ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 18, NUMBER 10
WEDNESDAY, APRIL 1, 1992

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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on April 1, 1992. See **tentative** agenda on pages 2913-2914 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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401 KAR 59:212. New graphic arts facilities using rotogravure and flexography. (Amended After Hearing)
401 KAR 59:214. New factory surface coating operations of flat wood paneling. (Amended After Hearing)
401 KAR 59:225. New miscellaneous metal parts and products surface coating operations. (Amended After Hearing)
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ADMINISTRATIVE 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 administrative 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 to 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 the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative 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 ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 120 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
200 KAR 18:020E

In order to comply with the intent of the General Assembly to stimulate existing agricultural enterprises and promote new agricultural ventures, it is necessary to implement this administrative regulation as soon as possible to provide funds for eligible applicants for the 1992 spring planting season. This emergency regulation shall be replaced by an ordinary regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 6, 1992.

BRERETON C. JONES, Governor
CHARLES BENNETT, Chairman

FINANCE AND ADMINISTRATION CABINET
Kentucky Agricultural Finance Corporation

200 KAR 18:020E. Guidelines for operating loan program.

RELATES TO: KRS 247.940 through 247.994
STATUTORY AUTHORITY: KRS Chapter 13A, 247.946(1)
EFFECTIVE: March 6, 1992
NECESSITY AND FUNCTION: KRS 247.946(1) authorizes the Kentucky Agricultural Finance Corporation to promulgate administrative regulations governing financing of agricultural loans through the Kentucky Agricultural Finance Corporation established by KRS Chapter 247. This administrative regulation establishes the operating loan program.

Section 1. Definitions. Except as provided herein, the terms used in this administrative regulation are defined in KRS 247.942.

(1) "Corporation staff" means the staff of the Office of Financial Management and Economic Analysis.

(2) "Program" means the corporation's operating loan program.

Section 2. Eligible Lending Institution. The lender shall be in good standing with state and federal regulatory authorities and shall not be subject to any federal or state supervisory action.

Section 3. Eligible Applicant. (1) An applicant shall:

(a) Not have defaulted on any corporation loan or loans under other state or federal loan programs.

(b) Sign and return the application certification, "Kentucky Agricultural Finance Corporation Operating Loan Program Certification of Applicant."

(c) Be at least eighteen (18) years of age at the time the loan applica- tion is submitted to the lender.

(2) "Kentucky Agricultural Finance Corporation Operating Loan Program Certification of Applicant, (January, 1992)" is incorporated by reference. A copy of this form may be inspected, obtained or copied at the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Room 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday between 8:30 a.m. and 4:30 p.m.

Section 4. Loan Requirements. (1) The lending institution shall certify that the loan is a new agricultural loan and is not tied to any existing loan.

(2) The loan shall be for a term of one (1) to three (3) years and may be a fixed or variable interest rate.

(3) The loan shall be 100 percent collateralized, which may include purchases for the loan.

(4) The interest rate on the loan shall not exceed the prime rate published in the Wall Street Journal on the first business day of the month.

Section 5. Bank Requirements. (1) An eligible lender may hold up to $100,000 from the corporation for qualified loans. The lending institution shall remit to the corporation interest on the unloaned balance in an amount approved by the corporation's board.

(2) The lending institution shall assist the eligible applicant in completing the certification of applicant required by the corporation and referred to in Section 3(2) of this administrative regulation.

(3) By the fifth business day of each month, the lending institution shall report to the corporation all application requests, whether approved or denied.

Section 6. Loan Closing. (1) The lending institution shall:

(a) Completely disburse the qualified loan; and

(b) Notify the corporation immediately if delay is anticipated.

(2)(a) The lending institution shall forward photocopies of any and all documentation pertaining to the loan closing including a completed copy of "Kentucky Agricultural Finance Corporation Operating Loan Program Representations of Lender."

(b) "Kentucky Agricultural Finance Corporation Operating Loan Program Representations of Lender, (January, 1992)" is incorporated by reference. A copy of this form may be inspected, obtained or copied at the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Room 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday between 8:30 a.m. and 4:30 p.m.

Section 7. Servicing. (1) The lending institution shall:

(a) Hold the qualified loan instruments;

(b) Collect all payments of principal and interest from the applicant; and

(c) Apply a standard of loan servicing employed by prudent lenders and shall do so strictly in accordance with the corpora- tion's operating loan program requirements.

(2) The lending institution shall forward to the corporation monthly photocopies of program loan status reports.

(3) The following procedures apply to qualified loan pay- ments received in the month due:

(a) Each qualified loan payment remittance by the lender of the pro rata share due to the corporation on the participation shall be sent to the corporation within ten (10) days of receipt of the manner required by the loan.

(b) The statement of account shall reflect:

1. The total amount received from the applicant under the note;
2. The interest rate paid to date;
3. The principle paid to date;
4. The date on which such payment was received;
5. The pro rata share of interest due to the corporation;
6. The pro rata share of principal due to the corporation;
7. The total amount to be remitted to the corporation; and
8. The remaining outstanding principal balance of the loan.

(4)(a) Prepayments or late payments shall be remitted within ten (10) days of receipt by the lending institution.

(b) Prepayment shall include payment during the month of prepayment.

Section 8. Delinquencies. (1) In accordance with the lender's agreement, a lending institution shall collect or cause to be collected delinquent loan payments under the program with the same diligence exercised with respect to other loans in its portfolio.

(2) If the qualified loan is more than thirty (30) days past due, the lending institution shall set up a meeting to include the applicant, corporation, and the lending institution to determine:

(a) The reason for the default;

(b) Whether the reason is a temporary or permanent condition;

(c) The applicant's cooperation in correcting the delinquency; and

(d) Actions to be taken by the lending institution and corporation.

(3) The lending institution shall promptly advise the corporation in writing of its recommendations for curing the default.

(4) The lending institution shall:

(a) Provide the corporation with copies of repayment agreements.

(b) Notify the corporation, in writing, when it has determined that an applicant is not able to fulfill a repayment agreement.

Section 9. 200 KAR 18:010, Guidelines for FmHA loan program, is hereby repealed.

CHARLES BENNETT, Chairman
APPROVED BY AGENCY: February 28, 1992
FILED WITH LRC: March 6, 1992 at noon

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended)

201 KAR 2:105. Licensing and [/] drug distribution requirements for drug manufacturers and wholesalers.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.010, 315.036, 315.191(1)
NECESSITY AND FUNCTION: To establish uniform procedures and fees for the registration of all dr g manufacturers and wholesalers and to implement the provisions of the Federal Prescription Drug Marketing Act of 1987, [~~U.S. PL 100-293, 102 Stat. 95, codified at~~] 21 USC § 321 et seq., **21 CFR 205.1 through 205.50**; and to effect the federal act's requirement to license anyone in the wholesale distribution of prescription drugs. This applies to any person, partnership, corporation or other entity engaging in the wholesale distribution of prescription drugs within the Commonwealth.

Section 1. Definitions. (1) "Wholesale drug distributor" **is defined by** [~~means anyone engaged in wholesale prescription drug distribution and includes those described in~~] KRS 315.010(12), **and excludes** [~~but excepts~~] a common carrier or individual retained solely to transport **prescription drugs** [~~them~~] and the lawful distribution of **prescription** drug samples by manufacturers or **their** [~~distributor~~] representatives.

(2) "Wholesale drug distribution" means the distribution [~~transfer~~] of legend drugs to persons other than consumers or patients, but shall not include[~~:~~

~~(a)~~] the sale, purchase, or trade of a legend drug, or offer of same:

(a) [~~1.~~] By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;

(b) [~~2.~~] By hospitals or other health-care entities under common control;

(c) [~~3.~~] To alleviate emergency medical necessity or temporary shortage between pharmacies;

(d) [~~4.~~] By a pharmacist dispensing pursuant to a valid prescription order;

(e) [~~5.~~] By intracompany sales;

(f) [~~6.~~] By blood banks.

(3) "Manufacturer" means anyone engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging or a drug or the labeling or relabeling of its container.

(4) "Prescription drug" means any drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(6) of the Federal Food, Drug, and Cosmetic Act.

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

Section 2. Requirements. (1) License [~~Permit~~] shall be acquired pursuant to KRS 315.036.

(2) A separate license [~~permit~~] shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee need not seek licensure under this section when the agent or employee is acting in the usual course of business or employment.

(4) A license [~~permit~~] shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including, but not limited to:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as deemed appropriate by the Kentucky Board of Pharmacy or as per label requirements or official United States Pharmacopeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Separation of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled merchandise until they are destroyed or returned;

(c) Providing accurate and precise records of all goods shipped or received including source **or** [/] recipient, date, quantity, itemized description, and any other information pertinent to the transaction.

(d) All applicants for licensure as controlled substances wholesale drug distributors shall be registered with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and comply with all DEA regulations.

(5) The Kentucky Board of Pharmacy may choose to adopt regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.

Section 3. Qualifications for License [~~Permits~~]. (1) The minimum qualifications shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

5. Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

6. Compliance with licensing requirements under previously granted licenses, if any;

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and

8. Any other factors or qualifications the Kentucky Board of Pharmacy considers relevant to and consistent with the public health and safety.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest based on health and safety considerations.

(2) No license [~~permit~~] shall be issued pursuant to this regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs [~~and is of good moral character or if the applicant be an association or corporation that the managing officers are of good moral character~~]; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) [~~(2)~~] A duly licensed manufacturer or wholesaler may sell or distribute federal legend drugs only to the following persons:

(a) A currently licensed manufacturer;

(b) A currently licensed wholesaler;

(c) A currently licensed pharmacy;

(d) A currently licensed practitioner;

(e) A currently licensed hospital, but only for use by or in that hospital;

(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

[~~(3) No permit shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony.~~]

(4) A license [~~permit~~] issued pursuant to this regulation may be suspended or revoked for cause.

[~~(5) The Kentucky Board of Pharmacy reserves the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.~~]

Section 4. License [~~Permit~~] Fees; Renewals. (1) [~~All~~] Applications for a license [~~permit~~] [~~under the provisions of this regulation~~] shall be submitted to the Board of Pharmacy on **"Application for a License to Operate as a Drug Wholesaler or Manufacturer (KBP W/M 2:92)". This form is incorporated by reference. It may be obtained, inspected, or copied at the Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.** [~~forms furnished by it and shall contain such information as the board may require. Each~~]

(2) An application shall be accompanied by an annual fee of seventy-five (75) dollars.

(3) All licenses [~~permits~~] shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon proper application accompanied by the renewal fee of seventy-five (75) dollars and shall be nontransferable.

[~~(2) The Kentucky Board of Pharmacy shall require the following minimum information from each wholesale drug distributor as part of the license:~~

~~(a) The name, full business address, and telephone number of the licensee;~~

~~(b) All trade or business names used by the licensee;~~

~~(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;~~

~~(d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and~~

~~(e) The name(s) of the owner or operator of the licensee, including:~~

~~1. If a person, the name of the person;~~

~~2. If a partnership, the name of each partner, and the name of the partnership;~~

~~3. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;~~

~~4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.~~

~~(3) The Kentucky Board of Pharmacy may provide for a single license for a business entity operating more than one (1) facility within the Commonwealth, or for a parent entity with divisions, subsidiaries, or affiliate companies within the Commonwealth when operations are conducted at more than one (1) location and there exists joint ownership and control among all the entities.~~

~~(4) Changes in any information in subsection (2) of this section shall be submitted to the Kentucky Board of Pharmacy as required by such authority.~~]

Section 5. Standards. (1) Facilities. All buildings in which legend drugs are wholesaled, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations. Buildings shall meet all applicable federal, state, and local standards. A facility shall not be located in a residence.

(2) Security.

(a) All wholesale drug distribution centers shall be equipped with an [~~internal~~] alarm system to detect entry after hours.

(b) Wholesale drug distributors shall ensure that access from outside their premises is reduced to a minimum. This includes, but is not limited to, the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft by limiting access to areas where legend drugs are held to authorized personnel. These policies shall provide protection against computer theft and crimes.

(d) Licensees shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs.

(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and made available for inspection by authorized inspectors for a period of two (2) years. These records shall include:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs. [~~contain source of supply (items received, quantity, and date) and distribution (items distributed, quantity, and date).~~]

(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency. [~~may be kept at a central location rather than at each distribution center, but records shall be made available for inspection within seventy-two (72) hours of request by authorized inspectors.~~]

(4) Written policies and procedures.

(a) There shall be written policies and procedures to assure that the wholesale drug distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale drug distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesaler drug distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned goods. A wholesale operation shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods.

(6) Handling recalls. A wholesale operation shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and

(c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) Visual examination of all materials received or shipped to guarantee product identity and to reasonably guard against [~~prevent~~] acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock shall be adequately effected.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) Wholesale drug distributors shall be subject to the provisions

of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211 of the Code of Federal Regulations.

Section 6. Inspection Powers of the Kentucky Board of Pharmacy. [(1)] The Kentucky Board of Pharmacy shall promulgate [make rules and] regulations as may be necessary to carry out the purpose and enforce the provisions of this regulation. All [rules and] regulations promulgated shall conform to and not conflict with the wholesaler drug distribution guidelines adopted by the U.S. Food and Drug Administration or any applicable federal, state, or local laws and regulations and shall permit the Kentucky Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect the premises and delivery vehicles, purporting or appearing to be used by any manufacturer or wholesaler, and audit records and operational procedures at reasonable times, in reasonable fashion, to the extent authorized by law.

[(2) Any person authorized by the Kentucky Board of Pharmacy is hereby given right of entry for inspection purposes during normal business hours upon all premises purporting or appearing to be used by a drug manufacturer or wholesaler.]

Section 7. Violations. (1) [It shall be a violation of this regulation [these rules] for] A drug manufacturer or wholesaler **shall not** [to] distribute legend drugs directly to a consumer or a patient or [to] operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the license [permit].

TOM M. HOUCHENS, President
APPROVED BY AGENCY: February 4, 1992
FILED WITH LRC: February 5, 1992 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Office of General Counsel
(As Amended)

601 KAR 2:010. General procedures.

RELATES TO: KRS Chapters 186 and 281
STATUTORY AUTHORITY: KRS 186.050, 281.600, 365.015
NECESSITY AND FUNCTION: This regulation sets forth general procedures of the Department of Vehicle Regulation that are not specifically covered by topics in other regulations. This regulation is to provide for a more orderly operation of the department.

Section 1. No Sale or Transfer until Operation Begins. An application for sale, lease or transfer of a certificate shall [will] not be considered by the department unless the holder of the certificate has actually started operation under the certificate except that the commissioner may consider such an application if, in his opinion, it would be to the best interest of the traveling or shipping public.

Section 2. Method of Payment; Exception. The department shall [will] accept personal checks, corporate checks, certified checks, cashier's checks, money orders or cash for payment of fees and/or taxes owed to the Commonwealth that are the responsibility of the department to collect; except, however, the payment of apportioned registration licensing fees and payment to replace a check for which there was insufficient funds shall be made only by certified checks, cashier's checks, money orders, or cash.

Section 3. Citations. All citations issued by the Department of Vehicle Regulation shall be governed by 601 KAR 1:095 pertaining to the procedure on complaints, except that the citation shall constitute the thirty (30) day notice required in 601 KAR 1:030 to be given by the department.

Section 4. Trade Name. Where any person operating a motor carrier is the sole owner of the [such] business and is doing business under a trade name, a declaration of assumed name shall [ownership must] be filed with the county [court] clerk of the county in which the main office of the [such] business is located, and a copy of the declaration of assumed name shall [ownership must] be also filed with the department.

Section 5. Declaration of Partnership. Where two (2) or more persons are operating a motor carrier as a partnership, a declaration of partnership shall [must] be filed with the county [court] clerk of the county in which the main office of the [said] business is located, and a copy of the declaration of partnership shall [must] also be filed with the department.

Section 6. Custodian of Records. The Commissioner of the Department of Vehicle Regulation is the custodian of the records of the department. However, the commissioner may designate the deputy commissioner, appropriate division director or other qualified and legally appropriate person to certify as to the authenticity of a particular record or to act on behalf of the commissioner in any other matter pertaining to records maintained by the department. Any person who desires to obtain a copy of any record of the cabinet shall make a request therefor to the proper custodian, and a fee of ten (10) cents per page shall be charged for each copy furnished unless a fee for the record has been established by another administrative regulation.

Section 7. Financial Statements. (1) Financial statements required to be filed with applications shall be completed on the form TC 93-24, Financial Statement, **revised** [effective] November 1991. This form is hereby incorporated by reference as a part of this administrative regulation. It [prescribed and furnished by the department and] shall be prepared so as to reflect the financial condition as of the end of the last calendar quarter preceding the date of the filing of the application. The [such] financial statement[s] shall make no provision for, nor assign any value to, certificates or permits whether interstate, or intrastate held by the applicant.

(2) All financial statements filed with the applications shall be notarized or attested by the applicant, or, if the applicant is a corporation, a responsible official of same.

(3) Financial statements filed with applications for the sale, transfer or assignment of the controlling stock of a corporation or such a portion of the stock of a corporation as will vest the controlling stock of the corporation in another shall be the financial statements of the corporation the stock of which is being transferred.

(4) If the applicant has an independent financial statement, it may record on form TC 93-24 that the financial statement is attached. However, the applicant official shall swear on the form that the information is correct. Without this affidavit the financial statement shall be deemed incomplete.

