty assessment in full to the cabinet within thirty (30) days from the date of mailing of the final order entered pursuant to paragraph (c) of this subsection [assessment].

(b) Within the time frames set forth in Section 4 of this regulation, the person to whom a proposed penalty assessment was sent may contest the penalty, as well as the fact of the violation, by requesting in writing, a [attending the] preliminary hearing [scheduled] pursuant to Section 4(1) of this regulation or by waiving the preliminary hearing and requesting in writing, a formal hearing [in writing] pursuant to Section 4(6) [5(1)(b)] of this regulation. Prepayment of penalties shall be made as provided in Section 4 of this regulation [therein].

(c) Failure to request a preliminary hearing or a formal hearing in a timely manner shall be considered a waiver of the right to a hearing on the matter, an admission of the fact of the violation, and an acceptance of the proposed penalty assessment. If the person to whom the notice or order was issued fails to request the preliminary or formal hearing, or if that person fails to attend a scheduled hearing, the cabinet shall forthwith enter and mail a final order finding:

1. That the person to whom the notice or order was issued has waived his or her right to a hearing on the matter;

2. That the fact of the violation cited in the notice or order is deemed admitted and the proposed penalty assessment deemed accepted; and

3. That the proposed penalty assessment is due and payable within thirty (30) days after the mailing of the final order.

Section 4. Preliminary Hearings. (1) Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request [of noncompliance and order for remedial measures or an order for cessation and immediate compliance, the cabinet shall schedule] a preliminary hearing on the fact of the violation and the proposed penalty assessment [unless such hearing is waived by the person to whom the notice or order was issued]. The request for a preliminary hearing shall be forwarded to and received by the Division of Field Services, Frankfort office, within thirty (30) days of the date of receipt of the proposed penalty assessment or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return. If a preliminary hearing is requested, it [The preliminary hearing] shall be scheduled for a date no later than forty (40) [sixty (60)] days after the cabinet's receipt of the request; [date of mailing of the proposed penalty assessment:] provided however, if the [that, where the preliminary hearing is to consider a] notice or order requires [requiring] cessation of mining [by a permittee], the hearing [such hearings] shall be automatically scheduled for a date [held] within thirty (30) days of the issuance of the [such] notice or order. Failure by the cabinet to schedule hearings in accordance with these time frames [a hearing for a date within sixty (60) days or to hold a hearing concerning a notice or order requiring cessation of mining within thirty (30) days, respectively,] shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has

been assessed makes a timely objection on or before the date of the preliminary hearing and proves actual and substantial prejudice as a result of the delay. The scheduling of the preliminary hearings shall not operate as a stay of any notice or order.

(2) Notice of the preliminary hearing shall be served in accordance with Section 6 of this regulation. Notice shall also be sent to any person who filed a report which led to the issuance of the notice or order being contested. The cabinet shall post notice of the preliminary hearing at the department's appropriate regional office [closest to the mine site] at least five (5) days before the hearing. Any person shall have the right to attend and participate in the preliminary hearing.

(3) If a preliminary hearing is held before the time provided in Section 3(3) of this regulation for mailing of the proposed penalty assessment, the cabinet may propose such assessment at the preliminary hearing.

(4) The person contesting the assessment need not pay the proposed amount into escrow prior to the preliminary hearing. If such person waives the preliminary hearing, the payment provisions of subsection (6) of this section shall apply.

(5) The hearing officer may make a preliminary determination to affirm, raise, lower, or vacate the proposed penalty, or to affirm, terminate, modify, or vacate the notice or order with which the preliminary hearing is concerned. The hearing officer shall state his or her reasons therefor in writing and with particularity. Within thirty (30) days after the preliminary hearing is held, the hearing officer shall file his or her preliminary determination with the cabinet. Upon receipt, the cabinet shall immediately mail, postage prepaid, notice of the hearing officer's determination to the parties to the hearing and to any person who filed a report which led to the issuance of the notice or order which was the subject of the preliminary hearing.

(6) The person to whom the notice or order was issued may, within thirty (30) days of the receipt [mailing] of the proposed penalty assessment or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return, waive the preliminary hearing [in writing] and request, by written notice filed with the Division of Hearings, a formal hearing to contest either the fact of the violation or the proposed penalty assessment, or both. Such person shall [must] forward to the cabinet an amount equal to the proposed penalty assessment for placement into an escrow account, within thirty (30) days after receipt or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return [mailing] of the proposed assessment.

(7)[(a)] An authorized representative of the cabinet shall attend the preliminary hearing. Any party to the hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. Failure to appear without good cause shall be grounds for default. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas at the request of any party. An independent hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer.

[(b) If a person to whom a notice or order was issued fails without good cause to attend the scheduled preliminary hearing or to comply with subsection (6) of this section, he or she shall be deemed to have waived all rights to contest the fact of the violation or the proposed penalty, and the cabinet shall enter a final order containing the findings set forth in subsection (10) of this section.]

(8) If an agreement is reached at the preliminary hearing, the cabinet shall present the terms of the agreement to the hearing officer and shall present in person or mail, postage prepaid, a written settlement agreement to the person to whom the notice or order was issued. Such person shall sign the settlement agreement upon presentation immediately following the preliminary hearing or return it to the cabinet within ten (10) days of the date on which it was mailed. If the signed settlement agreement is returned more than ten (10) days after its presentation or mailing, it may be voided at the cabinet's discretion. The parties to the agreement will be deemed to have waived their rights to further hearings or review of the matter, except as expressly provided in the settlement agreement. The settlement agreement shall set forth the facts and circumstances giving rise to the agreement, including a statement of the violation or violations concerned. The penalty agreed to shall be due and payable thirty (30) days after the signing of the settlement agreement. If the matter is not settled, the hearing officer shall issue his or her preliminary determination not later than thirty (30) days after the preliminary hearing was held, and the provisions of subsection (9) of this section shall apply.

(9) If no agreement is reached, any party may, within thirty (30) days after the presentation or mailing of the hearing officer's determination following the preliminary hearing, request a formal hearing. Any such request by the person to whom the notice or order was issued shall be accompanied by payment of an amount equal to the proposed penalty (as amended or affirmed pursuant to the preliminary hearing) to the cabinet, to be held in escrow. If the cabinet is the party requesting the [a] formal hearing, the payment into escrow need not be made. Failure to request a formal hearing or to submit payment within the prescribed time shall be deemed a waiver of all rights to further hearings or review of the matter, and shall be grounds for issuance of a final order of the cabinet pursuant to subsection (10) of this section.

(10) [Failure to request a formal hearing in a timely manner shall be considered an admission of the fact of the violation and acceptance of the proposed penalty assessment.] If no request for a formal hearing is made within thirty (30) days after the presentation or mailing of the hearing officer's preliminary determination following the preliminary hearing, the cabinet shall forthwith enter and mail a final order finding:

(a) That any party [the person] has waived a [his or her] right to a formal hearing on the matter;

(b) That the findings and conclusions contained in the preliminary determination of

the hearing officer are admitted; and

(c) That the penalty assessment contained in the preliminary determination of the hearing officer is due and payable to the cabinet within thirty (30) days, after the mailing of the final order.

(11) No person who presided at a preliminary hearing shall either preside at a subsequent hearing in the same matter or participate in any further decision or any subsequent administrative appeal.

(12) There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer.

Section 5. Formal Hearing. (1) Requests for formal hearing by persons other than the cabinet.

(a) Except as provided in paragraph (b) of this subsection, any person aggrieved by an order or determination of the cabinet may request in writing, pursuant to KRS 224.081(2), that a hearing be conducted by the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had such notice.

(b) Any person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance may request a de novo formal hearing with the cabinet and pay the proposed penalty assessment into escrow pursuant to Section 4(6) or Section 4(9) of this regulation. Such request shall be filed with the Docket Coordinator, Division of Hearings, [Office of General Counsel, at the cabinet's central office] in Frankfort. The request for a hearing shall include a short and plain statement why the amount of the penalty proposed to be assessed, or the fact of the violation, or both, is being contested. The request for a hearing shall plainly identify the notice or order that the requester is contesting. The request shall not operate as a stay of any order or notice.

(2) Initiation of formal hearing by the cabinet.

(a) The cabinet may initiate a formal hearing and may seek revocation or suspension of the permit and forfeiture of the bond whenever:

1. It has reason to believe that a violation of KRS Chapter 350; [or] KAR Title 405, Chapters 7 through 24; or a permit condition has occurred or is occurring; or

2. A permittee has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. Within thirty (30) days from presentation or mailing of the hearing officer's report, the cabinet chooses to contest a preliminary hearing determination; or

4. The provisions of KRS 350.990(9) apply; or

5. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against any person to protect the environment or the health and safety of the public; or

6. The criteria of 405 KAR 10:050, Section 3(2) apply.

(b) The cabinet shall initiate a formal hearing and shall pursue revocation [or suspension] of the permit and forfeiture of the bond or suspension of the permit whenever:

1. The permittee has willfully failed to comply with an order for cessation and immediate compliance; or

2. The cabinet has determined, pursuant to paragraph (c)[1] of this subsection, that a pattern of violations of any permit conditions or any requirements of KRS Chapter 350 or [,] KAR Title 405, Chapters 7 through 24[, or any permit conditions] exists or has existed, and that [the violations were caused by] the permittee willfully violated said conditions or requirements [,] or the violations were caused by the permittee's [through] unwarranted failure to comply with those conditions or requirements [or conditions]; or

3. The criteria of 405 KAR 10:050, Section 3(1) apply.

(c) Pattern of violations.

1. The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

a. The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions;

b. The number of violations, cited on more than one (1) occasion of different requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions; and

c. The extent to which the violations were isolated departures from lawful conduct.

2. The cabinet shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If, after such review, the cabinet determines that a pattern of violations exists or has existed, the cabinet shall request a formal hearing pursuant to this subsection [(2) of this section].

3. In determining the number of violations within any twelve (12) month period, the cabinet shall only consider [only] violations cited [issued] as a result of inspections carried out on or after May 3, 1978. The cabinet may not consider violations cited [issued] as a result of [other] inspections carried out prior to May 3, 1978 in determining whether to exercise its discretion under paragraph (c)1 of this subsection, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

4. Whenever a permittee fails to abate a violation cited [contained] in a notice of noncompliance or cessation order within the abatement period set in the notice or order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists or has existed pursuant to this paragraph [subsection] and shall initiate a formal hearing as provided in this subsection [section].

(3) At any formal hearing held pursuant to subsection (1) or (2) of this section [Section 5(1) or (2) of this regulation to which it is a party], the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; and

(f) Any and all other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit or exploration approval, [the permittee shall immediately cease] surface coal mining operations on the permit area or disturbances on the exploration area shall immediately cease, and the permittee or person conducting coal exploration operations shall:

(a) If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices, and [or] violations as specified in the order.

(5) If a final order of the cabinet has been issued after a preliminary hearing or under Section (3)(4)(c) of this regulation, the [, any] issues adjudicated by the [such] order shall be conclusive as between all [the] parties to the [that] hearing and as to all persons in privity with the parties, and the issues so resolved shall not be readjudicated at any subsequent formal hearing [between the same parties].

(6) Administrative summons. Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2), the cabinet shall schedule a hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for such a hearing, unless the person complained against waives, in writing, the twenty-one (21) day period. The administrative summons, including a notice of hearing, shall be served in accordance with Section 6 of this regulation and shall include the following: a statement of the time, place, and nature of the hearing; a statement of the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for granting of the hearing. For all formal hearings initiated pursuant to subsection (2) of this section [Section 5(2) of this regulation], notice shall also be mailed to any intervenors, shall be posted at the department's appropriate regional office [of the cabinet] and, if practicable, notice shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.

(7) Prior to a formal hearing, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and such other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at such a conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold such additional conferences as may be proper to resolve any issue in dispute.

(8) All formal hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the cabinet following a preliminary hearing shall be binding against any party or parties to the preliminary hearing leading to the final order and shall be binding against all persons in privity with the parties. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing office shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030, 400 KAR 1:040, and 400 KAR 1:050 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and KAR Title 405, Chapters 7 through 24 [these regulations. The hearing officer shall permit any party to represent himself]. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for default.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of such hearing, consisting of: all pleadings, motions and [,] rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; proposed findings and recommended orders; and

legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. When certified by the cabinet as a true and correct copy of the testimony [by the cabinet], the transcript shall constitute the official transcript of the evidence.