(5) The form TC 93-24 may be obtained free of charge from the Transportation Cabinet's Office of General Counsel located on the tenth floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 8. Change of Name. Any authorized carrier may effect a change in the trade, assumed or corporate name under which it conducts its business by making written application therefor to the department and by furnishing evidence to the department of compliance with the applicable Kentucky laws regarding the use of trade or assumed names. The twenty-five (25) dollars application fee shall also be submitted.

Section 9. Papers to be Carried on Common Carrier Vehicles and Available for Inspection. Every vehicle being operated as a common carrier of property in intrastate or interstate commerce shall carry in the possession of the driver thereof, a manifest, bills of lading, freight bills, or other [such] similar papers, covering the intrastate or interstate freight carried by that vehicle. The manifest, bills of lading, freight bills, or other [such] shipping documents may be of any form

within the carrier's discretion, but shall [must] clearly show the name of the carrier, the name of the shipper, the name of the consignee, and the address of each. The [such] manifest, bills of lading, freight bills or other such shipping documents shall be made available for inspection to any authorized officer upon demand.

[Section 10. Report of List of Stockholders. Every corporation which is a holder of a certificate or permit, except a U-drive-it permit, authorizing the transportation of persons or property in intrastate commerce in Kentucky shall have on file with the department a report setting forth the names and addresses of every stockholder in the corperation owning ten (10) percent or more of the voting stock of the corporation and the percentage of stock owned by each. Quarterly thereafter, every such corporation shall file a similar report in the event there has been any change in the list of stockholders owning ten (10) percent or more of the voting stock since the last report filed.]

Section 10. [11.] Prohibited Operations. It shall be illegal for any carrier to transport either persons or property, for hire, to or from a location in Kentucky which is:

(1) Known to the carrier or its employees engaged in the pick up or delivery as a place where unlawful gambling or other illegal activity is conducted; or

(2) Notoriously known as a place where unlawful gambling or other illegal activity is conducted or carried on.

Section 11. [12.] Violation of this regulation by the carriers or its employees shall be grounds for denial of reciprocal privileges, revocation of authority or denial of an application for renewal of operating authority.

JERRY D. ANGLIN, Acting Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: December 23, 1991
FILED WITH LRC: December 23, 1991 at 1 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(As Amended)

701 KAR 5:050. Summary hearing procedures.

RELATES TO: KRS [156.031,] 156.132, 156.210
STATUTORY AUTHORITY: KRS 156.070, 156.132
NECESSITY AND FUNCTION: [KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990.] KRS 156.132 requires that the State Board for Elementary and Secondary Education, after a summary hearing as provided for by administrative regulations, suspend any district board of education member or superintendent who is believed to be guilty of immorality, misconduct in office, incompetence, or willful neglect of duty; authorizes the state board to issue subpoenas and administer oaths in removal proceedings; and KRS 156.210 authorizes the chief state school officer to administer oaths and examine witnesses, issue subpoenas, and to have access to public school records. This regulation implements KRS 156.132 by establishing summary hearing procedures for suspension prior to full-blown removal hearing procedures being instituted.

Section 1. When pursuant to KRS 156.132 the Commissioner of Education or the State Board for Elementary and Secondary Education determines it is appropriate to schedule a summary hearing before the state board regarding whether a district board of education member or superintendent should be suspended, the following shall be done:

(1) Arrange scheduling of a summary hearing; and

(2) At least ten (10) **working** days prior to the scheduled hearing, furnish the district board member or superintendent with written notice of the specific charges against him and with written notice of the scheduled hearing. Service of written notice shall be by personal delivery by a person over eighteen (18) years of age or by certified mail return receipt requested with instructions to the delivering postal employee to deliver to the addressee only and show the address where delivered and the date of delivery. [When, within its reasonable discretion, the State Board for Elementary and Secondary Education, pursuant to KRS 156.132, feels a summary hearing to determine whether a district board of education member or superintendent is to be suspended shall be held, the hearing shall either be scheduled before the full board, or a panel thereof, or referred to a hearing examiner who is a full-time employee of the Department of Education and who has been recommended by the chief state school officer, and the district board member or superintendent shall be furnished the specific charges against him.]

Section 2. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation may [shall have full authority to, and shall, do the following:]

[(1) Schedule the hearing, on not less than ten (10) days' written notice, and] grant hearing continuances [thereof] through the chairman of the state board or the hearing panel or through the hearing examiner for just cause shown by verified statement of the accused or by signed statement of his attorney, although when a panel of the state board or a hearing examiner conducts the hearing, a report in the form hereinafter required shall, whenever practicable, be made to the state board for its next regular meeting following referral of the matter to such a panel or hearing examiner.

Section 3. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this regulation shall:

(1) [(2)] Administer oaths, examine witnesses under oath, issue requested subpoenas to compel attendance of witnesses or production of physical evidence;

(2) [(3)] Tape record all testimony taken; and

(3) [(4)] Issue, whenever a hearing panel or hearing examiner is utilized, a written report to the state board containing a synopsis of the testimony taken, any exhibits filed, and a recommendation.

Section 4. [3.] Any hearing held under this regulation shall be for the purpose of allowing the accused district board member or superintendent to appear, with or without counsel, and to reply to the charges, although witnesses testifying in support of the charges may, at the option of the state board, also be heard. Formal rules of evidence and confrontation and cross-examination of witnesses shall not be applicable unless specifically ordered by the state board.

Section 5. [4.] Any hearing held under this regulation shall be closed to the public, unless otherwise requested by the accused district board member or superintendent, and any hearing panel's or hearing examiner's report shall be held confidential.

Section 6. [5.] Any failure of a district board member or superintendent to avail himself of the summary hearing procedures set forth herein shall not be deemed a waiver of his right to contest actual removal from office under KRS 156.132, and the procedures set forth herein shall not be deemed, purely by force of this regulation, to apply to any hearing which shall be held for actual removal.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: January 10, 1992
FILED WITH LRC: January 10, 1992 at 4 p.m.

BOARD OF FAMILY HEALTH CARE PROVIDERS
(As Amended)

902 KAR 22:030. Midlevel health care practitioner.

RELATES TO: KRS 216.900 through 216.930 [216.925]
STATUTORY AUTHORITY: KRS 216.920, 216.925
NECESSITY AND FUNCTION: KRS Chapter 216 mandates that the Kentucky Board of Family Health Care Providers promulgate regulations necessary to implement their duties and responsibilities. The regulation responds to provisions of KRS 216.920 which requires the Kentucky Board of Family Health Care Providers to certify and recertify midlevel health care practitioners; develop and administer qualifying examinations for midlevel health care practitioners; identify continuing education requirements for midlevel health care practitioners.

Section 1. Definition. "Midlevel health care practitioner (MLP)" means a person certified by the Kentucky Board of Family Health Care Providers to provide limited management of chronic conditions to patients in a licensed network following treatment protocols reviewed and approved by the board pursuant to KRS 216.925.

Section 2. [1.] Application for Certification. (1) The application form as shown in these regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the scheduled examination with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;

(c) Applicant has an addiction to alcohol or any other chemical substances;

(d) Applicant has misrepresented any facts on the application;

(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;

(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216.

(5) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 3. [2.] Approved Qualifying Examinations. (1) The examination for certification as a midlevel health care practitioner shall consist of a written portion and a clinical/skills practicum portion.

(2) The qualifying examination for certification as a midlevel health care practitioner shall consist of the following components as approved by the Kentucky Board of Family Health Care Providers:

(a) The written portion of the examination shall consist of items based on medical treatment protocols developed and approved by the Kentucky Board of Family Health Care Providers.

(b) The clinical practicum portion of the examination shall test the applicant's skills and shall be based on the medical treatment protocols developed and/or approved by the Kentucky Board of Family Health Care Providers.

(c) A score of seventy (70) percent shall be achieved on the written portion of the qualifying examination and a score of 100 percent shall be achieved on the clinical/skills portion of the examination for certification as a midlevel health care practitioner.

(3) The board shall recognize the national or state qualifying examinations for certification or licensure of advanced registered nurse practitioners, physician assistants and registered nurses as the qualifying examination for the certified midlevel health care practitioner.

Section 4. [3.] Qualifying Examination Administration. (1) Examination sites and examination frequency shall be designated by the Kentucky Board of Family Health Care Providers and published annually.

(2) There shall be no limit on the number of times a candidate can take the examination for certification.

(3) The candidate shall notify the Kentucky Board of Family Health Care Providers if a new test date is desired.

Section 5. Initial [4.] Certification of Midlevel Health Care Practitioners. (1) To be certified by the Kentucky Board of Family Health Care Providers as a midlevel health care practitioner, a person shall:

(a) Be a health care professional who, by license or certification directly deals with physical or psychological illness of a patient;

(b) Submit a completed application with the required fee;

(c) Be of good character and reputation;

(d) Meet the requirement for application pursuant to KRS 216.925;

(e) Have passed an examination approved by the Kentucky Board of Family Health Care Providers.

(2) The certified midlevel health care practitioner shall practice only in licensed networks following the guidelines pursuant to KRS 216.925.

(3) Certification shall begin on or before July 1, 1992, and completion of the qualifying examination is required every five (5) years thereafter [after initial certification]. [Certification shall begin on or before July 1, 1992, and certification shall be renewed every five (5) years thereafter.]

(4) Interagency cooperation.

(a) The board shall notify in writing other health care profession licensing or certifying agencies of an individual's additional certification as a midlevel health care practitioner.

(b) The board shall request that if the other health care profession licensing or certifying agency revokes the midlevel health care practitioner's license or certification, that notice of the revocation be sent to the Cabinet for Human Resources within ten (10) days of the agency's action.

Section 6. [5.] Recertification of Midlevel Health Care Practitioners. (1) The application form as shown in these regulations for the general practice of midlevel health care practitioners (MLPs) shall be completed in its entirety by all applicants.

(2) The application forms shall be obtained through the Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The application shall be executed and sworn before a notary and returned to the Kentucky Board of Family Health Care Providers with a postmark of at least sixty (60) days prior to the end of the licensure period with the fee of fifty (50) dollars.

(4) The Kentucky Board of Family Health Care Providers may reject an application for the following reasons:

(a) Applicant has been convicted of a misdemeanor involving moral turpitude or a felony;

(b) Applicant has had a health care profession license or certificate denied or revoked in any state or territory;

(c) Applicant has an addiction to alcohol or any other chemical substances;

(d) Applicant has misrepresented any facts on the application;

(e) Applicant has failed to provide additional information requested by the Kentucky Board of Family Health Care Providers;

(f) Applicant has not properly completed or sworn to the information to meet all the requirements pursuant to KRS Chapter 216;

(g) Applicant has failed to complete mandatory education requirements.

(5) [Certification shall be renewed at least every five (5) years thereafter according to procedures established by the Kentucky Board

~~of Family Health Care Providers. In conjunction with the renewal of his/her certification,~~] The midlevel health care practitioner shall provide evidence of having completed the required ten (10) medical education hours annually for recertification.

(6) The Kentucky Board of Family Health Care Providers shall notify the candidate of acceptance or rejection of the application and/or date, time, place of the examination at least thirty (30) days prior to the examination.

Section 7. Revocation of Certification. (1) A midlevel health care practitioner's certification may be revoked for the following reasons:

(a) Conviction of a misdemeanor involving moral turpitude or felony;

(b) Any other health care profession license or certificate is denied or revoked in any state or territory;

(c) Addiction to alcohol or any other chemical substances;

(d) Misrepresentation of any facts during the application, testing and certification process or at any time while practicing as a midlevel health care practitioner in a licensed network;

(e) Failure to complete the ten (10) required medical education hours recognized by the board.

(2) The board shall request in writing to the supervising physician of the licensed network where the midlevel health care practitioner is employed that notification be provided to the designated Cabinet for Human Resources staff of the occurrence of any of the above.

Section 8. [~~6.~~] Mandatory Continuing Education Requirements. (1) Any human immunodeficiency virus education courses shall be in accordance with 902 KAR 2:160, Human immunodeficiency virus education continuing education for professionals.

(2) Courses shall utilize organized learning experiences through personal professional presentations or educational programs meeting the criteria for AMA Category 1 or the Kentucky Board of Nursing requirements.

(3) Continuing education courses approved by any other health care profession licensing or certifying agency shall be considered for relevance to the role of midlevel health care practitioners and for approval as continuing education courses for midlevel health care practitioners by the Kentucky Board of Family Health Care Providers. [~~Other courses shall be reviewed for approval by a committee of the Kentucky Board of Family Health Care Providers in accordance with the following:~~]

(a) The potential provider of continuing education requirements for the midlevel health care practitioner shall request an application for approval as a provider and the board shall assign the potential provider of continuing education a permanent, nontransferable number. The provider of continuing education number shall be used to identify all communications, offering announcements, records, and reports.

(b) Applications for approval as a provider of continuing education may be submitted at any time during the year.

(c) If the potential provider of continuing education meets the board's standards and criteria, approval shall be granted.

(4) At the time of recertification the certified midlevel health care practitioner shall submit to the Kentucky Board of Family Health Care Providers in the form of certificates, examinations, signed forms, etc., proof of completion of ten (10) approved medical education hours per year to the following address: Kentucky Board of Family Health Care Providers, c/o Division of Vital Records and Health Development, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

PREVIOUS EXPERIENCE

LICENSES OR CERTIFICATES; Date, number and sources of any previous licenses to practice in any health field in any state or territory.

Name of Trade or Profession	Original Lic. Issue Date	Current Lic. Expiration Date	Name and Address of Licensing Agency
License:			
License:			
License:			

EMPLOYMENT HISTORY: Begin with your present or most recent job and list fully and accurately the details of each job you have held. Include Volunteer work. If you moved to a different position within the same organization so that your duties changed, then describe that as a separate job. Resumes must follow the format shown below. PLEASE NOTE IF YOU WORKED UNDER A DIFFERENT NAME. *(Attach additional sheets if necessary).*

Employed: From: Mo. Day Yr. To: Mo. Day Yr.

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

A description of jobs MUST be given:

Employed: From: Mo. Day Yr. To: Mo. Day Yr.

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

A description of jobs MUST be given:

Employed: From: Mo. Day Yr. To: Mo. Day Yr.

Title of Position _____

Reason for leaving _____

Name of Employer _____

Address: _____ Street

_____ City State Zip

Name and title of your immediate supervisor _____

A description of jobs MUST be given:

If you have ever been examined and refused a license as a health care professional or if you have ever had a health care professional license canceled or revoked, give full particulars.

_____

_____

Examination Date _____ Application No. _____

APPLICATIONS MUST BE TYPED OR FILLED OUT IN INK

APPLICATION FOR CERTIFICATION

KENTUCKY BOARD OF FAMILY HEALTH CARE PROVIDERS FOR CERTIFICATION TO PRACTICE

Commonwealth of Kentucky

Frankfort, Kentucky 40621

AN EQUAL OPPORTUNITY EMPLOYER M/F/H

CHECK APPROPRIATE BOX

- ☐ Applicant for Examination
- ☐ Certified or licensed PA, ARNP, RN applicant for certification
- ☐ Recertification

To the Kentucky Board of Family Health Care Providers:

I hereby apply for permission to take an examination at the next scheduled examination to demonstrate my qualifications to practice as a midlevel health care practitioner in the Commonwealth of Kentucky. I enclose herewith the required fee of fifty ($50) dollars (certified check or money order) and furnish below the information to which my affidavit is added at the end.

Social Security No. _____ Home Phone No. _____ Work Phone No. _____

☐ Mr.
☐ Ms. _____
Last Name First Name Middle Name Maiden Name (if any)

Address: _____
Street, R.F.D., or Box No. City State Zip Code

Date of Birth: _____
Month Day Year

PREVIOUS EDUCATION

EDUCATION AND TRAINING: Please circle highest grade completed. College transcripts are required.
Grade School 1 2 3 4 5 6 7 8 High School 9 10 11 12 College 1 2 3 4 Graduate School 1 2 3 4 Have you passed a G.E.D. Test? Yes ☐ No ☐ If yes attach a copy of the scores or the G.E.D. certificate

School	Name and Address of School	Dates Attended From	Dates Attended To	Date of Graduation	Number of Hours Completed	Number of Hours Now Carrying	Fields of Study Major	Fields of Study Minor	Degree, Diploma, or Certificate Earned
High School				mo/yr					Diploma: Yes _____ No _____
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Graduate College or University		mo/yr	mo/yr	mo/yr	*	*			Degree:
Vocational, Business, Technical		mo/yr	mo/yr	Clock hours weekly:	Clock hours Completed:			Must provide copy of certificate	Certificate Earned:
Apprenticeship	Type:	mo/yr	mo/yr	Length:	Journeyman: yes _____ no _____				Must provide copy of certificate

* Please indicate if quarter hours

I hereby submit a photograph of myself taken within the past six (6) months. Further, I swear that the statements herein contained are strictly true in every respect; that I have never been convicted of a felony or a misdemeanor involving moral turpitude; that I am not addicted to alcohol or other chemicals; that I have read and understand this affidavit; and that if this petition is granted and certification is subsequently issued to me, I will comply with the laws governing the practice of midlevel health care practitioner in the Commonwealth of Kentucky and do my utmost to uphold and maintain professionalism in the health care field.

_____
(Signature of Applicant)
Signed and sworn to before me this _____ day of _____, 19__.

_____
(Official designating officer administering oath)

On this _____ day of _____, 19__, personally appeared before me, referred to in the foregoing application for admission to an examination to demonstrate his qualifications to practice as a midlevel health care provider in the Commonwealth of Kentucky. I hereby certify that the accompanying photograph is that of the person making this application for examination for certification to practice as a midlevel health care provider.

Signature _____
Official Title _____

AFFIDAVIT

State of _____
County of _____

(Attach photograph in space provided on form.)

KAREN A. MAIN, Chairman
APPROVED BY AGENCY: January 31, 1992
FILED WITH LRC: February 5, 1992 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~224.320, 224.330, 224.340~~]
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~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 defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this regulation or in subsequent regulations, shall have the meaning given them in KRS 224.01-010 [~~224.005~~] or by commonly accepted usage. As used in the regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in Section 4 of this regulation, and the affected facility's basis, as defined by Section 1012 of the Internal Revenue Code which has been incorporated by reference in Section 4 of this regulation. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(11)~~] "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) [~~(12)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(14)~~] "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) [~~(16)~~] "District" has the meaning given it in KRS 224.01-010 [~~224.005~~].

(18) [~~(17)~~] "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) [~~(18)~~] "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) [~~(20)~~] "Existing source" means a source which is not a new source.

(22) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) [~~(22)~~] [~~(21)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) [~~(23)~~] [~~(22)~~] "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) [~~(24)~~] [~~(23)~~] "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) [~~(25)~~] [~~(24)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) [~~(26)~~] [~~(25)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) [~~(27)~~] [~~(26)~~] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

[~~(27) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner.~~]

(29) [~~(28)~~] "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) [~~(29)~~] "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. **Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.**

(31) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated

marginal nonattainment in 401 KAR 51:010.

(32) [~~(31)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

[~~(32) [(29)] "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:~~

~~(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;~~

~~(b) The following shall not be considered a change in the method of operation:~~

~~1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;~~

~~2. An increase in hours of operation;~~

~~3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.~~]

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Clean Air Act, shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) [~~(33)~~] [~~(30)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) [~~(34)~~] [~~(31)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) [~~(35)~~] [~~(32)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) [~~(36)~~] [~~(33)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(37)~~] [~~(34)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) [~~(38)~~] [~~(35)~~] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) [~~(39)~~] [~~(36)~~] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) [~~(40)~~] [~~(37)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) [~~(41)~~] [~~(38)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) [~~(42)~~] [~~(39)~~] "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) [~~(43)~~] [~~(40)~~] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A 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 federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) [~~(44)~~] [~~(41)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) [~~(45)~~] [~~(42)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation or chapter.

(47) [~~(46)~~] [~~(43)~~] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) [~~(47)~~] [~~(44)~~] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) [~~(50)~~] [~~(45)~~] "Shutdown" means the cessation of an operation.

(52) [~~(51)~~] [~~(46)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) [~~(52)~~] [~~(47)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) [~~(53)~~] [~~(48)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(55) [~~(54)~~] [~~(49)~~] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) [~~(55)~~] [~~(50)~~] "Start-up" means the setting in operation of an affected facility.

(57) [~~(56)~~] [~~(51)~~] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(58) [~~(57)~~] [~~(52)~~] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) [~~(58)~~] [~~(53)~~] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) [~~(59)~~] [~~(54)~~] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(61) [~~(60)~~] [~~(55)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) [~~(61)~~] [~~(56)~~] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides **or carbonates**; ammonium carbonate[**s**]; methylene chloride; 1,1,1,-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - Cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram[~~(s)~~]
gal - gallon[~~(s)~~]
gr - grain[~~(s)~~]
hr - hour[~~(s)~~]
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch[~~(es)~~]
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram[~~(s)~~]
KRS - Kentucky Revised Statutes
l - liter[~~(s)~~]
lb - pound[~~(s)~~]
m - meter[~~(s)~~]
m^3 - cubic meter
min - minute[~~(s)~~]
mg - milligram[~~(s)~~]
MJ - megajoules
MM - million
mm - millimeter[~~(s)~~]
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates

TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard.

Section 3. 401 KAR 50:047 Definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

(1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.

(2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

(4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., 1-((VOC exiting)/(VOC entering)).

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

(11) "PTE" means a permanent total enclosure which contains a process that emits VOC and meets the specifications given in Procedure T.

(12) "TTE" means a temporary total enclosure which is built around a process that emits VOC and meets the specifications given in Procedure T.

(13) "BE" means a building or room enclosure that contains a process that emits VOC. If a BE is to serve as a PTE or TTE, the appropriate requirements given in Procedure T shall be met.

(14) "Procedure F.1" means Procedure F.1 in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(15) "Procedure F.2" means Procedure F.2 in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(16) "Procedure G.2" means Procedure G.2 in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(17) "Procedure L" means Procedure L in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

(18) "Procedure T" means Procedure T in "VOM Measurement Techniques for Capture Efficiency", which has been incorporated by reference in Section 5 of this regulation.

Section 4. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:

(a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service; and

(b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.

(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601 (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 50:012. General application.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.10-100, **40 CFR 60.14** [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100, **40 CFR 60.14** [~~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 guidelines by which all regulations of Title 401, Chapters 50 to 65, are to be understood.

Section 1. General Application of Regulations and Standards. Regulations of the cabinet shall be construed and applied according to subsections (1) through (4) of this section, [~~in light of the considerations set forth hereinafter~~] which shall guide the cabinet in the issuance, modification, and revocation of permits.

(1) In the absence of a [~~any~~] standard specified in these regulations, all air contaminant sources shall as a minimum apply [~~such~~] control procedures that [~~as~~] are reasonable, available, and practical.

(2) Nothing in these regulations is intended to permit a [~~any~~] practice which is in violation of a [~~any~~] statute, ordinance, or regulation.

(3) These regulations shall be [~~construed as~~] complementary to each other, and to [~~such~~] other regulations [~~as have been~~] adopted [~~or shall be adopted~~] by the cabinet. If a [~~any~~] provision of these regulations or the application thereof to a [~~any~~] person or circumstance is held to be invalid, the [~~such~~] invalidity shall not affect other provisions or application of another [~~any other~~] part of these regula-

tions and to this end each provision of these regulations and the various applications thereof are declared to be severable.

(4) Except as provided by 401 KAR 50:055, nothing in these regulations shall allow a source to remove control equipment or discontinue procedures previously required in a nonattainment area to achieve the national ambient air quality standards until a state implementation plan containing different requirements has been approved by the U.S. EPA.

(5) For the purpose of applying the definition of modification, an increase in the amount of an air pollutant shall be determined as in 40 CFR 60.14.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 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 defining of terms used in 401 KAR Chapter 51.

Section 1. General Definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) ~~(11)~~ "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) ~~(12)~~ "Compliance schedule" means a **time** schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) ~~(13)~~ "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) ~~(14)~~ "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) ~~(15)~~ "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) ~~(16)~~ "District" has the meaning given it in KRS 224.01-010.

(18) ~~(17)~~ "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) ~~(18)~~ "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) ~~(19)~~ "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) ~~(20)~~ "Existing source" means a source which is not a new source.

(22) ~~(21)~~ "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) ~~(22)~~ "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) ~~(23)~~ "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) ~~(24)~~ "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) ~~(25)~~ "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) ~~(26)~~ "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) ~~(27)~~ "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) ~~(28)~~ "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) ~~(29)~~ "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. **Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upsent condition or preventable equipment breakdown shall not be considered malfunctions.**

(31) ~~(30)~~ "Marginal nonattainment county" or "marginal nonat-

tainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) [~~(31)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

~~[(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:~~

~~(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;~~

~~(b) The following shall not be considered a change in the method of operation:~~

~~1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;~~

~~2. An increase in hours of operation;~~

~~3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.~~]

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Clean Air Act, shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) [~~(34)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(37)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) [~~(38)~~] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) [~~(39)~~] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) [~~(41)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) [~~(42)~~] "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) [~~(43)~~] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A 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 federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) [~~(44)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) [~~(45)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(47) [~~(46)~~] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) [~~(47)~~] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) [~~(50)~~] "Shutdown" means the cessation of an operation.

(52) [~~(51)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) [~~(53)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(55) [~~(54)~~] "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(57) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(58) [~~(57)~~] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) [~~(58)~~] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) [~~(59)~~] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(61) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) [~~(61)~~] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides **or carbonates**; ammonium carbonate[~~s~~]; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC- 115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 59 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency

tainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) [~~(31)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

[~~(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:~~

~~(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;~~

~~(b) The following shall not be considered a change in the method of operation:~~

~~1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;~~

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(37) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(37)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

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(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

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(48) [~~(47)~~] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

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(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

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ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
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sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency

(52) [~~(50)~~] "Shutdown" means the cessation of an operation.

(53) [~~(51)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) [~~(53)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(56) [~~(54)~~] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty- eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(58) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(59) [~~(57)~~] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) [~~(58)~~] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) [~~(59)~~] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(62) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) [~~(61)~~] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides **or carbonates**; ammonium carbonate[s]; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapter 59, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: March 13, 1992
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:185. New solvent metal cleaning equipment.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new solvent metal cleaning equipment.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means cold cleaners, open top vapor degreasers, and conveyorized degreasers which utilize volatile organic compounds (VOCs) to remove soluble impurities from metal surfaces.

[~~(2) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(2) [~~(3)~~] "Classification date" means June 29, 1979.

(3) [~~(4)~~] "Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to the lip of the tank. For a vapor degreaser it is the distance from the solvent vapor level in the tank to the lip of the tank.

(4) [~~(5)~~] "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(5) [~~(6)~~] "Refrigerated chiller" means a second set of freeboard condenser coils located slightly above the primary condenser coils which create a cold air blanket above the vapor zone.

(6) [~~(7)~~] "Cold cleaner" means a batch-loaded degreaser whose solvent is kept below its boiling point.

(7) [~~(8)~~] "Open top vapor degreaser" means a batch-loaded degreaser whose solvent is heated to its boiling point creating a solvent vapor zone.

(8) [~~(9)~~] "Conveyorized degreasers" means a degreaser which is continuously loaded by means of a conveyor system. Its solvent may be boiling or nonboiling.

(9) [~~(10)~~] "Solvent" means, in this regulation, VOCs [~~volatile organic compounds~~].

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the operating requirements which apply to this type of degreaser as specified in Sections 4, 5, and 6 of this regulation.

Section 4. Cold Cleaners. (1) Control equipment:

(a) The cleaner shall be equipped with a cover. If the solvent volatility is greater than fifteen (15) mm Hg measured at 100°F or if the solvent is agitated or heated, then the cover shall be designed so that it can be easily operated with one (1) hand.

(b) The cleaner shall be equipped with a drainage facility so [~~such~~] that solvent that drains off parts removed from the cleaner will return to the cleaner. If the solvent volatility is greater than thirty-two (32) mm Hg measured at 100°F then the drainage facility shall be internal so that parts are enclosed under the cover while draining. The drainage facility may be external if the cabinet determines that an internal type cannot fit into the cleaning system.

(c) A permanent, conspicuous label, summarizing the operating requirements specified in subsection (2) of this section shall be installed on or near the cleaner.

(d) If used, the solvent spray shall be a fluid stream (not a fine, atomized or shower type spray) and at a pressure which does not cause excessive splashing.

(e) If the solvent volatility is greater than thirty-two (32) mm Hg measured at 100°F or if the solvent is heated above 120°F, then one (1) of the following control devices shall be used:

1. Freeboard that gives a freeboard ratio greater than or equal to seven-tenths (0.7).

2. Water cover (solvent shall [~~must~~] be insoluble in and heavier than water).

3. Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(2) Operating requirements:

(a) [~~Do not dispose of~~] Waste solvent shall not be disposed of or transferred [~~or transfer it~~] to another party so [~~, such~~] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [~~Store~~] Waste solvent shall be stored only in covered containers.

(b) [~~Close~~] Degreaser cover shall be closed if [~~whenever~~] not handling parts in the cleaner.

(c) [~~Drain~~] Cleaned parts shall be drained until dripping ceases (fifteen (15) seconds is usually necessary).

Section 5. Open Top Vapor Degreasers. (1) Control equipment:

(a) The degreaser shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone.

(b) The degreaser shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat to shut off sump heat if condenser coolant either is not circulating or is too warm.

2. Spray safety switch to shut off spray pump if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which shuts off sump heat if the vapor zone rises above the design level.

4. Equivalent safety systems as approved on a case-by-case basis by the cabinet.

(c) The degreaser shall be equipped with at least one (1) of the following major control devices:

1. Freeboard ratio greater than or equal to 0.75, and if the degreaser opening is greater than ten (10) square feet, the cover shall be powered or mechanically assisted.

2. Refrigerated chiller.

3. Enclosed design so [~~such~~] that the cover or door opens only if [when] the dry part is actually entering or exiting the degreaser.

4. Carbon adsorption system, with ventilation greater than or equal to fifty (50) cfm/square foot of air- [~~/~~] vapor interface area (if [~~when~~] cover is open), and exhausting less than twenty-five (25) ppm by volume solvent averaged over one (1) complete adsorption cycle.

5. Control system demonstrated to have control efficiency equivalent to or better than any of the above.

(d) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) [~~Keep~~] The cover shall be closed at all times unless [~~except when~~] processing work loads through the degreaser.

(b) [~~Minimize~~] Solvent carryout shall be minimized by the following measures:

1. [~~Rack~~] Parts shall be racked so that entrainment of solvent is avoided and full drainage is accomplished.

2. [~~Move~~] Parts shall be moved in and out of the degreaser at a vertical speed less than eleven (11) ft./min.

3. [~~Degrease the~~] Work load in the vapor zone shall be degreased until condensation ceases (thirty (30) seconds or more is usually necessary).

4. [~~Tip out~~] Any pools of solvent shall be tipped out on the cleaned parts before removal.

5. [~~Allow~~] Parts shall be allowed to dry within the degreaser above the vapor zone until visually dry (fifteen (15) seconds is usually necessary).

(c) [~~Do not degrease~~] Porous or absorbent materials such as cloth, leather, wood, or rope shall not be degreased.

(d) Work loads shall [~~should~~] not occupy more than half of the degreaser's open top area.

(e) [~~Never~~] Spray above the vapor level shall not be allowed.

(f) [~~Repair~~] Solvent leaks shall be repaired immediately or [~~shut down~~] the degreaser shall be shut down.

(g) [~~Do not dispose of~~] Waste solvent shall not be disposed of or transferred [~~or transfer it~~] to another party so [~~such~~] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [~~Store~~] Waste solvent shall be stored only in closed containers.

(h) Exhaust ventilation shall [~~should~~] not exceed sixty-five (65) cfm per square foot of degreaser area unless necessary to meet OSHA requirements or control device requirements. Ventilation fans shall [~~should~~] not be used near the degreaser opening.

(i) Water shall [~~should~~] not be visually detectable in the solvent exiting the water separator.

Section 6. Conveyorized Degreasers. (1) Control equipment:

(a) A conveyorized degreaser shall be enclosed except for work load entrances and exits.

(b) The degreaser shall be equipped with a drying tunnel or another means such as rotating baskets sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(c) Minimized openings: entrances and exits shall silhouette work loads so that the average clearance between the largest parts and the edge of the degreaser opening is either less than four (4) inches or less than ten (10) percent of the width of the opening.

(d) Downtime covers: the degreaser shall be equipped with covers for closing off the entrance and exit during shutdown hours.

(e) If the degreaser has an air- [~~/~~] solvent interface area or an air- [~~/~~] vapor interface area equal to or greater than twenty (20) square feet [~~ft.~~], it shall be equipped with at least one (1) of the following major control devices:

1. Refrigerated chiller.

2. Carbon adsorption system with ventilation greater than or equal to fifty (50) cfm/square foot of air- [~~/~~] vapor interface area (if [~~when~~] downtime covers are open) and exhausting less than twenty-five (25) ppm of solvent by volume averaged over a complete adsorption cycle.

3. A system demonstrated to have a control efficiency equivalent to or better than either of the above.

(f) If the degreaser is a vapor type, it shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat which will shut off the sump heat if coolant is either not circulating or is too warm.

2. Spray safety switch which will shut off the spray pump or conveyor if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which will shut off sump heat if the vapor level rises above the design level.

4. Equivalent safety systems as approved on a case-by-case basis by the cabinet.

(g) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) Exhaust ventilation shall [~~should~~] not exceed sixty-five (65) cfm per square foot of degreaser opening unless necessary to meet OSHA requirements or control device requirements. Work place fans shall [~~should~~] not be used near the degreaser opening.

(b) [~~Minimize~~] Solvent carryout shall be minimized by the following measures:

1. [~~Rack~~] Parts shall be racked so that entrainment of solvent is avoided and full drainage is accomplished.

2. [~~Maintain~~] Vertical conveyor speed shall be maintained at less than eleven (11) ft/min.

(c) [~~Do not dispose of~~] Waste solvent shall not be disposed of or transferred [~~or transfer it~~] to another party so [~~such~~] that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. [~~Store~~] Waste solvent shall be stored only in closed containers.

(d) [~~Repair~~] Solvent leaks shall be repaired immediately or [~~shut down~~] the degreaser shut down.

(e) Water shall [~~should~~] not be visually detectable in the solvent exiting the water separator.