(11)(a) After the hearing, the hearing officer shall issue [make] a determination [after hearing and] based on the [a] preponderance of [the] evidence appearing in the record as a whole. The determination shall set [, setting] forth whether, in fact, the violation did [in fact] occur. If the violation occurred, the determination shall specify a recommended penalty and recommended [, the amount of the penalty recommended by the hearing officer, and] remedial or compliance actions [recommended] to be taken by the permittee or the person conducting coal exploration operations. For hearings conducted pursuant to 405 KAR 7:070, the determination shall specify the recommended term and conditions for suspension or revocation of the blaster's certification in accordance with 405 KAR 7:070, Section 4.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revocation of the [a] permit or forfeiture of the [a] bond if the [a] permittee has violated any provision of KRS Chapter 350; [or] KAR Title 405, Chapter 7 through 24; a [any] permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet. Provided however, the hearing officer shall recommend revocation of the [a] permit and forfeiture of the [a] bond or suspension of the permit if the permittee has [demonstrated a pattern of violations or] willfully failed to comply with an order for cessation and immediate compliance, if [or] the conditions of 405 KAR 10:050, Section 3(1) are met, or if the permittee has demonstrated a patter of violations of any requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions, and the permittee willfully violated said requirements or the violations were caused by the permittee's unwarranted failure to comply with those requirements;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons should not be eligible to receive another permit or conduct future operations; and

3. The hearing officer may recommend that a person or persons [permittee] be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or a [any] permit condition, when said [which] violations are found to exist on the basis of a preponderance of the evidence.

(12) Subject to subsection (5) of this section [Section 5(5) of this regulation], the hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth in Section 3(2) of this regulation for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty assessed in his final written report.

(13) Except as provided in Section 9 of this regulation for permit hearings, the hearing officer shall, within thirty (30) days of the close of the hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall mail, postage prepaid, a copy of his report and recommended order to all parties. The parties may file, within seven (7) days of receipt [mailing] of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension.

(16) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.085 and 350.032(2).

Section 6. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of preliminary hearing, notice of formal hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) [(1)] The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon

delivery of the envelope or as provided by subsection (2) [(3)] of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal government offices to accept and sign for 'addressee only' mail, signature by such authorized representative shall constitute service on the addressee; or

(b) [(2)] The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute [or rule, other than by subsection (1) of this section,] to deliver them, or to any person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) [(3) As an alternative to other methods of service specified by statute or regulation,] Service of process may be made upon a person issued a permit by the cabinet or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee (at the address [as] specified on the face of the permit, at the permanent address specified in the permit application, or at any new address that has been specified in writing by the permittee), or in the case of coal exploration, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service is effective upon acceptance of the document by any person at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (1)(c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsections (1) through (3) of this regulation, the provisions of 400 KAR 1:030 shall apply to service resulting from or attendant to formal hearings under Section 5 of this regulation. [The methods of service specified by this regulation shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.]

Section 7. Location of Hearings. [Preliminary hearings and formal hearings shall,] Upon written request filed by the cabinet or the person to whom the notice or order was issued and received within thirty (30) [fifteen (15)] days of the receipt [mailing] of the proposed penalty assessment, or, where the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return, the preliminary hearing or formal hearing shall [by the cabinet or the operator to whom the notice or order was issued,] be held at or reasonably close to the mine site, or at any other location acceptable to the parties. The department's appropriate regional office for [of the cabinet nearest to] the mine site shall be deemed reasonably close unless a closer location is requested by the cabinet or the person [operator] and agreed to by the hearing officer in his or her discretion.

Section 8. Temporary Relief. (1) Pending the completion of the investigation and hearings provided for in this regulation, the chief hearing officer may, subject to review by the secretary, grant temporary relief from any notice or order issued pursuant to 405 KAR 12:020, [or] permit determination, or bond release decision of the cabinet. Any request for such relief shall be in writing and shall contain a detailed statement giving reasons why such relief should be granted. The chief hearing officer may grant such temporary relief after making a written finding that such relief is warranted, and shall state the reasons for his or her finding. The chief hearing officer shall grant or deny such relief expeditiously: Provided that, where the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, the chief hearing officer shall grant or deny such temporary relief within five (5) days of receipt of such request.

(2) The chief hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, under such conditions as he or she may prescribe, if:

(a) A hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting such relief shows that there is substantial likelihood that the findings on the merits in a hearing conducted by the cabinet will be favorable to such person; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) Where a person requests temporary relief from a permit or coal exploration determination, the chief hearing officer may, under such conditions as he or she may prescribe, pending final determination of the proceeding, grant such temporary relief as he or she deems appropriate, if:

(a) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not effect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a

permit where a permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied.

Section 9. Review of Permit and Coal Exploration Determinations. Review of determinations by the cabinet on permits and revisions and renewals thereof, concerning issuance; denial; imposition of conditions; application for transfer, sale, or assignment of rights; or applications for coal exploration shall be conducted pursuant to this regulation, provided that the cabinet shall issue its final decision within twenty (20) days after the hearing, as set forth in KRS 350.090(1). The burden of proof shall be on the party seeking to reverse the determination of the cabinet. Temporary relief may be requested pursuant to Section 8 of this regulation.

Section 10. Orders to Abate and Alleviate. Whenever the secretary, pursuant to KRS 224.071, issues an order to abate and alleviate, the cabinet shall, as soon as possible, not to exceed ten (10) days thereafter, provide the person to whom the order was issued an opportunity to be heard. The holding of a hearing pursuant to this section shall not operate as a termination or stay of such an order or of the affirmative obligations imposed on any person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

Section 11. Penalties. (1) Any person or permittee who violates any of the provisions of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to the provisions therein, may be assessed a civil penalty of not more than $5,000 for each day during which such violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against any person issued an order pursuant to KRS 350.130(4).

(2) Whenever a violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) Such penalty for the failure to abate the violation shall not be assessed for more than thirty (30) days for each such violation. If the permittee has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 8 of this regulation, following a determination that the person requesting relief will suffer irreparable loss or damage from the application of the requirements, then the abatement period shall be extended until the date when the cabinet issues its final order concerning the violation in question.

(3) Any person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS Chapter 350 and KAR Title 405, Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or regulations promulgated pursuant thereto, or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Cabinet for Human Resources and Environmental Protection by the cabinet's office of general counsel, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If no judicial review is sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the cabinet or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the cabinet or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section 12. Intervention and Consolidation. (1) Any person may petition in writing for leave to intervene at any stage of a proceeding under this regulation.

(2) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why that interest is or may be adversely affected.

(3) The hearing officer shall grant intervention where the petitioner:

(a) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) Has an interest which is or may be adversely affected by the outcome of the

proceeding.

(4) If neither subsection (3)(a) nor (b) of this section [paragraph (a) nor paragraph (b) of subsection (3) above] applies, the hearing officer shall consider the following in determining whether intervention is appropriate:

(a) The nature of the issues;

(b) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's implementation of its statutory mandate.

(5) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the hearing officer.

(6) When proceedings involving the same permittee or a common question of law or fact are pending before the cabinet, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 13. Costs and Expenses. (1) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any proceeding held pursuant to this regulation which results in a final order of the cabinet.

(2) The petition for an award of costs and expenses, including attorneys' fees, must be filed with the cabinet within forty-five (45) days of receipt of the final order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(3) A petition filed under this section shall include the name of the party from which costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of such costs and expenses; and

(c) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(4) Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

(5) Appropriate costs and expenses including attorneys' fees may be awarded as follows:

(a) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, KAR Title 405, or permit conditions or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To any person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated a formal hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under this regulation or participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that any person applied for review pursuant to this regulation or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(6) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under this regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section 14. Judicial Review. The commencement of proceedings for judicial review of any determination of the cabinet shall not operate as a stay of the final order of the cabinet, unless specifically ordered by the court.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow

Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: 405 KAR 7:090 sets forth procedural and due process provisions for Kentucky's permanent regulatory program for surface mining. Although this amendment will revise verbage throughout 405 KAR 7:090, the most substantive changes pertain to the scheduling of preliminary hearings. The amendment will affect the majority of those persons who are cited with permanent program violations and wish to challenge those violations, or the attendant penalties, through the preliminary hearing process. In this respect, the cabinet anticipates that this amendment will affect approximately 900 persons annually.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment will impose a minor filing requirement on most persons desiring to challenge cabinet cited violations or cabinet assessed penalties. Such persons will incur additional expenses associated with preparing and submitting hearing requests; however, these expenses should be minimal. During Fiscal Year 1987, the cabinet held 1508 preliminary hearings. 603 of these hearings were ruled as defaults, principally because the party cited with the violation did not appear at the proceeding. Had this amendment been in effect during FY 1987, hearing requests would have been necessary in order to initiate the adjudication process for most of the 905 hearings that were attended by the cited parties. Under this amendment, the cabinet anticipates that the default rate for preliminary hearings will be reduced to near zero, with a corresponding reduction in the need for preliminary hearings. In light of the virtual elimination of defaults, under this amendment approximately 900 requests for preliminary hearings - submitted from parties who would not have defaulted under the current requirements - will be filed annually.

2. Continuing costs or savings: The first year expenses identified in subparagraph 1 above will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: As noted in paragraph (a) above, this amendment will establish a need for parties aggrieved by cabinet actions to file written notice if they wish the cabinet to schedule a preliminary hearing to review a cited violation or an assessed penalty.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: During Fiscal Year 1987, the cabinet scheduled 1508 preliminary hearings. Approximately 600 of these hearings were ruled as defaults because the person opposing the cabinet did not appear at the proceeding. Notwithstanding this high default rate, the cabinet incurred similar preparatory expenses for each of the 1508 hearings. Conservative estimates of the manpower and resource outlays associated with the 600 defaulted hearings exceed $80,000 - a substantial expense for hearings that never debated the issues. This amendment will revise the process used to schedule preliminary hearing. The amendment will eliminate the flaw requiring the cabinet to schedule hearings even if the "aggrieved" party does not wish to pursue the matter. Had the amendment been in effect for fiscal 1987, the cabinet would have saved over $80,000. For the future, the cabinet anticipates that the amendment will reduce the annual default rate to near zero, causing the cabinet to adjudicate approximately 900 preliminary hearings per year compared to the over 1500 preliminary hearings held in FY 1987. The amendment will also require that the cabinet distribute penalty assessments via certified mail. Since previous 405 KAR 7:090 did not require that such mailings be certified, this change will result in a minor additional expense to the cabinet.

2. Continuing costs or savings: The first year expenses and savings identified in subparagraph 1 above will continue for subsequent years.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: By eliminating the need to automatically schedule preliminary hearings, the cabinet's paperwork will be decreased; however, the new process will require that the cabinet track hearing requests, so, on balance, paperwork requirements will remain about the same.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not effect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, the cabinet has no alternative methods of implementing the changes embodied within this amendment.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not applicable to this amendment since, under federal and Kentucky laws, the hearings provisions of Kentucky's permanent program for coal mining must apply equally to all persons.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate) The federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) establishes the basis whereby state and federal authorities regulate surface mining. Title 5 of SMCRA contains the provisions whereby persons aggrieved by an action of the regulatory authority may challenge that action through an adjudicative process. Kentucky's implementation of these federal provisions is achieved through 405 KAR 7:090. The changes proposed for 7:090 are consistent with the plain language of Title 5 as well as the intent suggested by that

language. The most substantive of these changes pertain to the process whereby preliminary hearings are scheduled. The cabinet proposes to eliminate the process of automatically scheduling a preliminary hearing whenever any violation occurs. The cabinet will continue to automatically schedule preliminary hearings if the notice citing the violation requires cessation of mining; however, for all other notices, the aggrieved party must submit a written request if he wishes to challenge the cited violation or the assessed penalty. The SMCRA counterpart to these requirements is codified in Sections 521 and 525. Although these two sections pertain to federal inspections, SMCRA Section 518(i) requires that the same or similar procedures be adopted under state programs. As does the proposed amendment, SMCRA Section 521(a)(5) mandates that hearings be held when notices require cessation of mining. For any citation that does not cease mining, Section 525(a)(1) merely requires that the cited party have the opportunity to request a hearing on the matter. Since the federal Act does not require an automatic hearing for citations that do not require cessation of mining, the proposed amendment is consistent with the federal mandate.

2. Does the propoed regulation impose stricter requirements or other responsibilities on the regulated entitites than those required by the federal mandate? (Explain) The proposed amendment does not impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate. Justification for this statement is provided in paragraph 1 above. The remainder of the changes included in the propsed amendment are minor, largely editorial, and completely consistent with the mandate.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct such operations. The regulation specifies when permits are required, [requirements for continued operation under interim permits,] application deadlines, requirements for applications for permanent program permits, fees, verification of applications [permits], public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application [permit] approval or denial and relevant actions, term of the permits, conditions of [the] permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, the provisions of this regulation shall apply to all applications, [permits and] all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General [Permit] Requirements. (1) Permanent program permits required. No [On and after the date of primacy, no] person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by such operations[; except that, a person holding a valid interim program permit issued under Title 405, Chapters 1 or 3 is not required to obtain a permanent program permit until eight (8) months after the date of primacy for areas covered by the valid interim program permit that will be affected by surface coal mining operations after eight (8) months after the date of primacy].

(2) General filing requirements for permanent program permit[s] applications.

(a) [New areas permitted under the permanent program.] Each person who intends to engage in surface coal mining and reclamation operations [on an area not covered by a valid interim program permit] shall file a complete application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, and shall not begin such operations until the permit is granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until such revision is approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission is granted by the cabinet. [Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the cabinet not later than thirty (30) days after that succession is approved by the cabinet.]

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on such areas until the amendment is approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

[(f) Filing requirements for persons holding

valid interim program permits.]

[1. Persons who hold valid interim program permits to engage in surface coal mining and reclamation operations, and who will not engage in surface coal mining operations on such permit areas after eight (8) months after the date of primacy, are not required to submit applications for permanent program permits for such operations.]

[2. Notwithstanding any litigation contesting the approval of the Commonwealth's permanent regulatory program by the Secretary of the Interior, each person who holds a valid interim program permit to engage in surface coal mining and reclamation operations, and who intends to engage in surface coal mining operations on such permitted area after eight (8) months from the date of primacy, shall not later than two (2) months after the date of primacy file a substantially complete application, with such form and content as specified by the cabinet, for a permanent program permit for those portions of the previously permitted area which will be affected by surface coal mining operations eight (8) months after the date of primacy. The applicant shall complete the application as soon as possible after the two (2) months period, but no later than eight (8) months after the date of primacy.]

[3. Applications which are not submitted within the two (2) months period required by subparagraph 2 of this paragraph shall be treated as applications submitted in accordance with paragraph (a) of this subsection and shall not make the applicant eligible for the interim program extension under Section 3(3) and (4) of this regulation.]

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the provisions of the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and Title 405.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

[Section 3. Interim Program Permits. (1) Issuance of interim program permits after the date of primacy. During the first sixty (60) days after the date of primacy, the cabinet may issue, deny, revise or amend an interim program permit under the requirements of 405 KAR 1:005 or 405 KAR 3:005 for areas covered by an interim program application submitted prior to the date of primacy. Except as provided in subsection (2) of this section and Section 6 of 405 KAR 1:005 and 405 KAR 3:005:]

[(a) No application received by the cabinet after the date of primacy will be processed under 405 KAR 1:005 or 405 KAR 3:005; and]

[(b) No interim program shall be issued under 405 KAR 1:005 or 405 KAR 3:005 after sixty (60) days from the date of primacy.]

[(2) Revision of interim program permits after the date of primacy. The cabinet may revise a valid interim program permit at any time after the date of primacy under 405 KAR 1:005 or 405 KAR 3:005 in order to approve changes to methods of operation and to approve incidental boundary revisions where such revision is necessary for the continuation of the operation and the revision does not include additional areas from which coal will be removed.]

[(3) Continued operation under interim program permits beyond eight (8) months after the date of primacy. A person engaging in surface coal mining and reclamation operations under a permit issued by the cabinet in accordance with the requirements of the interim regulatory program under KRS Chapter 350 may engage in surface coal mining operations on those permitted areas beyond eight (8) months after the date of primacy if and only if:]

[(a) The person has applied for a permanent program permit under this chapter as required by Section 2(2)(f)2 of this regulation; and]

[(b) The cabinet has not yet:]

[1. Denied the permit with respect to such application; or]

[2. Received the applicant's bond and issued the permit with respect to such application within thirty (30) days of the decision to issue the permit; and]

[(c) The operations are conducted in compliance with Title 405, Chapters 1 and 3, the applicable requirements of KRS Chapter 350 and all terms and conditions of the interim program permit.]

[(4) Extension and expiration of interim program permits. Notwithstanding the expiration date contained in the valid interim program permit, all valid interim program permits shall expire eight (8) months after the date of primacy unless the conditions of subsection (3) of this section are met, in which case the interim program permit shall expire on the date the cabinet:]

[(a) Denies the permanent program permit; or]

[(b) Issues the permanent program permit or on the 30th day after the date of the decision to issue, whichever is sooner.]

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at [USGS seven and one-half (7 1/2) minute topographic map and, if necessary to show sufficient detail, an enlargement thereof of] a scale of [not to exceed] one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not

limited to, locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications.

(1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the cabinet may require.

(c) The application shall be complete with respect to all information required by this Title and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively [is] complete unless all design plans for the permit area are in [final,] detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed such data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided [to the applicant,] information which is made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or such other person who will serve as agent for service of notices and orders. Such designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. Such person shall continue as agent for service of process until such time as written revision of the permit is made to designate another person as agent.

(b) The applicant may designate [in the permit application,] persons authorized by the applicant to submit modifications to the application to the cabinet. If such designation is not made in the application, or in separate correspondence, the cabinet shall accept such modifications only from the applicant.

(6) General requirements for maps and plans.

(a)[1.] If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) [2.] Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of [between] 400 or [and] 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map. However, when the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) [3.] Where a map or drawing is required to be certified by [Where applicable, maps shall be prepared by or under the direction of] a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10 [by the registered professional engineer].

(d) [4.] All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, [and] signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10 [, where required by this Title, shall be certified by the registered professional engineer].

(e) [(b)] Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c). [surface coal mining operations which have been or will be conducted within the permit area in the following time periods:]

[1. Prior to August 3, 1977;]

[2. Between August 3, 1977 and May 3, 1978 (January 1, 1979 for persons who received a small operator's exemption in accordance with 405 KAR 1:030 or 405 KAR 3:030);]

[3. Between May 3, 1978 (January 1, 1979, for persons who received a small operator's exemption in accordance with 405 KAR 1:030 or 405 KAR 3:030) and eight (8) months after the date of primacy;]

[4. After issuance of the permit.]

[(7) Certifications by professional engineers. All certifications required to be made by

professional engineers shall be in accordance with 405 KAR 7:040, Section 10.]

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage [Permit] Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. Such fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of $375 for each application, plus an additional $75 for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which are not affected by surface operations and facilities. [For applications submitted prior to July 15, 1982, the amount of such fee shall be $250 plus fifty (50) dollars for each acre or fraction thereof of the area of land to be affected under the permit except that no acreage fees shall be required for surface areas overlying underground workings which are not affected by surface operations and facilities. For applications submitted on or after July 15, 1982, the above amounts shall be increased to $375 and seventy-five (75) dollars respectively.]

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application [such] fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) [(1)] of this regulation that the application is deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application is deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and [or] other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show [indicate] the north arrow [point] and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section; [and]

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except where public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)(a) and (b); [,] a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing; [, where the relocation is to occur, and the duration of the relocation.]

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and [The proposed postmining land use if different than the premining land use.]

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit is determined to be administratively complete [of the date of

notification to the applicant as to the initial completeness of the application under Section 13(1) of this regulation], the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local [Federal, state and local] government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and [general governmental entities and fish and wildlife and historic preservation agencies;]

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

[(b) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;]

[(c) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and]

[(d) The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.]

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining is proposed to occur, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies [on Permit Applications]. (1) Written comments or objections on [permit] applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies [entities] to whom notification is provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all such comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an [initial or revised] application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application [issuance of the permit], or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference is requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request such conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest

bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Title 405, Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed [uses or] relocation of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability. [Information contained in permit applications on file with the cabinet shall be open, upon written request, for public inspection and copying at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.]

(a) The cabinet shall make an application for a permit, major or minor revision, amendment, or renewal of a permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining will occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (1) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office at the same time that the changes are submitted to the Division of Permits.

(2) [(a)] Information pertaining to coal seams, test borings, core samples, or soil samples in [permit] applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected. [; and]

[(b) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record.]

[(2) The cabinet shall provide for procedures to maintain information required to be kept confidential under subsection (1) of this section separately from other portions of the permit application. This information shall be clearly identified as confidential by the applicant and submitted separately from other portions of the application.]

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Such information shall be clearly identified by the applicant and submitted separately from the remainder of the application. Where a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information is limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(b) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979.

Section 13. Department Review of [Permit] Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1), of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(2)(a) [(1)] Administrative [Initial] completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative [initial] completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) [cabinet] working days after the applicant's receipt of the initial notice of incompleteness. If, after [such] ten (10) working days, the cabinet determines that the application is still

incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) [(a)] A determination by the cabinet that the application is administratively [initially] complete shall be construed to mean that the application contains the major elements required by KRS Chapter 350 and Title 405, Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively [initially] complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination of administrative [initial] completeness shall not be construed to mean that the application is complete in every detail, nor shall it be construed to mean that any aspect of the application is technically sufficient or approvable.

[(b) For applications submitted under Section 2(2)(f)2 of this regulation, this subsection applies at the time of submission of the complete application, but not at the time of submission of a substantially complete application. Also, the time limits for cabinet action under this subsection shall not apply to applications submitted under Section 2(2)(f)2 of this regulation due to the large number of such applications which will be submitted in a short period of time. The cabinet will conduct the completeness determination for such applications as expeditiously as possible.]

(3) [(2)] Processing of complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) [(3)] If the cabinet determines from either the lists submitted as part of the application under 405 KAR 8:030, Section 3(3) or 405 KAR 8:040, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of any provision of SMCRA (P.L. 95-87) or KRS Chapter 350, and regulations promulgated pursuant thereto, the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit to the cabinet proof which is satisfactory to the cabinet and other agencies which have jurisdiction over such violation, that the violation has been or is in the process of being corrected; or [:]

[1. Has been corrected; or]

[2. Is in the process of being corrected.]

(b) Establish to the cabinet that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. In this case, the permit shall contain a condition requiring that if the administrative or initial judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with the provisions of paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the cabinet has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and such termination shall be set aside by the cabinet only when the cabinet has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.

(5) [(4)] No permit shall be issued if the cabinet determines that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA (P.L. 95-87), [or] KRS Chapter 350, or Title 405 KAR, Chapters 7 through 24 of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of SMCRA (P.L. 95-87), [or] KRS Chapter 350, or Title 405 KAR, Chapters 7 through 24. Irreparable damage to the environment is defined as any damage to the environment, in violation of SMCRA (P.L. 95-87), KRS Chapter 350, or Title 405 KAR, Chapters 7 through 24, that cannot be corrected by actions of the applicant. Before any final determination by the cabinet pursuant to this subsection the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090. [Such hearing shall be conducted pursuant to 405 KAR 7:090.]

Section 14. Criteria for Application [Permit] Approval or Denial. No [permit or revision for an] application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval [and made available to the applicant], that:

(1) The permit application is [accurate and] complete and accurate and in compliance with [and that] all requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 [have been complied with].

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and Title 405, Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact [general] area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance

outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030; [and]

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she [has] made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; [and]

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3); [and]

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5) The proposed operations will not adversely affect any publicly-owned parks or places included in the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4).

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)[(3)](a) of this regulation; or

(b) Made the demonstration required by Section 13(4)[(3)](b) of this regulation.

(8) The applicant has paid [submitted proof that] all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM [have been paid].

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA (P.L. 95-87) or KRS Chapter 350 of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of SMCRA (P.L. 95-87) or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR Title 405, Chapters 16 and 18. [Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.]

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) [(11)] The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under Title 405, Chapter 10 prior to the issuance of the permit.

(13) [(12)] The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

[(13) The proposed postmining land use of the permit area has been approved by the cabinet in accordance with the requirements of 405 KAR 16:210 or 405 KAR 18:220.]

(15) [(14)] The cabinet has made all specific approvals required under Title 405, Chapters 16 through 20.

(16) [(15)] The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC Sec. 1531 et seq.).

(17) [(16)] The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited such bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid such sum as the cabinet finds is adequate to reclaim such lands.

(18) [(17)] The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that such violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) [(18)] The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) [(19)] The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet are incorporated into the permit application and the surface coal mining operation is jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation is a previously mined area as defined in those sections.

Section 15. Criteria for Application [Permit] Approval or Denial Regarding Existing Structures. No application for a permit, [or] revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete application, that the provisions of 405 KAR 7:040, Section 4, are met.

Section 16. Application [Permit] Approval or

Denial Actions. (1) The cabinet shall take action on [permit] applications within the following time periods as appropriate:

[(a) A complete application submitted to the cabinet under Section 2(2)(f)2 of this regulation shall be processed by the cabinet so that an application is approved or denied within eight (8) months after the date of primacy, in accordance with KRS 350.060(2).]