(f) Downtime covers shall be placed over entrances and exits of the degreaser immediately after the conveyor and exhaust are shut down and removed just before they are started up.

Section 7. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract shall be awarded no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment shall be initiated no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 8. [~~7.~~] Exemptions. Any cold cleaners shall be exempt from [~~the provisions of~~] Section 4 of this regulation if the following criteria are met:

(1) The cold cleaner shall [~~must~~] have a remote solvent reservoir;

(2) The solvent used in the cold cleaner shall [~~must~~] not have a vapor pressure that exceeds thirty-three (33) mm Hg measured at

100°F or be heated above 120°F;

(3) The sink-like work area shall [~~must~~] have an open drain area less than 100 sq. cm.; and

(4) Evidence shall be [~~is~~] provided that waste solvent shall [~~will~~] be stored or properly disposed of with minimal loss due to evaporation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:190. New insulation of magnet wire operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new insulation of magnet wire operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for insulation of magnet wire.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to a coating bath.

(3) "Coating die" means the device, located between the applicator and the drying oven, which scrapes off excess coating and leaves a thin film of desired thickness.

(4) "Magnet wire" means wire used in [~~such~~] equipment such as electrical motors, generators, and transformers which carries an electrical current.

(5) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including coating die area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs) [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compound~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 [~~5~~] of this regulation, then that portion shall be considered to be a separate coating line.

[~~(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(6) [~~(7)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(7) [~~(8)~~] "Classification date" means June 29, 1979. [~~the effective date of this regulation.~~]

(8) "VOCs [~~(9) "Volatile organic compounds~~] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following~~

~~methods of analyses, filed~~] by reference in 401 KAR 50:015[, for coatings] shall be used as applicable to determine compliance of the coatings, unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [.]

[~~(a) ASTM D 1644-75 Method A;~~]
[~~(b) ASTM D 1475-60(74);~~]
[~~(c) ASTM D 2369-73; or~~]
[~~(d) Federal Standard 141a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emission on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;
(b) Application method and substrate type;
(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;
(d) The VOC content as applied in each adhesive, coatings, or solvent;
(e) The date for each application for adhesive, coating, or solvent;
(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and
(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is less than two-tenths (0.20) kg/l of coating (one and seven-tenths (1.7) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

[~~(2) An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by July 1, 1981.~~]

(2) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;
(b) Fifteen (15) lb/day actual emissions before add-on control; or
(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8,760 hour/year before add-on control.

(3) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:210. New fabric, vinyl and paper surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new fabric, vinyl or paper surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for fabric, vinyl, or paper.

(2) "Applicator" means the mechanism or device used to apply the coating including, but not limited to, roll, knife, or rotogravure coater.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;
(b) Process storage;

(c) Applicators;
(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;
(e) Clean up operations;
(f) Leaks, spills, and disposal of VOCs [~~volatile organic compounds~~];
(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];
(h) To determine [~~For the purposes of determining~~] compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each coating line;
(i) If any portion of the series of equipment [~~and/~~]or operations qualifies for an exemption according to Section 6 [~~5~~] of this regulation, then that portion shall be considered to be a separate coating line.
(j) An affected facility which is capable of performing both paper coating and paper printing shall [~~will~~] be considered as performing a paper printing operation subject to 401 KAR 59:212.

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~], but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Fabric coating" means the coating or saturation of a textile substrate to impart properties that are not initially present, such as strength, stability, water or acid repellency, functionality, [or appearance.

(7) [~~(8)~~] "Vinyl coating" means the coating of vinyl coated fabric or vinyl sheets, which includes decorative, functional, or protective topcoats or printing.

(8) [(9)] "Paper coating" means saturation or the application of a uniform layer of material across the entire width of a web of paper, pressure sensitive tapes regardless of substrate, related web coating processes on plastic film such as typewriter ribbons, photographic film, magnetic tape, functional films, and decorative coatings on metal foil such as gift wrap and packaging, but does not include the printing of paper.

(9) [~~(10)~~] "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

(10) [~~(11)~~] "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

(11) [~~(12)~~] "Rotogravure coating" means the application of a uniform layer of material across a substrate by means of a roll coating technique in which the entire coating roll is uniformly etched with recessed cells and no pattern or design is present. The coating material is picked up in these recessed cells and is transferred to the substrate.

(12) [~~(13)~~] "Classification date" means June 29, 1979.

(13) "VOCs [~~(14) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [When] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(14) [(15)] "Printing" means the formation of words, designs, and pictures, usually by a series of application rolls, each with only partial coverage. It shall apply [~~applies~~] to flexographic and rotogravure processes as applied to publication, specialty, and packaging printing as defined in 401 KAR 59:212.

Section 2. Applicability. (1) This regulation shall apply to:
(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and
(b) Each affected facility commenced on or after the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.
(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.
(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.
(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [5] of this regulation.
(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D-1644-75 Method A;~~]
[~~(b) ASTM D-1475-60(74);~~]
[~~(c) ASTM D-2369-73; or~~]
[~~(d) Federal Standard 141-a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emission on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.
(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids. Vinyl plastisols and organisols shall not be included in VOC equivalency calculations that are required to be included in applications for VOC bubbles.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on June 29, 1979, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [5.] Exemptions. (1) Any affected facility coating fabric or paper shall be exempt from [the provisions of] Section 3 of this regulation if the VOC [volatile organic compound] content of the coating is less than 0.35 kg/l of coating (two and nine-tenths (2.9) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

(2) Any affected facility coating vinyl shall be exempt from [the provisions of] Section 3 of this regulation if the VOC [volatile organic compound] content of the coating is less than 0.45 kg/l of coating (three and eight-tenths (3.8) lb/gal) excluding water or exempt solvent or both, delivered to the applicators associated with the coating line.

[(3) An owner or operator electing to qualify for an exemption [extension] under this section shall have [must] achieved final compliance for that affected facility by December 1, 1981.]

(3) [(4)] An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hr actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity for maximum production) and 8760 hr/yr before add-on control.

(4) [(5)] Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:212. New graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS [Chapter] 224.20-100, 224.20- 110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [224.033]

NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new graphic arts facilities which use rotogravure and flexography.

[Section 1. Applicability. (1) The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(a) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(b) In any other county and is a part of a major source of volatile organic compounds.]

[(c) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

[(2) The provisions of this regulation shall not apply to new facilities which use publication rotogravure printing process. These facilities shall be subject to the provisions of 401 KAR 59:213.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, specialty rotogravure, and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment [and/]or operations used to apply, dry, or cure any inks containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;
(f) Leaks, spills and disposal of VOCs [volatile organic compounds];
(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];
(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) printing line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each printing line;
(i) If any portion of the series of equipment [~~and/~~]or operations qualify for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate printing line;
(j) All units in a machine which has both coating and printing units shall [will] be considered as performing a printing operation.
[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]
(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquid which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.
(6) [~~(7)~~] "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to specialty and packaging printing.
(7) [~~(8)~~] "Coating" means the application of a uniform layer of material across the entire width of a web.
(8) [~~(9)~~] "Classification date" means February 4, 1981.
(9) "VOCs [~~(10) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purpose of determining VOCs [~~volatile organic compounds~~] net input. When the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.
(10) [~~(11)~~] "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.
(11) [~~(12)~~] "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogs, brochures, directories, newspaper supplements, and other types of printed materials.
(12) [~~(13)~~] "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.
(13) [~~(14)~~] "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.
(14) [~~(15)~~] "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.
(15) [~~(16)~~] "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned gift wrap, wallpaper and floor coverings.

Section 2. Applicability. (1) This regulation shall apply to:
(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and
(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.
(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) No person shall cause, allow, or permit an affected facility for packaging rotogravure printing or specialty rotogravure printing to discharge into the atmosphere more than thirty-five (35) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.
(2) No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the department.
(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the department determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of[~~:~~] the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the department, performance tests [~~as~~] specified by the department shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.
(3) With the prior approval of the department, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.
(4) If [~~Whenever~~] deemed necessary by the department, the department shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 6 [~~5~~] of this regulation. Method 24A, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for inks~~] shall be used as applicable to determine compliance of the inks unless [~~except in these cases where~~] the department determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]
[~~(a) ASTM D 1644 75 Method A;~~]
[~~(b) ASTM D 1475 60(74);~~]
[~~(c) ASTM D 2369 73; or~~]
[~~(d) Federal Standard 141 a, Method 4082.1.~~]
(5) The amount of exempt solvents shall be subtracted from the amount of inks, just like water, with the ultimate value of interest being the mass of VOC per unit volume of ink less exempt solvent or water or both.
(6) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. These records shall include, but not be limited to, the following:
(a) Applicable regulation number;
(b) Application method and substrate type;
(c) Amount and type of graphic arts material or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each graphic arts material or solvent;

(e) The date for each application for graphic arts material or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon start-up.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for any reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) The control system contract or the exempt coatings and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [5.] Exemptions. Any affected facility shall be exempt from [the provisions of] Section 3 of this regulation if the printing systems:

(1) Utilize a waterborne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower VOC [~~volatile organic compound~~] content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); [~~or~~]

(3) Utilize inks which, excluding water, contain sixty (60) percent or more by volume nonvolatile material as applied to the substrate; or

(4) Utilize inks with an emission limit of five-tenths (0.5) lb VOC/lb solids as delivered to the applicator.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the department on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:214. New factory surface coating operations of flat wood paneling.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new factory surface coating operations of flat wood paneling.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any other county and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for the factory surface coating of interior flat wood paneling.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to: roll coaters, curtain coaters, sprays and brushes.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure [any] coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compound~~] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 [5] of this regulation, then that portion shall be considered to be a separate coating line;

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or [other] containers which contain surface

coatings, VOCs [volatile organic compounds], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Interior flat wood paneling" means printed interior wall panels made of hardwood plywood and thin particle board, natural finish hardwood plywood panels, or hardboard paneling with Class II finishes.

(7) [~~(8)~~] "Printed panels" means panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(8) [(9)] "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(9) [~~(10)~~] "Particle board" means a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Thin particle board has a thickness of one-fourth (1/4) inch or less.

(10) [~~(11)~~] "Natural finish hardwood plywood panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(11) [~~(12)~~] "Hardboard" means a panel manufactured primarily from interfelted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

(12) [~~(13)~~] "Class II hardboard paneling finishes" means finishes which meet the specifications of Voluntary Product Standard PS-59-73, which has been incorporated [~~filed~~] by reference in 401 KAR 50:015, as approved by the American National Standards Institute.

(13) [~~(14)~~] "Classification date" means February 4, 1981. [~~the effective date of this regulation.~~]

(14) "VOCs [~~(15) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [When] the nature of an [~~any~~[operation or a design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or a portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is a part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [~~any~~] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application of adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) Award a contract for the control system or for the exempt coatings and any accompanying process change no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control

equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [5.] Exemptions. (1) An [Any] affected facility shall be exempt from [the provision of] Section 3 of this regulation if the total VOC [volatile organic compound] content of all the coatings applied to a specific area of finished paneling product is:

(a) [(1)] Less than two and nine-tenths (2.9) kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (six (6.0) lb/1,000 sq. ft.) for printed interior wall panels made of hardwood plywood and thin particle board;

(b) [(2)] Less than five and eight-tenths (5.8) [five and nine-tenths (5.9)] kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (twelve (12.0) lb/1,000 sq. ft.) for natural finish hardwood plywood panels; or

(c) [(3)] Less than four and eight-tenths (4.8) [four and nine-tenths (4.9)] kg of VOCs [volatile organic compounds] per 100 sq. m. of coated surface (ten (10.0) lb/1,000 sq. ft.) for Class II finishes for hardboard paneling.

(2) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(3) An affected facility shall be exempt from this regulation if the total VOC emissions from all affected facilities subject to this regulation are less than or equal to:

(a) Three (3) lb/hour actual emissions before add-on control;

(b) Fifteen (15) lb/day actual emissions before add-on control; or

(c) Ten (10) tons per year theoretical potential emissions based on design capacity (or maximum production) and 8760 hr/yr before add-on control.

[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:225. New miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [Chapter 224]

STATUTORY AUTHORITY: KRS 224.10-100 [224.033]

NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new miscellaneous metal parts and products surface coating operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line located at job shops and original equipment manufacturing industries which apply coatings on metal substrates not elsewhere subject to regulation in this chapter.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: dipping, spraying, or flow coating.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Single coat" means only one (1) film of coating is applied to the metal substrate.

(5) "Prime coat" means the first of two (2) or more films of coating applied in an operation.

(6) "Topcoat" means the final film or series of films of coating applied in a two (2) coat (or more) operation.

(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualify for an exemption according to Section 6 [5] of this regulation, then that portion shall be considered to be a separate coating line.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [(10)] "Miscellaneous metal parts and products" means items including but not limited to:

(a) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(c) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(d) Commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, etc.); and

(g) Any other industrial category not otherwise subject to regulation in this chapter which coats metal parts or products.

(10) [~~(11)~~] "Heat sensitive material" means materials which cannot be exposed to temperatures greater than eighty-two (82) to ninety-three (93)°C (180°-200°F).

(11) [~~(12)~~] "Air or forced air-dried items" means parts that are too large or too heavy for practical size ovens; parts that are sensitive to heat; parts to which heat sensitive materials are attached; or equipment assembled prior to top coating for specific performance or quality standards.

(12) [~~(13)~~] "Outdoor or harsh exposure or extreme environmental conditions" means exposure to any of the following: year round weather conditions, temperatures consistently above ninety-five (95)° Celsius, detergents, scouring, solvents, corrosive atmosphere; and similar environmental conditions.

(13) [~~(14)~~] "Classification date" means February 4, 1981. [~~the effective date of this regulation.~~]

(14) "VOCs [~~(15) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of an [~~any~~] operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(15) "Glass adhesive primer" means a primer applied to the body of a vehicle to etch the topcoat for the purpose of ensuring a positive bond with the adhesive used to secure the windshield and back glass to the vehicle in a manner consistent with federal safety regulations.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

(3) The provisions of this regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [~~any~~] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by the procedures specified in 401 KAR 50:047 in all ozone nonattainment areas except marginal.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 [~~5~~] of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 [~~5~~] of this regulation. Method 24, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for coatings~~] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141a, Method 4082.1.~~]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

(6) The amount of exempt solvent shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation.

(b) Award a contract for the control system or for the exempt coatings and any accompanying process change no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [5.] Exemptions. (1) An [Any] affected facility shall be exempt from the provisions of Section 3 of this regulation if the VOC [volatile organic compound] content of coating is:

(a) Less than 0.52 kg/l of coating (four and three-tenths (4.3) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with clear coat;

(b) Less than 0.42 kg/l of coating (three and five-tenths (3.5) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with air or forced air-dried items or items subject to outdoor or harsh exposure or extreme environmental conditions;

(c) Less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with color coat or first coat on untreated ferrous substrate; or

(d) Less than 0.05 kg/l of powder coating (four-tenths (0.4) lb/gal) delivered to applicators associated with no or infrequent color change, or a small number of colors applied.

(2) The surface coating of the following metal parts and products are exempt from this regulation:

(a) The exterior of airplanes and marine vessels, but not parts for the exterior of airplanes and marine vessels that are coated as a separate manufacturing or coating operation;

(b) Automobile refinishing; and

(c) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.

(3) An [Any] affected facility shall be exempt from [the provisions of Section 3 of] this regulation if the total VOC [volatile organic compound] emissions from all affected facilities subject to this regulation are less than or equal to twenty (20) tons per year.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(5) Glass **adhesive** primer with VOC content equal to or less than six and nine-tenths (6.9) lb/gal of glass **adhesive** primer, excluding water or exempt solvent or both, shall be exempt from this regulation.

[Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:230. New synthesized pharmaceutical product manufacturing operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [Chapter 224]

STATUTORY AUTHORITY: KRS 224.10-100 [224.033]

NECESSITY AND FUNCTION: KRS 224.10-100 [224.033] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new synthesized pharmaceutical product manufacturing operations.

[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]

[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]

[(2) In any other county and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means operations involved in the manufacture of pharmaceutical products by chemical synthesis, but does not include fermentation, extraction, or formulation and packaging.

(2) "Extraction" means the manufacture of botanical and biological products by the extraction of organic chemicals from vegetative materials or animal tissues.

(3) "Fermentation" means the production and separation of medicinal chemicals such as antibiotics and vitamins from microorganisms.

(4) "Formulation and packaging" means the formulation of bulk pharmaceuticals into various dosage forms such as tablets, capsules, injectable solutions, ointments, etc., that can be taken by the patient immediately and in accurate amount.

[(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(5) [(6)] "Classification date" means February 4, 1981. [the effective date of this regulation.]

(6) [(7)] "kPa" means kilopascals.

(7) [(8)] "psi" means pounds per square inch.

Section 2. Applicability. (1) This regulation shall apply to:

(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and

(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.

(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this

regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the following operating requirements:

(1)(a) Each vent from reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers that emit six and eight-tenths (6.8) kg/day (fifteen (15) lb/day) or more of VOCs [~~volatile organic compounds~~] shall be equipped with surface condensers or other methods of control which provide emission reductions equivalent to the use of surface condensers which meet the requirements in paragraph (b) of this subsection.