(a) [(b)] 1. Except as provided for in paragraph (b) [(c)] of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application [shall be approved or denied] within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) [(1)] of this regulation, except that periods of temporary withdrawal under Section 13(3) [(2)](b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) [(c)] of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application [shall be approved or denied] within forty-five (45) working days after the notice of administrative completeness under Section 13(2) [(1)] of this regulation, except that periods of temporary withdrawal under Section 13(3) [(2)](b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application [shall be approved or denied] within fifteen (15) working days after the notice of administrative completeness under Section 13(2) [(1)] of this regulation, except that periods of temporary withdrawal under Section 13(3) [(2)](b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) [(c)] In the event that the notice, hearing and conference procedures as mandated by KRS Chapter 350 and this Title prevent a decision from being made [issued] within the time periods specified in paragraph (a) [(b)] of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

[(d) Where an application submitted under Section 2(2)(f)2 of this regulation also contains, within the proposed permit area, new lands which are not covered by a valid interim program permit, that application shall be processed under paragraph (a) of this subsection.]

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities: [If a permit conference has been held under Section 11 of this regulation, the cabinet shall provide its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.]

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and must include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application is denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial. [If no such permit conference has been held, the cabinet shall provide its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.]

[(4) The cabinet shall:]

[(a) Provide a copy of its decision to:]

[1. Each person and government official who filed a written objection or comment with respect to the application; and]

[2. The Regional Director of the Department of Surface Mining Reclamation and Enforcement together with a copy of any permit issued; and]

[(b) Publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located.]

(4) [(5)] If the cabinet decides to approve the application, it shall require that the applicant file the performance bond [or provide other equivalent guarantee] before the permit is issued, in accordance with the provisions of Title 405, Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county wherein the proposed surface coal mining and reclamation operations will be located.

[(6) Within ten (10) days after the issuance of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Title 405, Chapter 10, the cabinet shall notify the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area.]

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate [full and complete] for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for

equipment and for the opening of the operation with the need [of the operation, and this need is] confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and Title 405, Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not such conditions are set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and Title 405, Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized [approved] for the term of the permit; and which are subject to the performance bond [or other equivalent guarantee] in effect pursuant to Title 405, Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to: [The permittee shall allow the authorized representatives of the Secretary of the Interior, including but not limited to, inspectors and fee compliance officers, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to:]

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of such failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Title 405, Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and Title 405, Chapters 16 through 20, in accordance with the provisions of KRS Chapter 350[, Section 14(13),] and Title 405, Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

Section 19. [Department] Review of [Outstanding] Permits. (1)(a) The cabinet shall review each permit issued [and outstanding] under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued [and outstanding] permits will be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time [this

review], the cabinet may, by order, require [reasonable] revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and Title 405, Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is required by an order issued under Section 19 of this regulation.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under Title 405, Chapters 7 through 24.

(2) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where such construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;

7. Changes which may cause major impacts on the hydrologic balance;

8. Incidental boundary revisions that affect new watersheds;

9. Incidental boundary revisions that include diversions of perennial streams;

10. Incidental boundary revisions that include new areas from which coal will be removed, provided that such revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (18) through (21) [(15)]; 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (18) through (21) [(15)]; 15; 16(1) through (4) [, (3), (4)(a), (5)]; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative [initial] completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. [Prior to July 15, 1982,] Applications for major and minor revisions shall include a basic fee of $375 [250]. [Prior to July 15, 1982,] If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) [fifty (50)] dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which are not affected by surface operations and facilities. [On and after July 15, 1982, the above amounts shall be increased to $375 and seventy-five (75) dollars respectively.]

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit. [upon expiration of the term of the permit, in accordance with subsections (2) and (4) of this section. Permit renewal shall not include approval for extension of the permit area beyond the boundaries of the current permit.]

[(2) Complete applications for renewal.]

(2) [(a)] Contents of renewal applications. [Complete] Applications for renewal of permits shall be submitted [made] within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) [1. A statement of] The name and address of the permittee, the term of the renewal requested and [,] the permit number[, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal];

(b) [2.] A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) [3.] Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of $375;
[4. Prior to July 15, 1982, a fee of $250. On and after July 15, 1982, a fee of $375.]
(e) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and
(f) Any additional revised or updated information which may be required by the cabinet.
[(b) Processing and review of renewal applications.]
(3) [1.] Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.
[2. Before finally acting to grant the permit renewal, the cabinet shall require any additional performance bond needed by the permittee to comply with the requirements of subsection (4)(a)4 of this section, to be filed with the cabinet.]
(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.
(5) [(3)] Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.
(6) [(4)] Approval or denial of renewal applications.
(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that [, upon the basis of a complete application for renewal and completion of all procedures required under subsection (2) of this section, issue a renewal of a permit, unless it is established and written findings by the cabinet are made that]:
1. The terms and conditions of the existing permit are not being satisfactorily met; [or]
2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and Title 405, Chapters 7 through 24; [or]
3. The requested renewal substantially jeopardizes the applicant's [operator's] continuing responsibility to comply with KRS Chapter 350 and Title 405, Chapters 7 through 24 on existing permit areas; [or]
4. The applicant [operator] has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to Title 405, Chapter 10; [or]
5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or
6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.
(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.
(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, [and] to any persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.
(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General [Approval required]. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Title shall be made without the prior written approval of the cabinet, in accordance with this section.
(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall: [Obtaining approval:]
(a) Provide a complete application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided: [Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued under this Title shall, prior to the date of such transfer, assignment or sale:]
1. The name and address of the existing permittee and the permit number;
2. A brief description of the proposed asction requiring approval;
3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10;
4. Applicable waivers in accordance with 405 KAR 24:040, Section 2(5). Unless the waivers originally submitted with the permit application or subsequent revisions or amendments stipulate that they are transferable, new waviers must be executed in favor of the proposed successor. If such waivers are not obtained, the successor may only conduct reclamation operations within the area previously exempted by waiver that were disturbed by the original permittee and may not extract coal within this area; and
5. A processing fee of $375.
[1. Obtain performance bond coverage for the permit area by: obtaining transfer of the original bond; providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee; and]
[2. Provide the cabinet with an application for approval of such proposed transfer, assignment, or sale, including: a fee of $250 for applications submitted prior to July 15, 1982, a fee of $375 for applications submitted on and after July 15, 1982; the name and address of the existing permittee; the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent; for surface mining activities the same information as is required by 405 KAR 8:030, Sections 2, 3, 4, 5(3), 7, and 8, for applications for new permits for those activities; or for underground mining activities, the same information as is required by 405 KAR 8:040, Sections 2, 3, 4, 5(3), 7, and 8, for applications for new permits

for those activities.]

[3. Obtain the written approval of the cabinet for transfer, assignment, or sale of rights, according to paragraph (c) of this subsection.]

(b)[1.] Advertise [The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise] the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county in which the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the [and particular] geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section [subparagraph 2 of this paragraph].

[2. Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the cabinet, within fifteen (15) days from the date of publication of the advertisement.]

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred. [The cabinet may, upon the basis of the applicant's compliance with the requirements of paragraphs (a) and (b) of this subsection, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:]

[1. The person seeking approval would be eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation.]

[2. The applicant has, in accordance with paragraph (a)1 of this subsection, submitted a performance bond or other guarantee as required by Title 405, Chapter 10 and at least equivalent to the bond or other guarantee of the original permittee; and]

[3. The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this chapter as required in subsection (3) of this section.]

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement. [Requirements for new permits for persons succeeding to rights granted under a permit.]

[(a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.]

[(b) Pursuant to subsection (2)(c)3 of this section, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall:]

[1. Make application for a new permit under this chapter, if the change involves conducting operations outside the original permit area; or]

[2. Make application for a revised permit under Section 20 of this regulation.]

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor: [Proof of transfer, sale or assignment of rights. The successor in interest shall submit proof of the execution of the transfer, sale or assignment of rights within fifteen (15) days following execution of the agreement between the prior permittee and the successor in interest.]

(a) Is eligible to receive a permit in accordance with the criteria specified in Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with Title 405, Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5), the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of such proof, the cabinet will reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) [(5)] Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area provided that the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under this Title for reclamation of the areas affected by all prior permittees.

[(6) Interim program permits. The procedures

of this section, including prior approval, public notice and comment, issuance of approval of transfer, sale or assignment of rights, submission of proof of execution of the agreement, and release of bond liability, shall apply to successors in interest to a valid interim program permit. However, the application content, performance bond requirements, and criteria for approval shall be modified by the cabinet to be consistent with the requirements of the interim program.]

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit can be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation[; revisions and renewals]. All such extensions must be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under this Title.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or Title 405, Chapters 7 through 24.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation will effect applicants for coal mining permits; applicants for permit renewal; and applicants for transfer, assignment, or sale of permit rights. During fiscal year 1987, the cabinet processed 866 applications for new permits and 116 applications for transfer, assignment, or sale of permit rights. No renewal applications were processed during FY 1987. To a lesser degree, this amendment will also effect persons applying for permit revisions and amendments. In FY 1987, the cabinet processed 258 minor revisions, 134 major revisions, and 81 amendments. The cabinet anticipates that future permitting activities will remain near the FY 1987 levels, with the exception of permit renewals. 1988 statistics indicates that the permit renewal rate has increased, and the cabinet expects that rate to continue well above the 1987 level.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment will impose a few additional application requirements on the entities noted above. Additional costs will be attendant to these application requirements.

2. Continuing costs or savings: The costs existing the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendment revises the list of criteria the cabinet uses in determining whether to approve or deny a permit application. In theory, by changing the list, the approval/denial criteria change, and some of those who may be able to obtain a permit under the current list may not be eligible under the new one. However, the cabinet anticipates that this will be a rarity.

(b) Reporting and paperwork requirements: This amendment will impose a few additional reporting and paperwork requirements. These additional requirements are largely tied to the imposition of additional application requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment will require the cabinet to provide written notification to additional governmental and private agencies and/or individuals. Costs associated with transmittal preparation and document mailing will increase as a result of these additional notification requirements.

2. Continuing costs or savings: The costs existing the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: As noted above, the cabinet's paperwork will

increase as a result of this amendment. This increase will be caused by additional notification requirements imposed by the amendment.

(3) Assessment of anticipated effect on state and local revenues: The amendment should not effect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 773, 774, 775, 777, and 778.

2. State compliance standards. The proposed amendments sets forth permit application requirements and standards for permit processing.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate sets forth permit application requirements and standards for permit processing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because stricter standards or additional or different responsibilities are not proposed, this item is not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 8:020. Coal exploration.

RELATES TO: KRS 350.057, 350.610
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.057, 350.060, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to exploration operations. This regulation specifies when notice to the cabinet is required and when prior written approval is needed from the cabinet. This regulation further specifies the application process, information requirements, and hearing and compliance requirements.

Section 1. Exploration in an Area not Designated Unsuitable for Mining and Removing [of Less Than] 250 Tons or Less of Coal. (1) Any person who intends to conduct coal exploration during which [less than] 250 tons or less of coal will be removed and which will not take place in an area designated unsuitable for mining pursuant to KAR Title 405 Chapter 24 [in the area to be explored] shall, at least twenty-one (21) days prior to conducting the exploration, file with the cabinet a written notice of intention to explore.

(2) The notice shall include:

(a) The name, address, and telephone number of the person seeking to explore;

(b) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(c) A precise description of the exploration area (including latitude, longitude, nearest community, and USGS quadrangle);

(d) A statement of the period of intended exploration;

(e) The names and addresses of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored; and

(f) A description of the method of exploration to be used and the practices that will [proposed to] be followed to protect the environment and to reclaim the area from adverse impacts [as a result] of the exploration activities in accordance with the applicable requirements of 405 KAR 20:010. [; and]

[(g) A statement as to whether the proposed coal exploration will be conducted within an area which has been designated unsuitable for mining pursuant to Title 405, Chapter 24.]

(3) The cabinet shall, in accordance with Section 3 of this regulation, place such notices on public file and make them available for public inspection and copying at the appropriate regional office of the cabinet.

(4) Any person who conducts coal exploration activities pursuant to this section which substantially disturb the natural land surface shall comply with 405 KAR 20:010.

[(5) If the cabinet determines that the area of proposed coal exploration will be within an area designated unsuitable for mining pursuant to Title 405, Chapter 24, the exploration shall be subject to approval by the cabinet. The cabinet shall, within fifteen (15) days of

receipt of the applicant's written notice filed pursuant to subsection (1) of this section, provide written notice to the applicant that either:]

[(a) The exploration is approved; or]

[(b) The exploration threatens to interfere with the values for which the area has been designated unsuitable for mining, and therefore is not approved until the applicant has submitted to the cabinet an acceptable plan to conduct the exploration so as not to interfere with such values; or]

[(c) The exploration is incompatible with the values for which the area was designated unsuitable for mining, and therefore is not approved.]