(b) If surface condensers are used, the condenser outlet gas temperatures shall not exceed the following temperatures (degrees Celsius) if [~~when~~] condensing VOCs [~~volatile organic compounds~~] with the respective minimum vapor pressures (kilopascals). All vapor pressures are measured to twenty (20) degrees Celsius.

1. Negative twenty-five (-25)°C; forty (40) kPa (five and eight-tenths (5.8) psi);
2. Negative fifteen (-15)°C; twenty (20) kPa (two and nine-tenths (2.9) psi);
3. Zero°C; ten (10) kPa (one and five-tenths (1.5) psi);
4. Ten (10)°C; seven (7) kPa (one (1.0) psi); and
5. Twenty-five (25)°C; three and five-tenths (3.5) kPa (five-tenths (0.5) psi).

(2)(a) For air dryers and production equipment exhaust systems that emit 150 kg/day (330 lbs/day) or more of VOCs [~~volatile organic compounds~~], emissions shall be reduced ninety (90) percent.

(b) For air dryers and production equipment exhaust systems that emit less than 150 kg/day (330 lbs/day), emissions shall be reduced to fifteen (15) kg/day (thirty-three (33) lbs/day).

(3)(a) For storage tanks storing VOCs [~~volatile organic compounds~~] with a vapor pressure greater than twenty-eight (28) kPa (four and one-tenth (4.1) psi) at twenty (20)°C, one (1) liter of displaced vapor shall be allowed to be released to the atmosphere for every ten (10) liters transferred (i.e., a ninety (90) percent effective vapor balance or equivalent) on truck or [~~/~~]rail car delivery to all tanks greater than 7,500 liters (2,000 gal) capacity unless the [~~except where~~] tanks are equipped with floating roofs, vapor recovery systems, or their equivalent. This requirement does not apply to transfer of VOCs [~~volatile organic compounds~~] from one (1) in-plant location to another.

(b) For tanks storing VOCs [~~volatile organic compounds~~] with a vapor pressure greater than ten (10) kPa (one and five-tenths (1.5) psi) at twenty (20)°C, the pressure or [~~/~~]vacuum conservation vents shall be set at plus or minus two-tenths (0.2) kPa, unless [~~except where~~] more effective air pollution control is used.

(4) All centrifuges containing VOCs [~~volatile organic compounds~~], rotary vacuum filters processing liquid containing VOCs [~~volatile organic compounds~~] and [~~any~~] other filters having an exposed liquid surface if [~~where~~] the liquid contains VOCs [~~volatile organic compounds~~] shall be enclosed. This applies to liquids exerting a total VOCs [~~volatile organic compounds~~] vapor pressure of three and five-tenths (3.5) kPa (five-tenths (0.5) psi) or more at twenty (20)°C.

(5) All in-process tanks containing VOCs [~~volatile organic compound~~] at any time shall have covers which shall be closed except for short periods when production, sampling, maintenance, or inspection procedures require operator access.

(6) For liquids containing VOCs [~~volatile organic compounds~~], all leaks in which liquid is [~~can be~~] observed to be running or dripping from vessels and equipment (for example: pumps, valves, flanges) shall be repaired within fifteen (15) days. A visual recheck shall be made after repair. If the leak is still present or a new leak is created by the repair, further maintenance shall be performed until the VOC [~~volatile organic compound~~] emission drops below the screening value (observed to be running or dripping). Leaks that cannot be repaired within fifteen (15) days shall be repaired during the next scheduled turnaround. If the cabinet requests it, the owner or operator shall demonstrate to the cabinet's satisfaction while the repairs could not be completed within the initial fifteen (15) day period. If the leak is [~~, or if~~] unable to be brought into compliance, a variance shall be requested and obtained on an individual basis. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. Leak detection or [~~/~~]maintenance and repair procedures shall include maintaining a survey log identifying when the leak occurred and reporting every ninety (90) days those leaks not repaired after fifteen (15) days. The operator shall retain the survey log for two (2) years after the inspection is completed.

Section 4. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.

(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation.

(b) Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation.

(c) Initiate on-site construction or installation of emissions control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation.

(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.

(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 5. [~~4.~~] Compliance Procedures. Compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of[~~:~~] the control system design, control device efficiency, control system capture efficiency, and [~~any~~] other factors that could influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device.

Section 6. [~~5.~~] Monitoring Requirements. If [~~When~~] adsorbers, condensers, incinerators or scrubbers are used to achieve compliance with Section 3 of this regulation, the following monitoring devices shall be an integral part of the control device:

(1) For carbon adsorbers, a monitoring device connected to an alarm device, which indicates carbon bed breakthrough;

(2) For condensers, a temperature securing device located in the exit gas stream;

(3) For incinerators, temperature securing devices located in the combustion chamber for thermal incinerators and in the catalyst preheat chamber for catalytic incinerators; and

(4) For scrubbers, flow meters for measuring flow rate of scrubbing medium or pressure drop measuring devices indicating back pressure and pressure drop across the scrubber.

[~~Section 6. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 59:240. New perchloroethylene dry cleaning systems.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new perchloroethylene dry cleaning systems.

~~[Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below which is located:]~~
~~[(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or]~~
~~[(2) In any other county and is a part of a major source of volatile organic compounds.]~~
~~[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]~~

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.
(1) "Affected facility" means a dry cleaning system which uses perchloroethylene.
(2) "Dry cleaning system" means a series of equipment [~~and/~~]or operations which includes, but is not limited to washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves used for the purpose of commercial cleaning of fabrics.
~~[(3) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]~~
(3) [(4)] "Classification date" means February 4, 1981. [~~the effective date of this regulation.~~]

Section 2. Applicability. (1) This regulation shall apply to:
(a) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation and located in a county or portion of a county designated as nonattainment for ozone in 401 KAR 51:010, for any classification except marginal; and
(b) Each affected facility commenced on or after the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginal nonattainment for ozone in 401 KAR 51:010.
(2) Each affected facility commenced on or after the classification date defined in Section 1 of this regulation but prior to the effective date of this regulation which is part of a major source located in a county or portion of a county designated attainment or marginally nonattainment for ozone in 401 KAR 51:010 shall be exempt from this regulation except that control devices and procedures required at the time it commenced shall continue to be **operated and** maintained.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. The owner or operator of an affected facility shall install, maintain and operate the control equipment such that the following requirements are met:
(1) There shall be no liquid leakage of organic solvents from the system.
(2) The entire dryer exhaust shall be vented through a properly functioning carbon adsorber or equally effective control device.
(3) The maximum organic solvent concentration in the vent from the dryer control device shall not exceed 100 ppm before dilution.
(4) Filter and distillation wastes.
(a) The residue from a [~~any~~] diatomaceous earth filter shall be cooked or treated so that wastes shall not contain more than twenty-five (25) kg of solvent per 100 kg of wet waste material.
(b) The residue from a solvent still shall not contain more than sixty (60) kg of solvent per 100 kg of wet waste material.
(c) Filtration cartridges shall be drained in the filter housing for at least twenty-four (24) hours before being discarded. The drained cartridges shall be dried in the dryer tumbler after draining.
(d) Any other filtration or distillation system may [~~can~~] be used if equivalency to these requirements is demonstrated. A [~~Any~~] system reducing waste losses below one (1) kg solvent per 100 kg clothes cleaned shall [~~will~~] be considered equivalent.

Section 4. Compliance. (1) Liquid leakage shall be determined by visual inspection of the following sources:
(a) Hose connections, unions, couplings and valves;
(b) Machine door gasket and seating;
(c) Filter head gasket and seating;
(d) Pumps;
(e) Base tanks and storage containers;
(f) Water separators;
(g) Filter sludge recovery operations;
(h) Distillation units;
(i) Diverter valves;
(j) Saturated line from lint basket; and
(k) Cartridge filters.
(2) Dryer exhaust concentration shall be determined by the proper installation, operation, and maintenance of approved equipment as determined by the cabinet or by performance tests specified by the cabinet.
(3) The amount of solvent in filter and distillation wastes shall be determined by ASTM D 322-67(77), and substituting collector C from ASTM E 123-78. ASTM methods have been incorporated [~~are filed~~] by reference in 401 KAR 50:015.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance upon startup.
(2) The owner or operator of an affected facility that, on or after the effective date of this regulation, becomes subject to this regulation for a reason other than construction, modification, or reconstruction shall be required to complete the following:
(a) Submit a final control plan for achieving compliance with this regulation no later than three (3) months after the date the affected facility becomes subject to this regulation.
(b) Award the control system contract no later than five (5) months after the date the affected facility becomes subject to this regulation.
(c) Initiate on-site construction or installation of emission control equipment no later than seven (7) months after the date the affected facility becomes subject to this regulation.
(d) On-site construction or installation of emission control equipment shall be completed no later than eleven (11) months after the date the affected facility becomes subject to this regulation.
(e) Final compliance shall be achieved no later than twelve (12) months after the date the affected facility becomes subject to this regulation.
(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. [~~5.~~] Exemptions. Perchloroethylene dry cleaning facilities which are coin-operated shall be exempt from this regulation.

Section 7. [6.] Variances. Variation with the standards and limitations contained in this regulation, if [when] supported by adequate technical information, may [will] be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 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 defining of terms used in 401 KAR Chapter 61.

Section 1. General definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 61, unless the content clearly indicates otherwise in a specific regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [(11)] "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) [(12)] "Compliance schedule" means a **time** schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [(13)] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [(14)] "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operated.

(17) [(15)] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) [(16)] "District" has the meaning given it in KRS 224.01-100.

(19) [(17)] "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) [(18)] "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) [(19)] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) [(20)] "Existing source" means a source which is not a new source.

(23) [(21)] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) [(22)] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) [(23)] "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) [(24)] "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) [(25)] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) [(26)] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) [(27)] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) [(28)] "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) [(29)] "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. **Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.**

(32) [(30)] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) [~~(31)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

~~[(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:~~

~~(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;~~

~~(b) The following shall not be considered a change in the method of operation:~~

~~1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;~~

~~2. An increase in hours of operation;~~

~~3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.]~~

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Clean Air Act, shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(36) [~~(34)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) [~~(37)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) [(38)] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) [~~(39)~~] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) [~~(41)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) [~~(42)~~] "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) [~~(43)~~] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A 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 federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) [~~(44)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) [~~(45)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(48) [~~(46)~~] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) [~~(47)~~] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious

nonattainment in 401 KAR 51:010.

(51) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) [~~(50)~~] "Shutdown" means the cessation of an operation.

(53) [~~(51)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) [~~(53)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(56) [~~(54)~~] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(58) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(59) [~~(57)~~] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) [~~(58)~~] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) [~~(59)~~] "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(62) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) [~~(61)~~] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides **or carbonates**; ammonium carbonate[~~s~~]; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-a); dichlorofluoroethane (HCFC-b); chlorodifluoroethane (HCFC-b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-a); 1,1-difluoroethane (HFC-a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 59, shall have the following meanings:

AC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary

JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 61:090. Existing automobile and light-duty truck surface coating operations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing automobile and light-duty truck surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for automobile and light-duty truck frames, small parts, wheels, and main body parts at an assembly plant but does not include the following:
(a) Underbottom-sound deadener coatings;
(b) Zinc rich antirust and weld line antirust prime coatings;
(c) Adhesive coatings or mastics;
(d) Flexible coatings;
(e) Plastic body fillers or caulks; or
(f) Interior coatings which are applied after upholstery and interior plastic parts are attached to the body.

(2) "Applicator" means the mechanism or device used to apply the coating, including, but not limited to dipping and spraying.

(3) "Automobile" means all passenger cars or passenger car derivatives capable of seating twelve (12) or fewer passengers.

(4) "Classification date" means June 29, 1979. [~~the effective date of this regulation.~~]

(5) "Coating line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any prime, topcoat or repair coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:
(a) Mixing operations;
(b) Process storage;
(c) Applicators;
(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;
(e) Clean up operations;
(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];
(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];
(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) coating line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [~~volatile organic compound~~] it receives from or distributes to each coating line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

(6) "Final repair coating line" means a coating line for the repainting of any coatings which are damaged during vehicle assembly.

(7) "Flash-off area" means the space between the application area and the oven.

(8) "Light-duty truck" means all motor vehicles rated at 3,864 kilograms (8,500 pounds) gross vehicle weight or less which is designed primarily for purposes of transportation of property or are derivatives of these [such] vehicles (including, but not limited to, pickups, vans, and window vans).

(9) "Prime coat coating line" means a coating line for the first coating and surfacer which are responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.

(10) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(11) "Topcoat coating line" means a coating line for the coating of the surface to obtain desired aesthetic effects.

[~~(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(12) [~~(13)~~] "Surfacer" means the spray application of primer to touchup areas on the surface not adequately covered during electrodeposition.

(13) "VOCs [~~(14) "Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. When the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(14) [~~(15)~~] "Electrophoretic deposition" means a process of applying a coating by dipping the component in a coating bath with an electrical potential difference between the component and the bath.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) If applicable, compliance is determined by "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations", which has been incorporated by reference in Section 7 of this regulation.

(2) [~~(1)~~] In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(3) [~~(2)~~] Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except~~

~~in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(4) [~~(3)~~] With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(5) If [~~(4) Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. [~~The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the cabinet determines that other methods would be more appropriate:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect June 29, 1979, shall have achieved final compliance by January 1, 1983, for prime coatings systems and final repair systems and by January 1, 1986, for topcoat systems.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [~~(1)~~] Prime coatings systems, topcoat systems, and final repair coating systems except as provided for in paragraph (b) of this subsection [~~subsection (3) of this section~~]:

1. [~~(a) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~March 1, 1980~~].

2. [~~(b) Award~~] The control system contract [~~and/~~]or the exempt coatings contracts and purchase orders shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~March 1, 1981~~].

3. [~~(c) Initiate~~] On-site construction or installation of emission control equipment [~~and/~~]or process changes for exempt coatings shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~June 1, 1981~~].

4. [~~(d)~~] On-site construction or installation of emission control equipment [~~and/~~]or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~July 31, 1982~~].

5. [~~(e)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~January 1, 1983~~].

6. If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

[~~(2) Topcoat systems.~~]

[~~(a) Submit a final control plan for achieving compliance with this regulation no later than July 1, 1980.~~]

[~~(b) Award the control system contract and/or the exempt coating contracts and purchase orders no later than March 1, 1983.~~]

[~~(c) Initiate on site construction or installation of emission control equipment and/or process changes for exempt coatings no later than June 1, 1983.~~]

[~~(d) On site construction or installation of emission control equipment and/or process changes for exempt coatings shall be completed no later than July 31, 1985.~~]

[~~(e) Final compliance shall be achieved no later than January 1, 1986.~~]

(b) [~~(3)~~] Prime coating lines which are using electrophoretic deposition on or before the effective date of this regulation shall be in compliance on the effective date of this regulation.

Section 6. Exemptions. (1) Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the VOC [~~volatile organic compound~~] content of the coating is:

(a) Prime coating line: 0.14 kg/l of coating (one and two-tenths (1.2) lb/gal), excluding water or exempt solvent or both, which shall be applied by electrophoretic deposition and 0.34 kg/l of coating (two and eight-tenths (2.8) lb/gal), excluding water or exempt solvent or both, delivered to the applicators associated with the surfacer. An alternative for the surfacer is fifty-five (55) percent solids by volume organic-borne prime coat applied with a minimum of sixty-five (65) percent transfer efficiency. An alternative for the prime coating line is an organic borne prime coat consisting of a minimum of fifty-five (55) percent solids by volume which is applied with a minimum of fifty (50) percent transfer efficiency.

(b) Topcoat coating line: 0.34 kg/l of coating (two and eight-tenths (2.8) lb/gal), excluding water or exempt solvent or both, delivered to the applicator(s) associated with the topcoat coating line or a fifty (50) percent solids by volume organic-borne topcoat applied with a minimum of sixty-five (65) percent transfer efficiency.

(c) Repair coating line: 0.58 kg/l of coating (four and eight-tenths (4.8) lb/gal), excluding water or exempt solvent or both, as delivered to the applicator applied with a minimum of sixty-five (65) percent transfer efficiency.

(2) Any affected facility using this section may elect to use **a weighted** [~~an arithmetic~~] average of the coatings used in the particular coating line involved. If this [~~such~~] average meets the exemption then all the coatings shall [~~will~~] be considered to meet the exemption.

(3) The exemptions specified in this section may be achieved by:

(a) Use of low solvent coating; [~~and/~~]or

(b) Any other emission reduction process or equipment shown to be as effective.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

Section 7. Reference Material. (1) Incorporation by Reference. The following document is incorporated by reference: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations," EPA-450/3-88-018, December 1988, available from U.S. Environmental Protection Agency, 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.

(2) The document incorporated by reference in subsection (1) of this section is available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 465-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

[~~Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 61:122. Existing graphic arts facilities using rotogravure and flexography.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120 [~~Chapter 224~~]
STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]
NECESSITY AND FUNCTION: KRS 224.10-100 [~~224.033~~] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing graphic arts facilities which use rotogravure and flexography.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[~~(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.~~]

[~~(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.~~]

Section 1. [~~2.~~] Definitions. As used in this regulation, all terms not defined in this section [~~herein~~] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a printing line for packaging rotogravure, publication rotogravure, specialty rotogravure, and flexographic printing.

(2) "Applicator" means the mechanism or device used to apply the ink.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Printing line" means a series of equipment [~~and/~~]or operations used to apply, dry, or cure any **inks** [~~links~~] containing VOCs [~~volatile organic compounds~~]. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [~~volatile organic compounds~~];

(g) Processing and handling of recovered VOCs [~~volatile organic compounds~~];

(h) For the purposes of determining compliance with this regulation, if any equipment or operation is [~~could be~~] considered to be a part of more than one (1) printing line, its VOC [~~volatile organic compound~~] emissions shall be assigned to each printing line of which it is a part proportionally to the throughput of VOCs [~~volatile organic compounds~~] it receives from or distributes to each printing line;

(i) If any portion of the series of equipment [~~and/~~]or operations qualifies [~~qualify~~] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate printing line;

(j) All units in a machine which has both coating and printing units shall [~~will~~] be considered as performing a printing operation.

[~~(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.~~]

(5) [~~(6)~~] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain inks, VOCs [~~volatile organic compounds~~], or recovered VOCs [~~volatile organic compounds~~]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(6) [~~(7)~~] "Printing" means the formation of words, designs, and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication, specialty, and packaging printing.

(7) [~~(8)~~] "Coating" means the application of a uniform layer of material across the entire width of a web.

(8) [~~(9)~~] "Classification date" means February 4, 1981.

(9) [~~(10)~~] "VOCs [~~Volatile organic compounds~~] net input" means the total amount of VOCs [~~volatile organic compounds~~] input to the affected facility minus the amount of VOCs [~~volatile organic compounds~~] that are not emitted into the atmosphere. VOCs [~~Volatile organic compounds~~] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOCs [~~volatile organic compounds~~] net input. If [~~When~~] the nature of any operation or design of equipment [~~is such as to~~] permits more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(10) [~~(11)~~] "Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

(11) [~~(12)~~] "Publication rotogravure printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogs, brochures, directories, newspaper supplements, and other types of printed materials.

(12) [~~(13)~~] "Flexographic printing" means the application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

(13) [~~(14)~~] "Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves intaglio or recessed image areas in the form of cells.

(14) [~~(15)~~] "Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

(15) [~~(16)~~] "Specialty rotogravure printing" means all rotogravure printing except packaging rotogravure and publication rotogravure printing. It includes, but is not limited to, rotogravure printing on paper cups and plates, patterned gift wrap, wallpaper and floor coverings.

Section 2. Applicability. This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

Section 3. Standard for VOCs [~~Volatile Organic Compounds~~]. (1) No person shall cause, allow, or permit an affected facility for publication rotogravure printing to discharge into the atmosphere more than twenty-five (25) percent by weight of the VOCs [~~volatile~~

~~organic compounds~~] net input into the affected facility.

(2) No person shall cause, allow, or permit an affected facility for packaging rotogravure printing or specialty rotogravure printing to discharge into the atmosphere more than thirty-five (35) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

(3) No person shall cause, allow, or permit an affected facility for flexographic printing to discharge into the atmosphere more than forty (40) percent by weight of the VOCs [~~volatile organic compounds~~] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system shall be [~~is~~] subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [~~except in those cases where~~] the cabinet determines that a material balance is not possible. If [~~For those cases where~~] a material balance is not possible, compliance shall [~~will~~] be determined based upon an engineering analysis by the cabinet of the control system design, control device efficiency, control system capture efficiency, and any other factors that may [~~could~~] influence the performance of the system. If [~~so~~] requested by the cabinet, performance tests [~~as~~] specified by the cabinet shall be conducted [~~in order~~] to determine the efficiency of the control device. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator may elect to effect all [~~such~~] changes [~~in the affected facility as are~~] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [~~Whenever~~] deemed necessary by the cabinet, the cabinet shall obtain samples of the inks used at an affected facility to verify that the inks meet the requirements in Section 6 of this regulation. Method 24A, which has been incorporated [~~The following methods of analyses, filed~~] by reference in 401 KAR 50:015, [~~for inks~~] shall be used as applicable unless [~~except in those cases where~~] the cabinet determines that other methods would be more appropriate. Case-by-case alternatives approved by the cabinet, but not previously authorized by the U.S. EPA, shall be submitted to the U.S. EPA as a SIP revision. [~~:~~]

[~~(a) ASTM D 1644-75 Method A;~~]

[~~(b) ASTM D 1475-60(74);~~]

[~~(c) ASTM D 2369-73; or~~]

[~~(d) Federal Standard 141 a, Method 4082.1.~~]

(5) The amount of exempt solvents shall be subtracted from the amount of inks, just like water, with the ultimate value of interest being the mass of VOC per unit volume of ink less exempt solvent or water or both.

(6) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of graphic arts material or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each graphic arts material or solvent;

(e) The date for each application for graphic arts material or solvent;

(f) The amount of surface preparation, cleanup, or washup solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility shall be required to complete the following:

(a) [~~(1) Submit~~] A final control plan for achieving compliance with this regulation shall be submitted no later than nine (9) months after the date the affected facility becomes subject to this regulation [~~April 15, 1981~~].

(b) [~~(2) Award~~] The control system contract or the exempt inks and any accompanying process change contracts shall be awarded no later than eleven (11) months after the date the affected facility becomes subject to this regulation [~~June 15, 1981~~].

(c) [~~(3) Initiate~~] On-site construction or installation of emission control equipment or process changes for exempt inks shall be initiated no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [~~December 1, 1981~~].

(d) [~~(4)~~] On-site construction or installation of emission control equipment or process changes for exempt inks shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [~~December 1, 1982~~].

(e) [~~(5)~~] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [~~December 31, 1982~~].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. Any affected facility shall be exempt from [~~the provisions of~~] Section 3 of this regulation if the printing systems:

(1) Utilize a waterborne ink whose volatile portion consists of seventy-five (75) volume percent water and twenty-five (25) volume percent organic solvent (or a lower VOC [~~volatile organic compound~~] content) in all printing units;

(2) Achieve a seventy (70) volume percent overall reduction of solvent usage (compared to all solvent-borne ink usage); [~~or~~]

(3) Utilize inks which, excluding water, contain sixty (60) percent or more by volume nonvolatile material as applied to the substrate; or

(4) Utilize inks with an emission limit of five-tenths (0.5) VOC/lb solids as delivered to the applicator.

[~~Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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(Amended After Hearing)

401 KAR 61:132. Existing miscellaneous metal parts and products surface coating operations.

RELATES TO: KRS [~~Chapter~~] 224~~20~~-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100 [~~224.033~~]

NECESSITY AND FUNCTION: KRS 224.10-110 [**224.033**] requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing miscellaneous metal parts and products surface coating operations.

[~~Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:~~]

[~~(1) In an urban county designated nonattainment for ozone under 401 KAR 51:010; or~~]

[(2) In any county which is designated nonattainment or unclassified for ozone under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.]

[(3) The provisions of this regulation shall not apply to affected facilities in the following counties: Garrard, Graves, Hopkins, Laurel, Montgomery, Nelson, Pulaski, Scott, Taylor, Trigg, and Union prior to designation of such counties nonattainment for ozone under 401 KAR 51:010.]

[(4) The provisions of this regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.]

Section 1. [2.] Definitions. As used in this regulation, all terms not defined in this section [herein] shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line located at job shops and original equipment manufacturing industries which apply coatings on metal substrates not subject to a regulation, other than 401 KAR 61:060, in this chapter.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to dipping, spraying, or flow coating.

(3) "Flash-off area" means the space between the applicator and the oven.

(4) "Single coat" means only one (1) film of coating is applied to the metal substrate.

(5) "Prime coat" means the first of two (2) or more films of coating applied in an operation.

(6) "Topcoat" means the final film or series of films of coating applied in a two (2) coat (or more) operation.

(7) "Coating line" means a series of equipment [and/]or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds (VOCs). This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flash-off area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of VOCs [volatile organic compounds];

(g) Processing and handling of recovered VOCs [volatile organic compounds];

(h) For the purposes of determining compliance with this regulation, if [any] equipment or an operation is [could be] considered to be a part of more than one (1) coating line, its VOC [volatile organic compound] emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of VOC [volatile organic compound] it receives from or distributes to each coating line;

(i) If a [any] portion of the series of equipment [and/]or operations qualifies [qualify] for an exemption according to Section 6 of this regulation, then that portion shall be considered to be a separate coating line.

[(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.]

(8) [(9)] "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, VOCs [volatile organic compounds], or recovered VOCs [volatile organic compounds]; but does not mean storage tanks of petroleum liquids which are subject to 401 KAR 59:050, 401 KAR 59:052, or 401 KAR 61:050.

(9) [(10)] "Miscellaneous metal parts and products" means items including but not limited to:

(a) Large farm machinery (harvesting, fertilizing and planting machines, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(c) Small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(d) Commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, etc.); and

(g) Any other industrial category not subject to a regulation, other than 401 KAR 61:060, in this chapter which coats metal parts or products.

(10) [(11)] "Heat sensitive material" means materials which cannot be exposed to temperatures greater than eighty-two (82) to ninety--three (93)∘C (180∘-200∘F).

(11) [(12)] "Air or forced air-dried items" means parts that are too large or too heavy for practical size ovens; parts that are sensitive to heat; parts to which heat sensitive materials are attached; or equipment assembled prior to top coating for specific performance or quality standards.

(12) [(13)] "Outdoor or harsh exposure or extreme environmental conditions" means exposure to any of the following: year round weather conditions, temperatures consistently above ninety-five (95)∘C, detergents, scouring, solvents, corrosive atmospheres; and similar environmental conditions.

(13) [(14)] "Classification date" means February 4, 1981.

(14) "VOCs [(15) "Volatile organic compounds] net input" means the total amount of VOCs [volatile organic compounds] input to the affected facility minus the amount of VOCs [volatile organic compounds] that are not emitted into the atmosphere. VOCs [Volatile organic compounds] that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining VOC [volatile organic compound] net input. If [When] the nature of an [any] operation or a design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(15) "Glass adhesive primer" means a primer applied to the body of a vehicle to etch the topcoat for the purpose of ensuring a positive bond with the adhesive used to secure the windshield and back glass to the vehicle in a manner consistent with federal safety regulations.

Section 2. Applicability. (1) This regulation shall apply to each affected facility commenced before the classification date defined in Section 1 of this regulation which is located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010.

(2) This regulation shall not apply to affected facilities which are subject to local air pollution control district regulations which have been approved by the cabinet and the U.S. EPA.

Section 3. Standard for VOCS [Volatile Organic Compounds]. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the VOCs [volatile organic compounds] net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of a [any] control system is subject to approval by the cabinet.

(2) Compliance with the standard in Section 3 of this regulation shall be demonstrated by a material balance unless [except in those cases where] the cabinet determines that a material balance is not possible. If [For those cases where] a material balance is not possible, compliance shall [will] be determined based upon an engineering analysis by the cabinet of: the control system design, control device efficiency, control system capture efficiency, and [any] other factors that could influence the performance of the system. If [so] requested by the cabinet, Method 25, which has been incorporated [Kentucky Method 90 or 91, filed] by reference in 401 KAR 50:015, shall be performed in order to determine the efficiency of the control device or demonstrate compliance with the standard. Capture efficiency shall be determined by procedures specified in 401 KAR 50:047.

(3) With the prior approval of the cabinet, the owner or operator

may elect to effect all [such] changes [in the affected facility as are] necessary to qualify for an exemption under Section 6 of this regulation.

(4) If [Whenever] deemed necessary by the cabinet, the cabinet shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6 of this regulation. Method 24, which has been incorporated [The following methods of analysis, filed] by reference in 401 KAR 50:015, [for coatings] shall be used as applicable to determine compliance of the coatings unless [except in those cases where] the cabinet and the U.S. EPA determine that other methods would be more appropriate. [:]

[(a) ASTM D-1644-75 Method A;]
[(b) ASTM D-1475-60(74);]
[(c) ASTM D-2369-73; or]
[(d) Federal Standard 141-a, Method 4082.1.]

(5) Compliance on one (1) coating line with VOC emission limits shall be based on an averaging period not to exceed twenty-four (24) hours. If it is not economically or technically feasible to determine emissions on a daily basis, alternatives expressing emission limits for longer averaging times may be accepted if approved by the cabinet and the U.S. EPA as a SIP revision.

(6) The amount of exempt solvents shall be subtracted from the amount of coatings, just like water, with the ultimate value of interest being the mass of VOC per unit volume of coating less exempt solvent or water or both.

(7) Calculations to determine equivalency on one (1) coating line shall be based on mass of VOC per volume of solids.

(8) Daily records shall be maintained by the source for the most recent two (2) year period. These records shall be made available to the cabinet or the U.S. EPA upon request. The records shall include, but not be limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of adhesive, coating (including catalyst and reducer for multicomponent coatings), or solvent used at each point of application, including exempt compounds;

(d) The VOC content as applied in each adhesive, coating, or solvent;

(e) The date for each application for adhesive, coating, or solvent;

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each; and

(g) Oven temperature, if applicable.

Section 5. Compliance Timetable. (1) Affected facilities which were subject to this regulation as in effect on February 4, 1981, shall have achieved final compliance by December 31, 1982.

(2) The owner or operator of an affected facility that becomes subject to this regulation on or after the effective date of this regulation shall be required to complete the following:

(a) [(1)] Submit a final control plan for achieving compliance with this regulation no later than nine (9) months after the date the affected facility becomes subject to this regulation [April 15, 1981].

(b) [(2)] Award a contract for the control system [contract] or for the exempt coatings and any other accompanying process change [contracts] no later than eleven (11) months after the date the affected facility becomes subject to this regulation [June 15, 1981].

(c) [(3)] Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than thirteen (13) months after the date the affected facility becomes subject to this regulation [December 1, 1981].

(d) [(4)] On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than seventeen (17) months after the date the affected facility becomes subject to this regulation [December 1, 1982].

(e) [(5)] Final compliance shall be achieved no later than eighteen (18) months after the date the affected facility becomes subject to this regulation [December 31, 1982].

(f) If an affected facility becomes subject to this regulation because it is located in a county previously designated nonurban nonattainment or redesignated in 401 KAR 51:010 after November 15, 1990, final compliance may be extended to May 31, 1995, and the schedule in paragraphs (a) through (d) of this subsection adjusted by the cabinet.

Section 6. Exemptions. (1) An [Any] affected facility shall be exempt from [the provisions of] Section 3 of this regulation if the VOC [volatile organic compound] content of the coating is:

(a) Less than 0.52 kg/l of coating (four and three-tenths (4.3) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with clear coat;

(b) Less than 0.42 kg/l of coating (three and five-tenths (3.5) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with air or forced air-dried items or items subject to outdoor or harsh exposure or extreme environmental conditions;

(c) Less than 0.36 kg/l of coating (three (3.0) lb/gal), excluding water or exempt solvent or both, delivered to applicators associated with color coat or first coat on untreated ferrous substrate; or

(d) Less than 0.05 kg/l of powder coating (four-tenths (0.4) lb/gal) delivered to applicators associated with no or infrequent color change, or a small number of colors applied.

(2) The surface coating of the following metal parts and products are exempt from this regulation:

(a) The exterior of airplanes and marine vessels, but not parts for the exterior of airplanes and marine vessels that are coated as a separate manufacturing or coating operation;

(b) Automobile refinishing; and

(c) Customized top coating of automobiles and trucks, if production is less than thirty-five (35) vehicles per day.

(3) An [Any] affected facility shall be exempt from [the provisions of Section 3 of] this regulation if the total VOC [volatile organic compound] emissions from all affected facilities subject to this regulation are less than or equal to thirty (30) tons per year.

(4) Low-use coatings shall be exempt from Section 3 of this regulation if the plantwide consumption of these coatings in the aggregate is less than or equal to fifty-five (55) gallons during the previous twelve (12) months.

(5) Glass **adhesive** primer with VOC content equal to or less than six and nine-tenths (6.9) lb/gal of glass **adhesive** primer excluding water or exempt solvent or both, shall be exempt from this regulation.

[Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information, will be considered by the cabinet on a case by case basis to allow for technological or economic circumstances which are unique to a source.]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120
STATUTORY AUTHORITY: KRS 224.10-100
NECESSITY AND FUNCTION: KRS 224.10-100 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 definition of terms used in 401 KAR Chapter 63.

Section 1. General definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 63, unless the content clearly

indicates otherwise in a specific regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) [~~(11)~~] "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) [~~(12)~~] "Compliance schedule" means a **time** schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) [~~(13)~~] "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) [~~(14)~~] "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) [~~(15)~~] "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) [~~(16)~~] "District" has the meaning given it in KRS 224.01-010.

(18) [~~(17)~~] "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) [~~(18)~~] "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) [~~(19)~~] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) [~~(20)~~] "Existing source" means a source which is not a new source.