[(6) Any person whose interests are or may be adversely affected by any actions of the cabinet pursuant to subsection (5) of this section shall have recourse to administrative and judicial review pursuant to 405 KAR 8:010, Section 24.]

Section 2. Exploration Removing [of] More Than 250 Tons of Coal and Exploration in an Area Designated Unsuitable for Mining, Regardless of Tonnage. (1) General. Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed, or which will take place in a area designated unsuitable for mining pursuant to KAR Title 405, Chapter 24, [in the area to be explored,] shall, prior to conducting the exploration, submit an application and obtain the written approval of the cabinet in accordance with this section.

(2) Contents of application for approval. Each application for approval, in the number and form required by the cabinet, shall contain, at a minimum:

(a) The name, address, and telephone number of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(c) An exploration and reclamation operations plan, including:

1. A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (e) of this subsection, including latitude, longitude, and nearest community; surface topography; geological, surface water, and other physical features; vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and known archaeological resources located within the proposed exploration area;

2. A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

3. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

4. The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

5. A description of the measures to be used to comply with the applicable requirements of 405 KAR 20:010; and

6. A statement as to whether the proposed coal exploration will be conducted within an area which has been designated unsuitable for mining pursuant to KAR Title 405 Chapter 24. If so, the application shall include a description of the measures to be taken so as not to interfere with the values for which the area was designated unsuitable;

(d) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(e) 1. A USGS seven and one-half (7 1/2) minute topographic map marked showing the area of land to be affected and location of drill holes or excavations, and

2. A map at a scale of 1:6000 (one (1) inch equals 500 feet) or larger, showing the areas of land which may be affected by the proposed exploration and reclamation. The map shall also specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 USC Sec. 1531 et seq.); [and]

(f) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation;

(g) A justification of the necessity to remove more than 250 tons of coal from the area during exploration; and

(h) [Prior to July 15, 1982, a fee of $250. On or after July 15, 1982,] A fee of $375.

(3) Public notice and opportunity to comment. Public notice of the complete application and opportunity to comment shall be provided as follows:

(a) As contemporaneously as possible with receipt of written notification from the cabinet under subsection (4)(a) of this section that the application is determined to be complete, public notice of the filing of the complete application with the cabinet shall be published by the applicant in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county in which the exploration area is located.

(b) The public notice shall state the name and business address of the person seeking approval, the date of the filing of the complete application, the address of the cabinet at which written comments on the application may be submitted, the closing date of the public comment period under paragraph (c) of this subsection, and a description of the general area of exploration.

(c) Any person with an interest which is or may be adversely affected shall have the right to file with the cabinet written comments on the complete application within thirty (30) days of the publication of the public notice under paragraph (a) of this subsection.

(4) Processing of applications.

(a) Within ten (10) working days of receipt of an application for approval of coal exploration operations, the cabinet shall provide written notification to the applicant as to the completeness of the application. The date of such written notification shall be deemed the date of filing of the complete application. A determination by the cabinet that the application is complete shall not be construed to mean that the application is technically sufficient.

(b) The cabinet shall act upon a complete application within sixty (60) days after the filing of the complete application.

(c) The cabinet shall approve a complete application filed in accordance with this regulation, if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

1. Will be conducted in accordance with KRS Chapter 350, 405 KAR 20:010, and this regulation;

2. Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 USC 1533) or result in the destruction or adverse modification of critical habitat of those species;

3. Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the cabinet and the agency with management responsibility over such areas; [and]

4. If located within an area designated unsuitable for mining, will not be incompatible with the values for which the area was designated unsuitable for mining; and

5. If removal of more than 250 tons of coal has been proposed, that such removal is justified. [Requires that more than 250 tons of coal be removed and the cabinet is satisfied that removal of more than 250 tons of coal is justified.]

(5) Terms of approval. Each approval issued by the cabinet shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with KRS Chapter 350, this regulation, and 405 KAR 20:010.

(6) Notice and hearing:

(a) The cabinet shall notify the applicant, [and] the appropriate local government officials, and all commenters on the application, in writing, of its decision on [to approve or disapprove] the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The cabinet shall provide public notice of approval or disapproval of each application by publication of notice in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county in which the proposed exploration operations are located.

(b) Any person having an interest [with interests] which is [are] or may be adversely affected by a decision of the cabinet pursuant to paragraph (a) of this subsection shall have the opportunity for administrative and judicial review as are set forth in 405 KAR 8:010, Section 24.

Section 3. Public Availability of Information. (1) Except as provided in subsection (2) of this section, all information submitted to the cabinet under this regulation shall be made readily available for public inspection and copying pursuant to Kentucky open record statutes KRS 61.870 to 61.884, at the appropriate Regional Office of the Department of Surface Mining Reclamation and Enforcement.

(2)(a) The cabinet shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the cabinet determines that the information is confidential.

(b) The cabinet shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(c) Information requested to be held as confidential under this subsection shall not be made publicly available until after notice and opportunity to be heard is afforded persons seeking or opposing disclosure of the information.

Section 4. Compliance. All coal exploration and reclamation operations which substantially disturb the natural land surface [or which remove more than 250 tons of coal] shall be conducted in accordance with the coal exploration requirements of KRS Chapter 350, this regulation, and 405 KAR 20:010, and any conditions on approval for exploration and reclamation imposed by the cabinet.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment will effect those persons intending to conduct coal exploration operations after the amendment is adopted. During the first five

months of 1988, the cabinet received 200 coal exploration notices, and as of May 31, 1988, there were 608 coal exploration operations in effect. Past trends indicate that future activities will remain at about this same level.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment will require that persons intending to conduct coal exploration operations in an area deignated unsuitable for mining publish a notice of their intent, submit an exploration application accompanied by a $375 fee, and obtain prior approval from the cabinet. Additional costs will be attendant to each of these requirements.

2. Continuing costs or savings: The costs existing the first year will continue in subsequent years for anyone intending to explore in an area designated unsuitable for mining.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and this amendment will have no effect on competition.

(b) Reporting and paperwork requirements: As noted above, this amendment will impose application and public notice requirements on persons intending to conduct coal exploration operations in an area designated unsuitable for mining.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amendment will impose additional notification requirements on the cabinet for two classes of coal exploration applications: 1) those proposing to remove more than 250 tons of coal, and 2) regardless of tonnage removed,those proposing to disturb an area designated unsuitable for mining. Because exploration operations in either of these two categories are a rarity, the additional notification requirements will have minimal implementation costs.

2. Continuing costs or savings: The costs existing the first year will continue for subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs.

(b) Reporting and paperwork requirements: The notification requirements discussed above constitute the only additional reporting and paperwork requirements that this amendment will impose on the cabinet.

(3) Assessment of anticipated effect on state and local revenues: The amendment will not effect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate this amendment.

(a) Necessity of proposed regulation if in conflict: Because no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Because no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 772, as created by federal register 48 FR 40621 et seq., published September 8, 1988, and as revised by federal register 51 FR 41952 et seq., published November 20, 1986.

2. State compliance standards. This amendment revises the notice and application requirements for persons intending to conduct coal exploration. These changes stem from two sources: the federal mandate, and a settlement agreement reached in recent litigation against the cabinet. In addition to some relataively minor changes, the amendment requires that persons intending to conduct coal exploration in an area designated unsuitable for mining publish public notice of the operation, file with the cabinet an application for the disturbance, and obtain the prior approval of the cabinet. The amendment also requires that the cabinet distrtibute a notice to all commenters telling of the decision on the exploration application.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate sets forth notice and application requirements for persons intending to conduct coal exploration. The mandate requires that persons intending to conduct coal exploration in an area designated unsuitable for mining publish public notice of the operation, file an application for the disturbance with the regulatory authority, and obtain the prior approval of the regulatory authority. The federal mandate also requires that the cabinet distribute a notice to all commenters telling of the decision on the exploration application.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because stricter standards or additional or different responsibilities are not proposed, this item is not applicable.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Proposed Amendment)

405 KAR 8:050. Permits for special categories of mining.

RELATES TO: KRS 350.093, 350.445, 350.450, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.093, 350.151, 350.450, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations, including certain special categories of mining. This regulation sets forth permit application requirements for special mining categories including mining on prime farmland, augering, in situ processes, off-site coal preparation plants, mountaintop removal mining, and mining on steep slopes. This regulation sets forth the only variance from the requirement to return to approximate original contour in steep slopes. This regulation sets forth the manner in which the contemporaneous reclamation requirements can be met for combined surface and underground mining activities.

Section 1. In Situ Processing Activities. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(2) Application requirements. Any application for a permit for operations covered by this section shall be made according to all requirements of this chapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operation involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 405 KAR 20:080, including:

(a) Delineation of proposed holes and wells and production zone for approval of the cabinet;

(b) Specifications of drill holes and casing proposed to be used;

(c) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(d) Plans for monitoring surface and groundwater and air quality, as required by the cabinet.

(3) Criteria for approval. No permit shall be issued for operations covered by this section unless the cabinet first finds, in writing, upon the basis of a complete application made in accordance with subsection (2) of this section that the operation will be conducted in compliance with all requirements of this chapter relating to underground mining activities, and 405 KAR 20:080 and Title 405, Chapter 18.

Section 2. Augering. (1) General. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations. Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 405 KAR 20:030. No permit shall be issued for any operations covered by this section unless the cabinet finds, in writing, that in addition to meeting all other applicable requirements of this chapter, the operation will be conducted in compliance with 405 KAR 20:030.

(2) Augering on previously mined lands.

(a) In addition to other requirements of Title 405, Chapter 8, each application for a permit to conduct auger mining on an area mined prior to May 3, 1978, and not reclaimed to the standards of Title 405 shall contain such information as the cabinet deems necessary to describe the proposed affected area and method of operation and show that the proposed method of operation will result in stable postmining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities.

(b) If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in adverse impact to the proposed permit area or adjacent area, the permit shall not be issued.

(c) The cabinet shall, consistent with all applicable requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, issue a permit if the applicant demonstrates that the proposed surface coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of the previously mined area.

(d) The cabinet shall ensure that all applicable performance standards can be met.

Section 3. Prime Farmlands. (1) Applicability. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(a) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977.

(b) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977. For the purposes of this paragraph, "renewal" of a permit shall mean a decision by the cabinet to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the cabinet to allow changes in the method of mining operations within the original permit area, or the decision of the cabinet to allow incidental boundary changes to the original permit.

(c) Lands included in any existing surface coal mining operation, for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

1. Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

2. The permittee had a legal right to mine the lands prior to August 3, 1977 through ownership, contract, or lease but not including an option to buy, lease or contract; and

3. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be a part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

4. A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include noncontiguous parcels if the permittee can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were a part of a single permitted operation. For the purpose of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds, or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one (1) surface coal mining operation.

5. For the purposes of this paragraph a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing.

(d) The following facilities associated with an underground mining activity, if the facilities affect a minimal amount of land and if the facilities are actively used over extended periods of time:

1. Coal processing plants;
2. Support facilities; and
3. Roads.

(2) Application requirements. If land within the proposed permit area is identified as prime farmland under 405 KAR 8:030, Section 21 or 405 KAR 8:040, Section 21, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(a) A soil survey of the permit area conducted by the SCS according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (SCS) and 18 "Soil Survey Manual" (SCS) as incorporated by reference in 405 KAR 7:015. The SCS establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. The National Soils Handbook is available for review at area and state SCS offices.

1. The soil survey shall include a soils map, a description of each soil mapping unit, and profile descriptions of each soil using representative descriptions from the soil survey area as determined by the SCS including, but not limited to, soil-horizon depths, textures, pH values, and consistence for each prime farmland soil unit within the permit area.

2. In addition to the representative soil profile description provided by the SCS, the applicant may submit site-specific soil profile descriptions of the permit area prime farmland soil mapping units. These descriptions shall be prepared by persons meeting the qualification requirements of the SCS prime farmland specifications incorporated by reference in 405 KAR 20:040. These descriptions must meet NCSS standards and shall include the name, address and qualifications of the soil scientist that prepared them. If such on-site descriptions are not obtained and included in the application, then the representative soil profile descriptions provided by the SCS shall be deemed by the cabinet as representative of the soils in the permit area and the soil-horizon depths and other data therein shall serve as a basis for determining whether reclaimed prime farmland areas have been restored to proper depth and meet other reconstruction standards of 405 KAR 20:040, Section 4.

3. Bulk density of the prime farmland soils prior to mining shall be documented and included in the application. These densities shall be obtained either by testing samples from each soil mapping unit by ten (10) inch soil layers or by using estimates provided for each soil series by the SCS.

4. The cabinet may require the applicant to provide information on other physical and chemical soil properties as needed to make a determination that the applicant has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 405 KAR 20:040.