(22) [~~(21)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) [~~(22)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) [~~(23)~~] "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) [~~(24)~~] "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) [~~(25)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) [~~(26)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) [~~(27)~~] "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) [~~(28)~~] "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) [~~(29)~~] "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. **Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.**

(31) [~~(30)~~] "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) [~~(31)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

~~[(32) "Modification" means a physical change in, or change in the method of operation of an affected facility which increases the potential to emit of an air pollutant (to which a standard applies) emitted by the facility, or which results in the emission of an air pollutant (to which a standard applies) not previously emitted, except that:~~

~~(a) Routine maintenance, repair, and replacement of component parts shall not be considered physical changes;~~

~~(b) The following shall not be considered a change in the method of operation:~~

~~1. An increase in the production rate, if the increase does not exceed the operating design capacity of the affected facility, or the maximum operating capacity specified as a condition to a permit issued by the cabinet;~~

~~2. An increase in hours of operation;~~

~~3. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to the facility, the affected facility is designed to accommodate the alternative use.]~~

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the

date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Clean Air Act, shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) [~~(33)~~] "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) [~~(34)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) [~~(35)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) [~~(36)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) [~~(37)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) [~~(38)~~] "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) [~~(39)~~] "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) [~~(40)~~] "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(42) [~~(41)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) [~~(42)~~] "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) [~~(43)~~] "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A 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 federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) [~~(44)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) [~~(45)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61. This term may be more narrowly defined within a specific regulation.

(47) [~~(46)~~] "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) [~~(47)~~] "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) [~~(48)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) [~~(49)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) [~~(50)~~] "Shutdown" means the cessation of an operation.

(52) [~~(51)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) [~~(52)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) [~~(53)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(55) [~~(54)~~] "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) [~~(55)~~] "Start-up" means the setting in operation of an affected facility.

(57) [~~(56)~~] "State implementation plan" means the most recently prepared plan or revision required by Section 110 of the Clean Air Act which has been approved by the U.S. EPA.

(58) [~~(57)~~] "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) [~~(58)~~] "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) [~~(59)~~] "Urban county" means a county which is a part of an

urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(61) [~~(60)~~] "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) [~~(61)~~] "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides **or carbonates**; ammonium carbonate[~~s~~]; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 63, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH_4 - methane
CO - Carbon monoxide
CO_2 - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H_2O - water
H_2S - Hydrogen sulfide
H_2SO_4 - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m^3 - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N_2 - Nitrogen
NO - Nitric oxide
NO_2 - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O_2 - oxygen
O_3 - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gauge
S - at standard conditions
sec - second
SIP - State implementation plan
SO_2 - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amended After Hearing)

601 KAR 1:040. Application for operating authority.

RELATES TO: KRS Chapter 281
STATUTORY AUTHORITY: KRS 281.600, 281.620 [~~281.610~~]
NECESSITY AND FUNCTION: This regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth.

Section 1. [~~(1)~~] Kentucky Intrastate Authority. (1) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The required form, "Application for Authority" form TC 93-13 effective **February , 1992** [~~November, 1991~~] is incorporated by reference as a part of this regulation. All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty- five (25) dollars. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2) When the applicant is a corporation [~~that has never held~~

~~operating authority in Kentucky~~], a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated [~~and if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State~~] shall be submitted with the application. **This certification** [~~Neither of these certifications~~] shall be **no** more than thirty (30) days old at the time the application is submitted to the department. [~~articles of incorporation shall be filed as part of the application.~~]

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4) All applications shall [~~must~~] be sworn to by the applicant or a responsible official acting for the applicant. No hearing shall be called or authority issued upon an incomplete application.

(5) The form TC 93-13 may be obtained free of charge from the Transportation Cabinet's Office of General Counsel located on the tenth floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 2. [~~(2)~~] Temporary Authority Applications. (1) [~~(a)~~] Applications for temporary authority shall be made to the department by petition filed in duplicate. The [~~which~~] petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought. All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated. The applicant shall have the burden of proof in showing that any [~~and/or all~~] existing carriers with authority are not capable of meeting the need for service. In lieu of meeting this burden, applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each of the [~~such~~] carrier waiving any objection to the temporary grant of authority.

(2) There shall also be filed with the [~~such~~] petition verified statements from a supporting shipper or shippers. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) Description of the specific commodity or passengers to be transported;

(e) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;

(f) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(g) How soon the transportation service is needed and the reasons for the time limit;

(h) How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(i) Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and

(j) Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal. [~~describing the commodity or commodities to be transported, the frequency of the need for service, the approximate volume of freight to be transported and that there is no available service, or if there is available service, that same is not capable of meeting the need, and if same is not capable of meeting the need, the reasons therefor and the particulars thereof shall be stated.~~]

(3) [~~(b)~~] If there are no [~~not~~] existing carriers with authority within the scope and area of the application, if all existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority, if there are unusual and emergency conditions, or if the application is for temporary approval under KRS 281.632(2), the department may issue temporary authority without following any of the requirements listed above.

(4) [~~(c)~~] If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1) All applications for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective **February, 1992** [~~November, 1991~~] is incorporated by reference as a part of this regulation. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated [~~and if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State~~] shall be submitted with the application. **This certification** [~~Neither of these certificates~~] shall be **no** more than thirty (30) days old at the time the application is submitted to the department.

(3) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010. All applications shall be sworn to by the applicant or a responsible official acting for the applicant. No hearing shall be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

(6) The form TC 93-17 may be obtained free of charge from the Transportation Cabinet's Office of General Counsel located on the tenth floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-7650.

Section 4. [~~2.~~] Interstate Operating Authority. (1) All for-hire carriers shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate or permit authorizing this [~~such~~] interstate transportation. All applications for this [~~such a~~] certificate or permit shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The form, TC 95-12, effective October, 1985, "FORM A, Uniform Application for Registration of Operating Authority Issued by ICC or Those Carriers Exempt from ICC Regulations". The application shall be accompanied by a copy of the applicant's operating authority issued by the Interstate Commerce Commission, except where the [~~such~~] transportation activities are exempted from federal regulation, in which event the application shall be for authority to transport persons or property under the particular exemption or exemptions of the Federal Motor Carrier Act.

(2) All applications and exhibits shall be typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with. All applications must be sworn to by the applicant or a responsible official acting for the applicant.

(3) The department may issue a Kentucky interstate common carrier certificate, a Kentucky interstate irregular route common carrier

certificate, and a Kentucky interstate contract carrier permit, all pursuant to the interstate authority. In the event the carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate or permit restricted to the [~~such~~] federally exempted activities as may be appropriate.

(4) The form TC 95-12 may be obtained free of charge from the Transportation Cabinet's Department of Vehicle Regulation, Division of Motor Carriers located on the third floor of the State Office Building, 501 High Street, Frankfort, Kentucky. Their mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-4540.

Section 5. [~~3.~~] Contract Carrier Permit; Intrastate. All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form[~~s~~] incorporated by reference in Section 1 of this regulation [~~furnished and prescribed by the department~~] and shall be accompanied by a filing fee of twenty-five (25) dollars and be in conformity with this administrative regulation [~~601 KAR 1:040~~] and 601 KAR 1:045. Each application shall include two (2) copies of the contract [~~or contracts~~] under which the applicant desires to operate. The contracts shall [~~must~~] be executed by the applicant and shipper, and shall set out, among other things, the rates applicable and the extent and scope of the activity covered by the contract and the minimum amount of freight to be shipped. Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation. At least one (1) of the contract copies shall have original signatures. The extent of the authority of the contract carrier permit shall [~~will~~] be limited to the scope of the contract [~~or contracts~~] on file with the department, made a part of the permit and be briefly set out on the vehicle identification card carried in the vehicle operated by the contract carrier.

Section 6. [~~4.~~] Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICC. [~~(1)~~] All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, by an applicant who [~~which also states that applicant~~] is a single state operator but also [~~,~~] desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority. [~~and requests that the application be filed with the Interstate Commerce Commission, Washington, DC, for a motor carrier certificate of registration, shall be made on forms prescribed and furnished by the cabinet, and shall be accompanied by a filing fee of twenty-five (25) dollars, and in all other respects fully comply with 601 KAR 1:040.~~]

[~~(2) All applications, pursuant to 601 KAR 1:040, shall be filed out not less than thirty-five (35) days before the date of a hearing with the cabinet. On or before the first day of the thirty-five (35) day period, the clerk of the Office of General Counsel shall assign the application a docket number and set the same on a day certain for hearing and shall immediately prepare, sign and mail a notice of the filing of the application for publication in the Federal Register under Section 206(a)(6) of the Interstate Commerce Act as amended October 15, 1962, the same to be sent to the Bureau of Operating Rights, Interstate Commerce Commission, Washington, DC, and otherwise shall proceed to give notice in the usual manner to all intrastate carriers and other parties as now required by KRS 281.625 and the regulations of the department.~~]

[~~(3) When applications are made under this section of the regulations, the same shall be reported and transcribed in accordance with 601 KAR 1:030 for compliance with Part 1100 General Rules of Practice, Interstate Commerce Commission, Section 1100.90. Provisions for copies of the record shall be made with the reporter in advance of the same being transcribed at the cost of the party requesting the same.~~]

[~~(4) Pursuant to the same section of the above mentioned general rules of practice, protests by interstate carriers shall be filed and placed in the docket, and all inquiries for information made by such carriers shall be promptly answered, and requests for copies shall be handled in accordance with 601 KAR 2:010. All protests or other filings shall be made in the form and manner prescribed by 601 KAR 2:010.~~]

LEWIS H. DOTSON, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: March 2, 1992
FILED WITH LRC: March 6, 1992 at 10 a.m.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:011. Procedure [~~in applications~~] for adjustments of claims.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: 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 judges and the Workers' Compensation Board.

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)(a) 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.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120.

(c) Additional parties may be joined upon motion made as soon as practicable after legal grounds for joinder are known. The administrative law judge may, in his discretion, overrule any motion for joinder which is untimely made. Upon joinder of an additional party, a copy of the file shall be served on the party joined as ordered by the administrative law judge. Upon order of the administrative law judge, the commissioner shall provide notice of the joinder to the party joined.

Section 3. Pleadings. (1) Any application for adjustment of claim for compensation, answer, or [~~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 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 twenty (20) [~~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.

~~[(4) If issues not raised by the pleadings are tried by expressed or implied consent of the parties, they may be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after opinion, award, or order, but not later than the time within which a petition for reconsideration may be filed. The claim or defense asserted in the amended pleading shall relate back to the date of the original pleading.]~~

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. The party filing a motion shall tender with the motion a proposed order granting the relief requested by the motion.

(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, or medical report containing the evidence and to the page where it is to be found, or to the pleading containing the admission.

(5) A motion may 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's 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, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(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. If [~~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 **issuance of the scheduling order by the Department of Workers' Claims** [~~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, all parties may begin discovery and proof. All parties may take discovery and proof before or within [~~for~~] sixty (60) days from the [~~filing~~] date of the scheduling order [~~application~~]; the defendants may then take discovery and proof for an additional thirty (30) days; thereafter, [~~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), **unless for good cause shown the administrative law judge has granted an extension of time,** 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. 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 retraining incentive benefits are sought.

(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 **all** ~~[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);
(d) Two (2) x-ray reports complying with KRS 342.316.

(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(1)(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.]~~

(4) [~~(5)~~] If at the end of the sixty (60) day 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 election to resist [~~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. The witness list shall give the name of each proposed witness together with a summary of the prior testimony or anticipated testimony of the witness. For medical witnesses, this summary shall include at a minimum a description of the diagnosis made by the witness and the physical findings and diagnostic studies upon which the diagnosis is based, as well as the functional impairment rating assessed by the witness and any work-related restrictions imposed.

(2) Within sixty (60) days after the date of the commissioner's scheduling order, the defendant employer shall file with the administrative law judge, with copies to opposing parties, the plaintiff's payroll records with the defendant employer for each of the fifty-two (52) weeks preceding the date of the alleged injury or the date of the alleged last exposure in accordance with the provisions of KRS 342.140 unless good cause is shown for the failure to file the payroll records or the parties, by joint stipulation, agree upon the employee's average weekly wage. Such payroll records or stipulation shall constitute evidence in the case.

(3) At the prehearing conference, the administrative law judge may limit witnesses for good cause shown.

(4) [~~(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.

(5) [~~(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.

(6) [~~(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.~~]

(7) [~~(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.

(8) [~~(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.

(9) [~~(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.

(10) [~~(9)~~] If the parties agree upon a settlement at or after the prehearing conference but before the hearing, the settlement agreement (Form 110) 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 the 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 KRS 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 9 [~~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, the defendant shall file his response, if any, and supporting affidavits, as appropriate, within twenty (20) days from the date of the issuance of the scheduling order by the Department of Workers' Claims, or within twenty (20) days of the filing of any subsequent motion [~~as herein provided~~].

(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) No interlocutory relief may be sought or granted when the claim is an application for retraining incentive benefits [~~(expedited procedure)~~].

(9) When the administrative law judge awards to the plaintiff

interlocutory relief in the form of income benefits while he is totally disabled, an attorney's 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 9(7) of this regulation. All provisions of KRS 342.320 and Section 4(6) 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 7(8) [~~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)(a) 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. Briefs filed with the administrative law judges shall not exceed **fifteen (15)** [~~twenty-five (25)~~] pages in length. **Reply briefs shall be limited to five (5) pages in length.** Permission to increase the length of a brief shall be sought by motion. Cause must be shown for the increase. 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, a decision shall be rendered no later than ninety (90) days following the hearing, and the time for filing a petition for reconsideration shall not begin to run until the date of filing of the written opinion.

(b) A persistent or continuous failure to comply with paragraph (a) of this subsection may be considered by the board as cause for removal of the administrative law judge pursuant to KRS 342.230.

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 timely petition for reconsideration shall suspend the finality of any order, decision, or award until the ruling is made thereon. Any notice of appeal filed prior to filing of a petition for reconsideration shall be held in abeyance until a ruling is made on the petition.

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. A final adjudication as used in this section shall be determined according to the provisions of Civil Rule 54.02(1) and (2).

(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)(b) [~~(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 **served** [~~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 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(2) [~~(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)(a) 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 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, and copies of all cited cases from federal courts and foreign jurisdictions.

(b) The failure of the petitioner to file petitioner's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties **absent a showing of good cause**:

1. A dismissal of the appeal after failure to respond to a show cause order served upon the attorney and client;

2. The striking of the petitioner's brief;

3. The imposition of a fine on petitioner's counsel of not more than $500.

(8)(a) The respondent's brief shall be filed with the board within thirty (30) days of the date the petitioner's brief was filed or due. 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 shall be required and the only appendix shall be a copy of any response filed to a petition for reconsideration and

copies of all cited cases from federal courts and foreign jurisdictions. 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.

(b) The failure of the respondent to file respondent's brief within the time provided by paragraph (a) of this subsection may be grounds for one (1) or more of the following penalties **absent a showing of good cause**:

1. The reversal of the opinion and award if the petitioner's brief and the record reasonably appear to sustain such action;

2. The striking of the respondent's brief;

3. The imposition of a fine on respondent's counsel of not more than $500.

(9) The petitioner's reply brief may [~~shall~~] be filed within fifteen (15) days after the date on which the last respondent's brief was filed or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, 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 may [~~shall~~] be filed within fifteen (15) days after the date on which the last cross-respondent's brief was filed or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Rule 76.12(4)(e) of the Kentucky Rules of Civil Procedure, 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 may [~~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, remand[~~ing~~] the claim to the administrative law judge for further proceedings in conformity with the direction of the board. There shall be no motion for reconsideration.

(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.~~]

(19) [~~(20)~~] Except for motions that call for final disposition of an appeal before [~~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 commissioner [~~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, except that the administrative law judge may, in his discretion, permit the introduction of a medical report not submitted on Form 107 or Form 108 if the report contains substantially all of the information required by the forms.

(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 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. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, this section may be complied with by a statement of the physician's medical qualifications index number on the record in lieu of attaching a statement of the physician's qualifications.

(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 but shall not be considered evidence unless a motion for that purpose is made.

(7) Any party may file**, with notice to the other parties,** the testimony of three (3) physicians, taken either by deposition or medical report, which shall be admitted into evidence without further **order** [~~motion~~]. If any party objects to the admissibility of the evidence, the administrative law judge shall then rule on its admissibility.

(8) [~~(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. The administrative law judge shall rule on the motion for admission within fifteen (15) days of the filing of the motion.

(9) [~~(8)~~] Any objection to the filing of a written medical report shall be filed within ten (10) days of the filing of the report or 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 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 their ~~[his]~~ position.

(2) Extensions of time for the taking of discovery or proof by deposition shall not be granted except upon showing of 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 in ~~[at]~~ issue, within the sound discretion of the administrative law judge, may result in assessment of costs 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 thirty (30) 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. (1) 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.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given and provided the notice of deposition contains the following information:

(a) That the deposition is being taken by telephone;

(b) The address and telephone number from which the telephone call will be placed to the witness;

(c) The address where the witness will be giving the deposition and the number of the telephone on which the witness will receive the deposition call; and

(d) That all opposing parties may appear to participate at the deposition either at the place from which the deposition is being given by the witness or at the place the telephone call is placed to the witness.

(3) After a party has served notice of its intention to take a deposition by telephone, any opposing party may participate in the deposition for cross-examination by conference call from places other than where the deposition is given by the witness or where the call is placed to the witness but must contribute its proportionate cost of the conference telephone call.

(4) The commissioner shall establish a medical qualifications index, and an index number will be assigned to a physician upon the filing by the physician of his qualifications. Any physician who has been assigned an index number may testify to the assigned number at deposition in lieu of stating his qualifications. Previously filed medical qualifications may be revised or updated by submitting such revision to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of the physician at the deposition.

~~[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 18. [~~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**, except as provided in subsection (2) of this section**.

(2) If no prior application for adjustment of claim has been filed in any dispute involving KRS 342.020 or 342.035, any provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, insurance adjuster, or surety for employer may contest the same without representation by an attorney through the appearance of a person who is an officer of or regularly employed in a managerial capacity by a corporation or partnership which is involved in the dispute.