(b) A detailed plan for soil removal, storage, and reconstruction which demonstrates that the applicant has the technological capability to comply with 405 KAR 20:040. The plan shall include at a minimum:

1. The proposed methods and types of equipment to be used for soil removal, storage, and reconstruction, including equipment operation patterns, use of ripping and chiseling, stockpile locations and erosion control measures, etc.

2. A description of measures to be taken to avoid excessive compaction of soils.

3. A description of measures to be taken to ensure that soil removal, handling, and reconstruction operations shall be conducted within soil moisture ranges that will minimize compaction.

4. A description of any soil amendments to be applied.

5. Maps, plans, and cross-sections depicting the location and acreages of reconstructed prime farmland soil mapping units, final grading configuration, drainage and erosion control measures.

6. Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes according to the requirements of 405 KAR 20:040, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area. The demonstration for soil substitutes or mixtures shall include analyses performed by a qualified soil scientist and such analyses of physical and chemical parameters of the original soils and the substitute soil materials or soil mixtures as required by the cabinet (which shall be conducted by a qualified laboratory).

(c) A plan for revegetation, crop production and demonstration of restoration of soil productivity in conformance with 405 KAR 20:040, Section 5. The cabinet may allow detailed cropping plans, including items such as identification of reference crops, locations of test plots, and yield measurement methodologies, to be submitted after issuance of the permit, as a revision to the permit, provided that the permit is conditioned to require submission of the detailed plan at least one (1) year prior to

initiation of crop production on the reclaimed area for the purpose of demonstration of compliance with 405 KAR 20:040. The initial revegetation plan, however, must be included in the application before the permit is issued. Permits issued prior to February 4, 1986 [the effective date of this amendment] shall be revised to comply with this paragraph at least one (1) year prior to initiation of crop production on the reclaimed area for the purpose of demonstration of compliance with 405 KAR 20:040.

(3) Cabinet consultation with the SCS.

(a) Before any permit is issued for areas that include prime farmlands, the cabinet shall consult with the state conservationist, SCS.

(b) The state conservationist shall provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (2) of this section. If the state conservationist considers those methods to be inadequate, he or she shall suggest revisions to the cabinet resulting in more complete and adequate reconstruction.

(4) Criteria for approval. A permit for the mining and reclamation of prime farmland may be granted by the cabinet, if it first finds, in writing, upon the basis of a complete application, that:

(a) The approved proposed postmining land use of these prime farmlands will be cropland;

(b) The permit incorporates as specific conditions the contents of the plan submitted under subsection (2) of this section, after consideration of any revisions to that plan suggested by the state conservationist under subsection (3) of this section;

(c) The applicant has the technological capability [There is a technologically feasible plan] to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(d) The proposed operations will be conducted in compliance with the requirements of 405 KAR 20:040 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of Title 405, Chapters 7 through 24.

Section 4. Mountaintop Removal Mining. (1) Applicability. This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(2) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 405 KAR 20:050, Section 1(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

(3) Criteria for approval. The cabinet may issue a permit for mountaintop removal mining, without regard to the requirements of 405 KAR 16:190 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(a) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use. [and, if:]

(b) [1.] After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the cabinet to constitute an equal or better economic or public use of the affected land compared with the premining use. [;]

(c) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

1. Compatible with adjacent land uses;

2. Obtainable according to data regarding expected need and market;

3. Assured of investment in necessary public facilities;

4. Supported by commitments from public agencies where appropriate;

5. Practicable with respect to private financial capability for completion of the proposed use;

6. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

7. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

[2. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210;]

(d) [3.] The proposed use would be consistent [compatible] with adjacent land uses and existing state and local land use plans and programs. [; and]

(e) [4.] The cabinet has provided, in writing, an opportunity of not more than sixty (60) days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any state or federal agency which the cabinet, in its discretion, determines to have an interest in the proposed use.

(f) [(b)] The applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 405 KAR 16:190, the operation will be conducted in compliance with the requirements of 405 KAR 20:050;

(g) [(c)] The requirements of 405 KAR 20:050 are made a specific condition of the permit;

(h) [(d)] All other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 are met by the proposed operations;

(i) [(e)] The permit is clearly identified as being for mountaintop removal mining.

(4) Periodic review.

(a) Any permits issued under this section shall be reviewed by the cabinet to evaluate the progress and development of mining activities to establish that the permittee is proceeding in accordance with the terms of the permit:

1. Within the sixth month preceding the third year from the date of its issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit term.

(b) Any review required under paragraph (a) of this subsection need not be held if the permittee has demonstrated and the cabinet

finds, in writing, within three (3) months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

(5) Modifications of permit. The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the cabinet, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 5. Steep Slope Mining. (1) This section applies to any persons who conduct or intend to conduct steep slope surface coal mining and reclamation operations, except:

(a) Where an applicant proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(b) Where a person obtains a permit under the provisions of Section 4 of this regulation; or

(c) To the extent that a person obtains a permit incorporating a variance under Section 6 of this regulation.

(2) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

(3) No permit shall be issued for any operations covered by this section, unless the cabinet finds, in writing, that in addition to meeting all other requirements of this chapter, the operation will be conducted in accordance with the requirements of 405 KAR 20:060, Section 2.

Section 6. Variances from Approximate Original Contour Restoration Requirements for Nonmountaintop Removal, Steep Slope Mining. (1) The cabinet may issue a permit for nonmountaintop removal, steep slope mining which includes a variance from the requirements of 405 KAR 16:190, 18:190 and 20:060, Section 2(3) to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the cabinet finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the requirements of 405 KAR 20:060, Section 3 are met. [General.]

[(a) Applicability. This section applies to nonmountaintop removal, steep slopes surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour required by 405 KAR 16:190 or 405 KAR 18:190 and 405 KAR 20:060, Section 2(3).]

[(b) This section provides for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to:]

[1. Improve watershed control of lands within the permit area and on adjacent lands, when compared to the watershed control which would exist were the area restored to the approximate original contour; and]

[2. Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.]

[(2) Criteria for approval. The cabinet may issue a permit for surface mining activities incorporating a variance from the requirements for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:]

[(a) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.]

[(b) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.]

[(c) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 405 KAR 16:210 or 405 KAR 18:220, as appropriate.]

[(d) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if:]

[1. There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges had the area been restored to approximate original contour, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws; or, there will be an increase in stream flow during times of the year when the stream is normally at low flow or dry conditions and such increase in stream flow is determined by the cabinet to be beneficial to public or private users or the ecology of such streams; and]

[2. The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or groundwater.]

[(e) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall show an understanding that the variance could not be granted without the surface owner's request.]

[(f) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 405 KAR 20:060, Section 3.]

[(g) All other requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 will be met by the proposed operations.]

(2) [(3)] If a variance is granted under this section:

[(a) The requirements of 405 KAR 20:060, Section 3 shall be made a specific condition of the permit.]

(a) A statement shall be listed on the permit making the requirements of 405 KAR 20:060, Section 3 a specific condition.

(b) The permit shall be specifically marked as

containing a variance from approximate original contour.

(3) [(4)] Periodic review.

(a) Any permits incorporating a variance issued under this section shall be reviewed by the cabinet at least every thirty (30) months following the issuance of the permit to evaluate the progress and development of the mining activities, to establish that the permittee is proceeding in accordance with the terms of the variance. [:]

[1. Within the sixth month preceding the third year from the date of this issuance;]

[2. Before each permit renewal; and]

[3. Not later than the middle of each permit term.]

(b) If the permittee demonstrates to the cabinet [at any of the times specified in paragraph (a) of this subsection] that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24, the review required in paragraph (a) of this subsection [at that time] need not be held.

(5) Modifications of permit. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the cabinet, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24.

Section 7. Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Operations. (1) Applicability.

(a) This section applies to any permittee or permittees who conduct or intend to conduct combined surface mining activities and underground mining activities where compliance with the time frames for reclamation as specified in 405 KAR 16:020, Section 2, is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operations for the surface mining activities can be completed.

(b) This section provides only for delay in reclamation of surface mining activities, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(2) Application requirements. Any applicant who desires to obtain a variance under this section shall file with the cabinet complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans which:

(a) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(b) Show how multiple future disturbances of surface lands or waters will be avoided;

(c) Identify the specific surface areas for which a variance is sought and the particular sections of KRS Chapter 350 and Title 405, Chapters 7 through 24 from which a variance is being sought;

(d) Show how the activities will comply with 405 KAR 16:010, Section 3 and other applicable requirements of Title 405, Chapters 7 through 24;

(e) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(f) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(g) Show how temporary off-site storage of spoil will be conducted to comply with the requirements of KRS Chapter 350 and 405 KAR 18:190, Section 6.

(3) Criteria for approval. A permit incorporating a variance under this section may be issued by the cabinet if it first finds, in writing, upon the basis of a complete application filed in accordance with this section that:

(a) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(b) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resources and will avoid multiple future disturbances of surface land or waters;

(c) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of Title 405, Chapters 7 through 24 and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(d) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(e) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by KRS Chapter 350 and 405 KAR 16:020;

(f) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 405 KAR 16:010, Section 3 and other applicable requirements of this Title;

(g) Temporary off-site storage of spoil will comply with the requirements of KRS Chapter 350 and 405 KAR 18:190, Section 6;

(h) Liability under the performance bond required to be filed by the applicant with the cabinet pursuant to Title 405, Chapter 10 will be for the duration of the underground mining activities and until all requirements of Title 405, Chapter 10 have been complied with; and

(i) The permit for the surface mining activities contains specific conditions:

1. Specifying the particular surface areas for which a variance is authorized; and

2. Providing a detailed schedule for reclamation in lieu of requirements of the time frames specified in 405 KAR 16:020, Section 2.

(4) Periodic review. Variances granted under permits issued under this section shall be reviewed by the cabinet no later than three (3) years from the dates of issuance of the permit and any permit renewals.

Section 8. Coal Processing Plants Not Located Within the Permit Area of a Specified Mine. (1) Applicability. This section applies to any

person who operates or intends to operate coal processing plants not within a permit area of a specific mine, other than such plants which are located at the site of ultimate coal use. [Notwithstanding the provisions of 405 KAR 7:015, the provisions of RAM #33, "Coal Processing Operations and Crushing and Loading Facilities," are null and void.]

(2) Permit required. Any person who operates or intends to construct or operate such a coal processing plant shall obtain a permit from the cabinet under Title 405, Chapters 7 through 24.

(3) Previously exempted operations. This subsection applies only to those coal processing plants subject to 405 KAR 20:070, Section 5.

(a) On or before February 1, 1986, all persons operating a coal processing plant who intend to operate after August 1, 1986 shall file an initially complete (as defined in 405 KAR 8:010, Section 13(1)(a)) permit application under 405 KAR Chapters 7 through 24. No person may operate a coal processing plant after August 1, 1986 unless that operation is being conducted under a permit issued under 405 KAR Chapters 7 through 24, except that a person may continue to operate a coal processing plant after August 1, 1986 without a permit if:

1. An initially complete permit application has been timely filed. "Timely filed" shall mean filed on or before February 1, 1986, or if filed within that time but determined to be initially incomplete, resubmitted within fifteen (15) calendar days of being served notice by the cabinet that the application is initially incomplete. Such notice shall be served in accordance with 405 KAR 7:090, Section 6.

2. The cabinet has yet to issue or deny the permit; and

3. The person complies with the performance standards of 405 KAR 20:070.

(b) The applicant shall file a performance bond under 405 KAR Chapter 10 within sixty (60) calendar days of being served notice of the decision by the cabinet to issue the permit. Such notice shall be served in accordance with 405 KAR 7:090, Section 6. If the performance bond is not filed within that time the cabinet shall deny the permit application.

(c) Any time limits for cabinet action specified in 405 KAR 8:010 shall not apply to permit applications filed under this subsection; provided, however, the cabinet shall make every effort to timely review and issue or deny such permit applications prior to August 1, 1986.

(4) Application.

(a) Any application for a permit for operations covered by this section shall be in accordance with 405 KAR 8:030 and, as applicable, 405 KAR 8:050 and shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and drawings of the construction, operation, maintenance, reclamation and removal of the coal processing plants. The plan shall demonstrate that those operations will be conducted in compliance with 405 KAR 20:070.

(b) For permit applications for operations subject to subsection (3) of this section, the requirements of 405 KAR 8:030, Section 21, and 405 KAR 8:050, Section 3, shall not apply to lands disturbed by the coal processing plants prior to December 1, 1985.

(c) Permit applications for operations subject to subsection (3) of this section, which were timely filed in accordance with subsection (3)(a)1 of this section, need not contain the information required under 405 KAR 8:030, Sections 12, 13, 14(3), and 15(4). Any such applicant failing to make a timely filing shall be required to submit this information.

(5) Criteria for approval. No permit shall be issued for any operation covered by this section unless the cabinet finds, in writing, that, in addition to meeting all other applicable requirements of this chapter, the operations will be conducted in compliance with the requirements of 405 KAR 20:070.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This amendment contains editorial cleanup to regulatory provisions for prime farmland, off-site coal processing plants. The amendment also contains more substantive, but still very minor, changes to the permit application requirements for three special categories of coal mining: mining operations on prime farmland, mountaintop removal mines, and steep-slope mines with a variance from the approximate original contour requirements. The cabinet processes approximately 100 such applications annually for the total of these three categories, and future permitting activities should remain at about this same level. Even though the above would indicate that approximately 100 persons per year may be affected by this amendment, this is not the case. Past interpretations of existing regulatory requirements are consistent with the changes proposed in this amendment, so this amendment will affect very few, if any, of the future applicants for the three subject categories of mining.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cabinet anticipates that this amendment will not cause additional costs nor will result in additional savings to the affected entities.

2. Continuing costs or savings: The cabinet anticipates that this amendment will not cause additional costs nor will result in additional savings to the affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs, and there will be no effects on competition.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will neither increase nor decrease as a result of this amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet does not anticipate that it will incur additional costs nor reap additional savings as a result of this amendment.

2. Continuing costs or savings: The cabinet does not anticipate that it will incur additional costs nor reap additional savings as a result of this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs to the cabinet.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will neither increase nor decrease as a result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: This amendment will not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to the promulgation of this amendment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies that conflict with, overlap, or duplicate the provisions of this amendment.

(a) Necessity of proposed regulation if in conflict: Since no conflicts exist, this item is not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Since no conflicts exist, this item is not applicable.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 785.14, as revised by federal register 52 FR 39182 et seq., published October 20, 1987; 30 CFR 785.16, as revised by federal register 51 FR 41952 et seq., published November 20, 1986; and 30 CFR 785.17, as revised by federal register 48 FR 21445 et seq., published May 12, 1983.

2. State compliance standards. This amendment revises the permitting requirements for three special categories of mining: mining operations on prime farmland, mountaintop removal mines, and steep-slope mines with a variance from the approximate original contour requirements.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate sets forth permitting requirements for the three special categories of mining referenced above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because stricter standards or additional or different responsibilities are not proposed, this item is not applicable.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement
(Proposed Amendment)

405 KAR 10:010. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.151, 350.465

PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations, including requiring bond sufficient to insure satisfactory reclamation. This regulation sets forth the general requirements for performance bonds and liability insurance. This regulation further sets out general minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations, and general requirements for various bonding methods.

Section 1. Applicability. This chapter sets forth the minimum requirements for filing and maintaining performance bonds and insurance for surface coal mining and reclamation operations under KRS Chapter 350.

Section 2. Requirement to File a Bond. (1) An applicant shall not disturb surface acreage or extend any underground shafts, tunnels, or operations prior to receipt of approval from the cabinet of a performance bond covering areas to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised or renewed permit to conduct surface coal mining and reclamation operations has been

approved under Title 405, Chapter 8, but before such permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet [as a penal sum]. The performance bond shall be conditioned upon the faithful performance of all the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of Title 405, Chapters 7 through 24 have been met. The amount, duration, type, conditions and terms of the performance bond shall conform to 405 KAR 10:020 and 405 KAR 10:030.

(3) No permit shall be revised or amended to include additional area unless the liability of the current bond(s) is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond(s) covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond(s), the additional area must be permitted as a separate increment of the current permit area or under a new permit.

[(4) Where more than one (1) bond is filed for a permit area or increment, the bonds must be accompanied by a schedule, agreed to by all parties, which sets forth the agreed distribution of bond amounts released under 405 KAR 10:040, and bond amount reductions under 405 KAR 10:020, Section 4, or which authorizes the cabinet to determine such distribution.]

Section 3. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant must file the entire bond amount required by the cabinet prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. Except as provided in 405 KAR 10:020, Section 3(2) regarding extended bond liability, there shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the cabinet. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary. Where the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area must be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under Title 405, Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required under 405 KAR 10:020, Section 2.

(c) The permittee shall not engage in any surface coal mining and reclamation operations on any increment of the permit area unless and until the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. [The full bond amount required for any increment shall be filed with the cabinet at least thirty (30) days prior to beginning operations in that increment.] No credit shall be given for reclamation on other increments.

(d) The boundaries of each increment [for which bond has been filed] shall be physically marked at the site in a manner approved by the cabinet.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in 405 KAR 10:020, Section 3(2) regarding extended bond liability, there shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 4. Requirement to File a Certificate of Liability Insurance. Each applicant for a permit shall submit to the cabinet, as part of the permit application, a certificate issued by an insurance company authorized to do business in Kentucky [the United States]. The amount, duration, form, conditions and terms of this insurance shall conform to 405 KAR 10:030.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be

submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation sets forth general requirements for performance bonds and liability insurance for surface coal mining operations under KAR Title 405, Chapters 7 through 24. Substantive proposed amendments will: 1) delete the requirement that bonds be payable to the cabinet as a penal sum; 2) require that increments be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the cabinet be necessary; 3) authorize regional administrators to approve initiation of operations on individual increments once the requird bond amount has been submitted, and delete the requirement that the bond be submitted at least 30 days prior to beginning operations on the increment; 4) provide that physical marking of the boundaries of increments at the site is required only for increments for which bond has been filed; and 5) require that insurance companies providing certificates of liability insurance to applicants be authorized to do business in Kentucky, rather than in the United States. The regulation will affect all applicants for permits, amendments to permits, and major revisions to permits, estimated at approximately 1100 such applications each year. Additionally, the regulation will affect any current permittees who may wish to change the currently approved bond or bonding method, and will also affect unbonded increments of current permittees.

(a) Direct and indirect costs or savings to those affected:

1. First year: On balance, the proposed amendments should prove advantageous to applicants and permittees. Deletion of the penal sum requirement will reduce the exposure of bond providers and thereby should make bonds relatively easier to obtain. The amendments to the incremental bonding provisions will make it simpler and more efficient for permittees to operate under incremental bonding. However, it is not possible to quantify the potential savings in a meaningful way.

2. Continuing costs or savings: Same as first year.

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

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None apply.

(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: 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: None

TIERING: Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800 as revised at 48 FR 32959, July 19, 1983 and 48 FR 44780, September 30, 1983.

2. State compliance standards. This administrative regulation sets forth minimum requirements for filing and maintaining performance bonds and liability insurance for surface coal mining and reclamation operations, including general requirements for various bonding methods. Substantive proposed amendments will: 1) delete the requirements that bonds be payable to the cabinet as a penal sum; 2) require that increments be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the cabinet be necessary; 3) authorize regional administrators to approve initiation of operations on individual increments once the required bond amount has been submitted, and delete the requirement that the bond be submitted at least 30 days prior to beginning operations on the increment; 4) provide that physical marking of the boundaries of increments at the site is required only for increments for which bond has been filed; and 5) require that insurance companies providing certificates of liability insurance to applicants be authorized to do business in Kentucky, rather than in the United States.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 800 sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with 30 U.S.C. 1201 et seq., P.L. 95-87.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than

those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:020. Amount and duration of performance bond.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to adopt rules and regulations governing the amount and duration of performance bonds for surface coal mining and reclamation operations. This regulation specifies criteria upon which to base determination of bond amounts and requires certain periods of liability during which the bonds must remain in effect. This regulation provides for adjustments in bond amounts.

Section 1. Determination of Bond Amount. The standard applied by the cabinet in determining the amount of performance bond shall be the estimated cost to the cabinet if it had to perform the reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under KRS Chapter 350, Title 405, Chapters 7 through 24 and the permit[, and such additional work as would be required to achieve compliance with the general standards for revegetation in 405 KAR 16:200, Section 6(2)(c) or 405 KAR 18:200, Section 6(2)(c) in the event the permittee fails to implement an approved alternative postmining land use plan within the two (2) years required by 405 KAR 16:200, Section 6(2)(c)2 or 405 KAR 18:200, Section 6(2)(c)2.] This amount shall be based on, but not be limited to:

(1) The estimated costs submitted by the permittee in accordance with 405 KAR 8:030, Section 24(4) and 405 KAR 8:040, Section 24(4);

(2) The additional estimated costs to the cabinet which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(3) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this section;

(4) An additional amount based on factors of cost changes during the previous five (5) years for the types of activities associated with the reclamation to be performed; and

(5) Such other cost information as may be required by or available to the cabinet.

Section 2. Minimum Bond Amount. The minimum amount of the bond for surface coal mining and reclamation operations at the time the permit is issued or amended shall be $10,000 for the entire area under one (1) permit.

Section 3. Period of Liability. (1) Liability under performance bond(s) applicable to an entire permit area or increment thereof shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the provisions of the permit have been completed, and the permit or increment terminated by release of the permittee from any further liability in accordance with 405 KAR 10:040.

(2) In addition to the period necessary to achieve compliance with all requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the permit including the standards for the success of revegetation as required by 405 KAR 16:200 and 405 KAR 18:200, the period of liability under performance bond shall continue for a period of five (5) years beginning with the last year of [substantially] augmented seeding, fertilizing, irrigation or other work. The period of liability shall begin again whenever [substantially] augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release. Isolated and clearly defined [A] portions of a bonded area requiring extended liability because of [substantial] augmentation may be separated from the original area and bonded separately upon approval by the cabinet. Such areas shall be limited in extent, and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the cabinet. [Such separation shall not change the period of liability for the remainder of the original bonded area. Before determining that extended liability should apply to only a portion of the original bonded area, the cabinet shall determine that such area portion:]

[(a) Is not significant in extent in relation to the entire area under bond; and]

[(b) Is limited to a distinguishable contiguous portion of the bonded area.]

(3) If the cabinet approves a long-term intensive agricultural postmining land use in accordance with 405 KAR 16:210, augmented seeding, fertilization, irrigation or other husbandry practices normally associated with the approved postmining land use shall not require restarting the five (5) year period of liability.

(4) The bond liability of the permittee shall include only those actions which the permittee is required to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a postmining land use approved under 405 KAR 16:210[, Section 4]. Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond.

Section 4. Adjustment of Amount. (1) The amount of the performance bond liability applicable to a permit or increment shall be adjusted by the cabinet: [as the acreage in the permit area or increment is increased, or when the cabinet determines that the cost of future reclamation, restoration or abatement work has changed substantially. Increase in performance bond liability shall not affect existing

obligations of sureties without their consent.]

(a) When the acreage in the permit area or increment is either increased or decreased; or

(b) When the cabinet determines that the cost of future reclamation, restoration or abatement work has changed. When it is determined that an adjustment under this paragraph is necessary, the cabinet shall:

1. Notify the permittee, the surety, and any person with a property interest in collateral who has previously requested such notification in writing; and

2. Provide the permittee an opportunity for an informal conference on the adjustment. The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference.

(3) [(2)] The amount of the performance bond liability applicable to a permit or increment may be adjusted by the cabinet upon application by the permittee under 405 KAR 8:010, Section 20 to delete acreage from the permit area or increment thereof where such acreage has not been affected by the surface coal mining and reclamation operation. The provisions of 405 KAR 10:040, Section 2(3) shall apply. However, a reduction due to such deletion of acreage shall not constitute a bond release and shall not be subject to the procedures of 405 KAR 10:040, Section 1.

(4) [(3)] The cabinet may grant [A permittee may request] reduction of the required performance bond amount if the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall not be considered as a request for partial bond release subject to the procedures of 405 KAR 10:040, Section 1.

(5) [(4)] The cabinet shall [may] refuse to approve any reduction of the performance bond liability amount if an action for revocation or suspension of the permit covered by the bond is pending, [or] if there is a pending action for forfeiture of the bond, or if the permittee is currently in violation of KAR Title 405 on that permit.

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 14, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation establishes minimum requirements for the amount and duration of performance bonds, and includes criteria and procedures for adjustment of the bond amount. The proposed amendment: 1) deletes "substantial" as a modifier of "augmented seeding"; 2) clarifies the description of areas which are eligible for extended bond liability; 3) provides that actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsile under the permit shall not be covered by the bond; 4) provides notification procedures and opportunity for an informal conference when the cabinet determines that a bond amount must be adjusted; 5) provides that certain reductions in bond amount are not subject to bond release procedures; and 6) makes mandatory certain conditions under which the cabinet will not grant reductions in bond amount. This regulation will affect all applicants for permits, amendments to permits, and major revisions to permits, estimated at approximately 1100 such applications each year. Additionally, the regulation will affect all current permittees of surface mining and reclamation operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: With the deletion of the modifier "substantial", permittees will no longer be able to do "touch-up" work to seed, plant, or fertilize previously seeded or planted areas (except for normal husbandry practices) without restarting the five year liability period. Costs associated with enhanced efforts during the initial seeding and planting period, or delays in bond releases, may be incurred. The amendments concerning extended bond liability for limited areas and notification of bond adjustment are administrative in nature and will neither create savings nor increase costs.

2. Continuing costs or savings: Same as first year.

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: Since the cabinet will be required to notify certain individuals and business entities when a bond amount adjustment is proposed, and must offer an informal conference on the adjustment, additional administrative costs will be incurred.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None other than notification and conference procedures described above.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons

why alternatives were rejected: None applicable.
(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: 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: None
TIERING: Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800 as revised at 48 FR 32959, July 19, 1983 and 48 FR 44780, September 30, 1983.

2. State compliance standards. This administrative regulation specifies criteria for determination of performance bond amounts, establishes the liability period during which bonds must remain in effect, and provides criteria and procedures for adjustment of the bond amount. The proposed amendment: 1) deletes "substantial" as a modifier of "augmented seeding"; 2) clarifies the description of areas which are eligible for extended bond liability; 3) provides that actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond; 4) provides notification procedures and opportunity for an informal conference when the cabinet determines that a bond amount must be adjusted; 5) provides that certain reductions in bond amount are not subject to bond release procedures; and 6) makes mandatory certain conditions under which the cabinet will not grant reductions in bond amount.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 800 sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with 30 U.S.C. 1201 et seq., P.L. 95-87.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:030. Types, terms and conditions of performance bonds and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.100, 350.110, 350.465
PURSUANT TO: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.151, 350.465
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to specify types, terms, and conditions for performance bonds and liability insurance. This regulation sets forth the various types and conditions which the cabinet will accept in satisfaction of the bonding requirements. This regulation sets forth that bonds shall be payable to the cabinet and other conditions. This regulation specifies certain alternative types of bonds, in addition to the surety bond, and the conditions upon which the cabinet will accept them. This regulation specifies the terms and conditions of liability insurance.

Section 1. Types of Performance Bond. (1) The cabinet shall approve performance bonds of only those types which are set forth in this section.
(2) The performance bond shall be either:
(a) A surety bond;
(b) A collateral bond; [or]
(c) A combination of the above [these] bonding types; or
(d) A bond filed pursuant to the Kentucky bond pool in accordance with 405 KAR 10:200.

Section 2. Terms and Conditions of Performance Bond. (1) The performance bond shall be in an amount determined by the cabinet as provided in 405 KAR 10:020, Sections 1 and 2.
(2) The performance bond shall be payable to the cabinet [as a penal sum].
(3) The performance bond shall be conditioned upon faithful performance of all of the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 and the conditions of the permit and shall cover the entire permit area or such incremental area as the cabinet has approved pursuant to 405 KAR 10:010, Section 3(2).
(4) The duration of the bond shall be for a time period provided in 405 KAR 10:020, Section 3.
(5) Surety bonds shall be subject to the following conditions:
(a) The cabinet shall not accept the bond of a surety company unless the bond shall not be cancelable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed [affected] may be cancelled with the written approval of the cabinet, provided the surety gives written notice to both the permittee and the cabinet of the intent to cancel prior to the proposed cancellation. Such notice shall be by certified mail. Cancellation shall not be effective for lands subject to bond coverage which are affected after receipt of notice, but prior to approval by the cabinet. The cabinet may approve such cancellation only if a replacement bond has

been filed by the permittee, or if the permit area has been reduced by revision to the extent that the remaining bond amount, after cancellation, is sufficient [the permit has been revised so that the surface coal mining operations approved under the permit are reduced to the degree necessary] to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with 405 KAR 10:020 [and the remaining performance bond liability]. The cabinet shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(b) The bond shall provide that the surety and the permittee shall be jointly and severally liable.

(c) [The bond shall provide that:]

1. The surety shall [will] give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, the surety shall promptly provide written notice [shall be given promptly] to the permittee and the cabinet.

3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without proper bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the surety of liability on its bond. [in violation of 405 KAR 10:010, Section 2(1).] The cabinet shall issue a notice to the permittee specifying [of noncompliance against any permittee who is without bond coverage. The notice shall specify] a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted. [During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.]

(d) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth of Kentucky.

(6) Collateral bonds may include cash deposits with the cabinet, certificates of deposit, and letters of credit. Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(a) The cabinet or its authorized agent shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this chapter.

(b) The cabinet shall require that certificates of deposit be assigned to the cabinet or its authorized agent in writing, and the assignment evidenced on the books of the bank issuing such certificates.

(c) The cabinet shall not accept an individual certificate of deposit unless it is issued by a FDIC or FSLIC insured financial institution, and in no event shall the cabinet accept [for] a denomination in excess of the maximum insurable amount as determined by FDIC and FSLIC.

(d) The cabinet shall require the issuer of certificates of deposit to waive all rights of setoff or liens which it has or might have against those certificates.

(e) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the cabinet at the time the collateral is offered.

(f) [(e)] The cabinet shall require the applicant to deposit sufficient amounts of certificates of deposit, so as to assure that the cabinet will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this chapter.

(7) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the United States. Any letter of credit issued by a non-Kentucky lending institution must be confirmed by an approved Kentucky lending institution.

(b) Letters of credit shall be irrevocable.

(c) The letter must be payable to the cabinet upon demand and receipt from the cabinet of a notice of forfeiture issued in accordance with 405 KAR 10:050, or in the event the bank wishes to terminate the letter on its expiration date, the cabinet may draw upon demand.

(d) [The letter of credit shall provide that:]

1. The issuer shall [will] give prompt notice to the permittee and the cabinet of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business;

2. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the cabinet;

3. Upon the incapacity of an issuer by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. [in violation of 405 KAR 10:010, Section 2(1).] The cabinet shall issue a

notice to the permittee specifying [of noncompliance against any permittee who is without bond coverage. The notice shall specify] a reasonable period to replace bond coverage, not to exceed ninety (90) days. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable bond is posted. [During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order of cessation and immediate compliance shall be issued.]

(8) When a permittee chooses to combine two (2) or more bonds for one (1) permit area or increment, the bonds may be accompanied by a schedule, acceptable to the cabinet and agreed to be all parties, which sets forth the agreed distribution of bond amounts to be released or reduced under 405 KAR 10:040 and 405 KAR 10:020, Section 4, respectively. If no schedule is submitted, the cabinet may release equal percentages of each bond.

Section 3. Substitution of Bonds. (1) The cabinet may allow permittees to substitute existing surety or collateral bonds for equivalent [other] surety or collateral bonds, if the liability which has accrued against the permittee on the permit area or increment is transferred to such substitute bonds.

(2) The cabinet shall not release existing performance bonds until the permittee has submitted and the cabinet has approved acceptable substitute performance bonds. A substitution of performance bonds pursuant to this section shall not constitute a release of bond under 405 KAR 10:040.

(3) The cabinet may refuse to allow substitution of bonds if an action for revocation or suspension of the permit covered by the bond is pending or if there is a pending action for forfeiture of the bond.

Section 4. Terms and Conditions for Liability Insurance. (1) The applicant shall submit, as a part of the permit application at the time of bond submission, a certificate issued by an insurance company authorized to do business in Kentucky certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certification shall be on a form prescribed by the cabinet. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate for all personal injury and property damage resulting from surface coal mining and reclamation operations, including damage caused by the use of explosives and damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(2) The policy shall be maintained in full force during the term of the permit or any renewal thereof, and during the liability period necessary to complete all reclamation operations under Title 405, Chapters 7 through 24, until full bond release has been granted.

(3) The policy shall include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew.

(4) In the event the insurer becomes unable to fulfill its obligations under the policy, notice shall be given immediately to the permittee and the cabinet.

(5) [(4)] Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee shall be deemed to be without insurance coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the insurer of liability on its policy. [in violation of this section.] The cabinet shall issue a notice to the permittee specifying [of noncompliance against any permittee who is without insurance coverage. The notice shall specify] a reasonable period to replace such coverage, not to exceed ninety (90) days. If an adequate insurance coverage is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall comply with the provisions of 405 KAR 16:010, Section 6 or 405 KAR 18:010, Section 4 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the cabinet has determined that an acceptable insurance coverage has been posted. If an acceptable insurance coverage has not been posted by the end of the period allowed, the cabinet may suspend the permit until acceptable insurance coverage is posted. [During this period, the cabinet shall conduct weekly inspections to ensure continuing compliance with other requirements of this Title and the permit. Such notice of noncompliance, if abated within the period allowed, shall not be counted as a notice of noncompliance for purposes of determining a "pattern of violation" under 405 KAR 7:090 and need not be reported as a past notice of noncompliance in permit applications under KRS Chapter 350 and Title 405, Chapters 7 through 24. If such a notice of noncompliance is not abated in accordance with the schedule, an order for cessation and immediate compliance shall be issued.]

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 14, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled to take place on Tuesday, August 30, 1988 at 9 a.m. EDT. The hearing has been scheduled for the Department for Surface Mining Reclamation and

Enforcement's Training Room (Room D-16) in the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons interested in attending or testifying at this hearing should submit written notification of such by 4:30 p.m. on August 25, 1988. Such notification must be submitted to James Hale at the address noted below, and the notice must indicate if testimony is to be given. If, by August 25, Mr. Hale has not received any written notice of intent to testify, the hearing will be cancelled. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 30, 1988. Comments received after that time will not be considered. Written comments and written requests to attend or testify at the hearing must be submitted to: James Hale, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Risk

(1) Type and number of entities affected: This regulation establishes requirements on the types, terms, and conditions of performance bonds and liability insurance. The proposed amendment: 1) clarifies that a bond filed pursuant to 405 KAR 10:200 (Kentucky Bond Pool) is an acceptable type of bond; 2) deletes the requirement that performance bonds be payable to the cabinet as a penal sum; 3) revises criteria for cabinet approval of cancellation of a bond by a surety; 4) modifies the responsibilities of the permittee and cabinet upon the incapacity of a permittee's surety, issuer of a letter of credit, or liability insurer; 5) clarifies that surety bonds must be executed by the operator and a corporate surety licensed to do business in Kentucky; 6) adds cash deposits as a form of collateral bond; 7) modifies the criteria for acceptable certificates of deposit and letters of credit; and 8) adds a notification provision for persons with an interest in collateral posted as bond, if they so request. This regulation will affect all applicants for permits, amendments to permits, and major revisions to permits, estimated at approximately 1100 such applications each year. Additionally, the regulation will affect all current permittees of surface mining and reclamation operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment deletes the requirement that the cabinet must issue a notice of noncompliance solely upon the incapacity of a surety company or liability insurer and substitutes a written notice to the permittee. The permittee will, therefore, realize a savings in administrative and legal costs.

2. Continuing costs or savings: Same as first year.

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: The proposed amendment deletes the cabinet requirement for weekly inspections for operations upon the incapacity of the permittee's surety or liability insurer. The cabinet will still conduct inspections as necessary. However, the number of inspections will likely decrease, with attendant savings in personnel, equipment, and administrative costs. The addition of the requirement to notify persons with an interest in collateral posted as a bond if they so request will cause increased administrative costs. However, since the cabinet does not anticipate many written requests for such notifications, the increased cost will likely be negligible.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None applicable.

(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: 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: None

TIERING: Was tiering applied? No. Tiering is not applicable to these proposed amendments since these requirements must, under the federal and Kentucky surface mining laws and regulations, apply equally to all applicants under Title 405, Chapters 7 through 24.

FISCAL NOTE ON LOCAL GOVERNMENT: A fiscal note is not required for this regulation because it will have no impact on local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800 as revised at 48 FR 32959, July 19, 1983 and 48 FR 44780, September 30, 1983.

2. State compliance standards. This administrative regulation establishes requirements on the types, terms, and conditions of performance bonds and liability insurance. The proposed amendment: 1) clarifies that a bond filed pursuant to 405 KAR 10:200 (Kentucky Bond Pool) is an acceptable type of bond; 2) deletes the requirement that performance bonds be payable to the cabinet as a penal sum; 3) revises criteria for cabinet approval of cancellation of a bond by a surety; 4) modifies the responsibilities of the permittee and cabinet upon the incapacity of a permittee's surety, issuer of a letter of credit, or liability insurer; 5) clarifies that surety bonds must be executed by the operator and a corporate surety licensed to do business in Kentucky; 6) adds cash deposits as a form of collateral bond; 7) modifies the criteria for acceptable certificates of deposit and letters of credit; and 8) adds a notification provision for persons with an interest in collateral posted as bond, if they so request.