(3) [~~(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.

(4) Every pleading shall be signed by the person filing the pleading together with his full address and telephone number(s).

Section 19. [~~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 20. [~~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 regulations 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 21. [~~24.~~] Frivolous Filings. All provisions of Rule 11 and Rule 73.02(4), Kentucky Rules of Civil Procedure, are incorporated into this regulation [~~rule~~] by reference.

Section 22. [~~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 23. [~~26.~~] Forms. (1) Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110, and 112 [~~111~~] are hereby adopted by reference.

(2) Incorporation by reference. One (1) copy of Forms 101, 102, 103 (rev. 1/8/92), 104, 105, 106, 107 (rev. 1/8/92), 108 (rev. 1/8/92), 109, 110, and 112 is filed herewith and incorporated by reference.

(3) Information available.

(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - **Fourth Floor-The Meyer Building, 624 West Main Street,** [~~620 South Third Street,~~] Louisville, Kentucky 40202;

3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;

4. Paducah - **220B North 8th Street,** [~~Suite B, Room 2, 400 Park Avenue,~~] Paducah, Kentucky 42001; and

5. Pikeville - **412 Second Street,** [~~111 Caroline Avenue,~~] Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section 24. [~~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 the [~~said~~] action, judgment has been rendered thereon, and there has been default in payment of the [~~said~~] judgment 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 compensation 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.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from the defendant-employer upon a showing that the defendant-employer has filed a petition in bankruptcy in the United States Bankruptcy Court under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) The predicted normal values of FVC and FEV_1, which are identical in both the 1984 and 1988 editions of the American Medical Association Guidelines, are given in graph form with ages and heights given in even years and even centimeters. The guidelines are silent as to the determination of the proper predicted values when the plaintiff's age is in an odd year or his height is in odd centimeters.

(2) If the plaintiff's age at the time of the exam is an odd year, the next highest even year shall be used.

(3) The plaintiff's height, as measured in his stocking feet, shall be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

Section 26. Resolution of Medical Fee Disputes. (1) Any employee, provider of medical services, employer, insurance carrier, self-insured, self-insured group, self-insured group administrator, or surety for employer, whether a natural person, partnership, or corporation, may seek, by **request** [~~motion~~] (Form 112), resolution of a dispute regarding the payment or nonpayment of medical expenses before an application for adjustment of claim is filed.

(2) The movant shall file with his **request** [~~motion~~] affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought. The opposing party may file, within twenty (20) days after notice of the **request** [~~motion~~] a response, if any, along with affidavits setting forth facts sufficient to show that the movant is not entitled to the relief sought.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which

shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute, including an order directing the parties to file a formal application for adjustment of claim.

(4) If the administrative law judge determines that such proceedings have been brought, **caused to be brought,** prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has so brought, **caused to be brought,** prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of this regulation.

JUDGE ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: March 4, 1992
FILED WITH LRC: March 10 at 9 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 13, 1992

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:015. Meetings.

RELATES TO: KRS 325.230, 325.240
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: [~~To promulgate administrative regulations of the State Board of Accountancy of Kentucky.~~] This administrative regulation governs the meetings of the board.

Section 1. The board shall meet in Louisville, or elsewhere in Kentucky as it may elect, at least once each year[~~, and shall remain in session as long as necessary in order to transact its business and to conduct written examinations of persons applying for a certificate as a Certified Public Accountant~~].

Section 2. The board shall schedule the time and place of future meetings by resolution.

(1) A special [~~In addition to the annual meeting, and in addition to future meetings the time and place of which may be fixed by resolution of the board, any~~] meeting may be called by the board president [~~of the board~~] or by a majority [~~joint call of four (4)~~] of the [~~its~~] members of the board.

(2) Two (2) weeks notice shall be given for special [~~such~~] meetings. [~~and~~]

(3) The notice shall [~~must~~] designate the time and place of the special meeting.

[~~(2) All meetings of the board shall be open and public, except that the board may hold executive sessions to deliberate on the decision to be reached after a hearing upon a complaint, or to consider the qualifications of candidates for certificates as certified public accountants.~~]

JOHN A. THOMPSON, President
APPROVED BY AGENCY: March 12, 1992
FILED WITH LRC: March 13, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher
(1) Type and number of entities affected: 4,309 certified public accountants.
(a) Direct and indirect costs or savings to those affected: None. This regulation deletes repetitious statutory language and conforms the language to standards of KRS Chapter 13A.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: No costs or savings will be realized with this amendment.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. These amendments were to provide conformity with KRS Chapter 13A and do not impact the regulated activities.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:020. Members of board.

RELATES TO: KRS 325.230, 325.240
STATUTORY AUTHORITY: KRS 325.240
NECESSITY AND FUNCTION: To elect officers [~~repromulgate administrative regulations~~] of the State Board of Accountancy of Kentucky.

Section 1. The annual election of officers of the board shall be held at the meeting immediately preceding July 1st of each year. [~~As soon as practicable after designation of new appointees each year, the board shall elect a president, a secretary and a treasurer from among its members. The office of secretary and treasurer may be held by the same individual.~~] All officers [~~shall be elected for a term of one (1) year and each~~] shall continue in office until new officers have [~~his successor has~~] been elected [~~and qualified or until his appointment as a member of the board shall expire~~].

JOHN A. THOMPSON, President
APPROVED BY AGENCY: March 12, 1992
FILED WITH LRC: March 13, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310. Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 4,309 certified public accountants.

(a) Direct and indirect costs or savings to those affected: None. This regulation deletes repetitious statutory language and conforms the language to standards of KRS Chapter 13A.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: No costs or savings will be realized with this amendment.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. These amendments were to provide conformity with KRS Chapter 13A and do not impact the regulated activities.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:040. [~~Examination; notice.~~] Procedures for conducting examination.

RELATES TO: KRS 325.270

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: [~~To promulgate administrative regulations of the State Board of Accountancy of Kentucky.~~] This administrative regulation describes [~~relates to~~] the procedure for conducting examinations.

Section 1. In May and November of each calendar year, the board shall conduct an examination for examination candidates who have met the requirements of 201 KAR 1:130. [~~During the months of May and November the board will conduct an examination for qualified applicants whose applications have been approved by the board. The applicants accepted as candidates for examination will be notified in writing to the address stated in their application of the exact place of the examination, and the dates and hours at which each subject will be given.~~]

Section 2. (1) At the examination site, a candidate[~~s for examination~~] shall be given a card bearing an identification number.

(2) The examination number [~~is for identification only and~~] shall be used on all papers submitted by the candidate in place of his name.

(3) If an examination [~~any~~] candidate makes any [~~shall sign his name or write his initials or~~] other identification marks upon his examination papers, [~~such action shall be considered as misconduct and shall be sufficient cause for rejecting~~] his papers shall be rejected.

Section 3. Answers to examination questions, shall [~~identified by the proper question number, must~~] be submitted by the candidate on paper furnished by the board. [~~The candidate shall clarify his answers by noting such number on each answer sheet and in no other manner.~~]

Section 4. (1) [~~All~~] Answers shall [~~must~~] be turned in to the examiner-in-charge within the time allotted.

(2) The time allotted shall be [~~is~~] stated on the examination question booklet.

(3) [~~All~~] Papers, stationery and supplies provided by the board, shall [~~, except for the examination questions booklet furnished by the board, shall remain its property and must~~] be returned at the completion of each section of the examination. [~~whether used or not. All examination papers shall be preserved for a period of one (1) year after each examination.~~]

Section 5. Examination Misconduct. An examination candidate shall not:

(1) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;

(2) Communicate with any person, other than board staff, members or proctors, inside or outside the examination room, during the course of the examination;

(3) Copy answers or allow his answers to be copied; or

(4) Substitute an individual in his place.

Section 6. Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) [~~Section 5. Reference by a candidate during the examination to books or other matter, or exchange of information with other persons shall be considered misconduct sufficient to bar the candidate from~~] Further participation in that particular examination subject; [~~and to cause cancellation of~~]

(2) Submitting all examination [~~other~~] papers; or [~~submitted covering other subjects of that scheduled examination and suspension of the right to sit~~]

(3) Sitting for subsequent examinations.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five

days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 1,100 CPA exam candidates each year.

(a) Direct and indirect costs or savings to those affected: None. These amendments bring the exam procedures in conformity with KRS Chapter 13A and codify existing examination misconduct standards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None. These are the examination procedures used for at least twenty (20) years and required by the National Association of State Boards of Accountancy Review Board and the American Institute of Certified Public Accountants who develop this nationwide test.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Uniform Certified Public Accountants Examination standards are cooperatively set by all 50 states using this exam.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. No subgroups exist among CPA examination candidates.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:045. Examination subjects, [~~of examination;~~] grading and [~~,~~] reexamination.

RELATES TO: KRS 325.261 [~~265~~], 325.270

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: [~~To promulgate administrative regulations of the State Board of Accountancy of Kentucky.~~] This administrative regulation governs examination [~~pertains to~~] subjects, [~~of examination,~~] grading and reexamination.

Section 1. Examination Subjects. (1) Examinations shall [~~will~~] include questions or problems in [~~on the following subjects~~]:

(a) [~~(1)~~] Accounting practice;

(b) [~~(2)~~] Theory of accounts;

(c) [~~(3)~~] Auditing; and

(d) [~~(4)~~] Business law.

(2)(a) A person who is licensed to practice law in any state shall be exempt from the business law portion of the examination.

(b) An attorney seeking exemption shall submit with his examination application a document from the appropriate state licensure authority certifying that he is:

1. Duly licensed; and

2. In good standing to practice law.

Section 2. Grading and Reexamination Procedures. (1)(a) A passing score for an examination shall be a score of at least seventy-five (75) on each subject of an examination.

(b) Grades shall be mailed ninety (90) days after the examination to the grade release address submitted to the board by the candidate.

(c) Grades shall not be reported over the telephone, or prior to the grade release date announced at the examination.

(2)(a) Except as provided in paragraph (b) of this subsection for each examination, if a candidate fails to achieve a score of at least seventy-five (75) on each examination subject, he shall receive conditional credit for each subject passed if he receives:

1. A passing grade in two (2) subjects; or

2. A passing grade in accounting practice; and

3. A grade of fifty (50) or more on the subjects he failed.

(b) If during one (1) examination, a candidate receives a passing grade in three (3) examination subjects, he shall receive conditional credit for those subjects regardless of the grade received on the final subject. [~~The candidate will be required to make a grade of not less than seventy-five (75) in each subject before he will be declared to have passed the examination.~~]

~~Section 3. A candidate who fails to receive a conditional credit or credits in any examination shall have the right to reexamination.~~

~~Section 4. A candidate who fails to pass all subjects but who receives a passing grade in two (2) or more subjects, or accounting practice alone, shall receive a conditional credit for such subject or subjects provided such candidate obtains a score of fifty (50) or more on the parts failed. This minimum grade requirement is waived if three (3) parts are passed at a single sitting.~~]

Section 3. A conditioned candidate may add conditional credits at subsequent examinations if he receives a passing grade on the subjects reexamined [~~5. To add to conditioned status, the candidate must obtain a grade of seventy-five (75) or more in the parts passed~~] and a grade of not less than fifty (50) on each subject [~~in all parts~~] not passed. Previously attained conditional credits shall not be affected by the failure to receive a grade of fifty (50). [~~While a grade of less than fifty (50) prevents the candidate from adding to his conditional status, it alone does not remove or cancel conditioned status previously attained.~~]

Section 4. (1) [~~6.~~] A candidate who receives [~~such~~] conditional credit, shall [~~or credits must~~] pass the [~~remaining~~] subjects he failed within the next six (6) examinations following [~~next succeeding~~] the examination at which the first conditional credit was earned.

(2) An additional number of examinations [~~sitting(s)~~] may be granted at the discretion of the [~~State~~] board [~~of Accountancy~~] for good cause.

(3)(a) If a [~~In the event of the failure of a~~] candidate fails [~~thus~~] to pass all of the examination subjects within the [~~above~~] prescribed period, he shall [~~will~~] be considered to have failed the examination.

(b) He [~~Such a candidate~~] may[~~, however, thereafter~~] make a new application as a first time candidate [~~, which shall be reviewed by the board as in the case of any new applicant~~].

Section 5. (1) [~~7.~~] At any examination [~~sitting~~], the candidate shall take [~~must sit for~~] all subjects [~~parts~~] for which he has not yet received a passing grade.

(2) The failure of a candidate to submit an answer [~~a~~] paper for [~~in regard to~~] any subject [~~part~~] of an examination shall [~~will~~] disqualify all papers submitted by him [~~that candidate~~] at that examination, unless the board, in its discretion, finds good cause not to disqualify the papers submitted.

Section 6. A person who took the same examination given by the board in a state other than Kentucky may have conditional credits obtained in the other state accepted by the board if:

(1) The standards under which the conditional credits were obtained are the same as those required by Sections 1 through 5 of this administrative regulation; and

(2) He meets all other standards required for approval as an examination candidate in Kentucky.

Section 7. An examination candidate who fails an examination shall be entitled to take future examinations if he complies with the reexamination requirements of 201 KAR 1:130.

~~[Section 8. Any person licensed to practice law in this state need not be examined in the subject of business law. An applicant claiming waiver of the examination in business law by virtue of this section must include with his application a certification from the Kentucky State Bar Association to the effect that such candidate is duly licensed to practice law in this state and is in good standing as provided in KRS 30.170.~~

~~Section 9. A candidate for the certificate of Certified Public Accountant who has written the uniform examination under the jurisdiction of another state and has failed to receive a passing grade in all subjects, but has passed two (2) or more subjects, or accounting practice alone, may, in the discretion of the board, be given conditional credit for parts passed, provided that the applicant met all requirements of the Kentucky law and regulations, except for residence, at the time of writing the examination.~~]

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 1,100 CPA exam candidates annually.

(a) Direct and indirect costs or savings to those affected: No costs or savings will be created to the affected class by these changes. The changes reflect conformity to the drafting standards of KRS Chapter 13A.

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: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. No subgroups exist among CPA examination candidates.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:050. Certificate application.

RELATES TO: KRS 325.261, 325.280

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: [~~To promulgate administrative regulations of the State Board of Accountancy of Kentucky.~~] This administrative regulation describes the procedure to obtain a certificate as a certified public accountant [~~pertains to making application for certification~~].

Section 1. (1) A person [~~Persons~~] who has [~~have~~] met the qualifications set forth in KRS 325.261 may complete and submit the "Application for Certificate as a Kentucky Certified Public Accountant". The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday. [~~make application for a certificate as Certified Public Accountant and a permit to practice public accounting provided such~~]

(2)(a) The application shall be [~~is~~] filed within five (5) years after successful completion of the examination.

(b) Waiver of this five (5) year [~~expiration~~] period may be granted to individuals for good cause, upon application to the [~~State~~] board [~~of Accountancy~~].

(3) With his [~~In submitting the~~] application [~~to the board~~], the applicant shall include:

(a) A check or money order made payable to the "Kentucky State Board of Accountancy" for [~~(1) Submit the application on the form prescribed by the board together with payment of the fee of~~] twenty-five (25) dollars, which is nonrefundable;

(b) The certificate of experience as described in 201 KAR 1:062;

[~~(2) Cause to be filed with the board three (3) letters from persons to whom the applicant is well known, two (2) of which must be from licensees of the board. Each letter must state an opinion as to the moral character of the applicant and his fitness to practice as a certified public accountant. All letters shall be mailed by the writers to the State Board of Accountancy, Louisville;~~

~~(3) Include in the application the name and address of each person from whom letters are to be received in accordance with subsection (2) of this section. No applicant shall submit for reference the name of any person to whom he is related by either blood or marriage;~~

~~(4) Submit satisfactory evidence that the experience requirements have been met in accordance with 201 KAR 1:061, unless such is already in possession of the board;~~]

(c) [~~(5) Enclose with application~~] One (1) photograph taken within ninety (90) days preceding the application, the back of which shall contain [~~must bear~~] the signature in ink of the applicant;

(d) The official transcript described in 201 KAR 1:130, [~~(6) Include with the application evidence of educational qualifications~~] unless it [~~such~~] is already in possession of the board; and

(e) [~~(7) Submit satisfactory~~] Evidence of completion of an examination on KRS Chapter 325, the administrative regulations promulgated by the board, Kentucky Rules of Professional Conduct [~~professional ethics~~] and other related questions as the board may deem appropriate.

Section 2. The act of filing an application for a certificate shall constitute [~~and permit to practice constitutes~~] an agreement that the applicant will take the oath of a Kentucky Certified Public Accountant.

Section 3. Certificate Without Examination. (1) On the application, an applicant who has satisfied the requirements of KRS 325.280 may request to be granted a certificate as a certified public accountant.

(2) In addition to the application, fee, and information requirements of Section 1 of this administrative regulation, an applicant shall submit or cause to have submitted:

(a) A list of colleges and universities attended with graduation date and degree awarded; and

(b)1. A form, "Authorization for Interstate Exchange of Information, January, 1985";

2. This form shall be completed by the Board of Accountancy in the state where the applicant holds a valid certificate and current permit to practice.

(3) "Authorization for Interstate Exchange of Information, January, 1985" is incorporated by reference and it may be inspected and a copy obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. to 4:30 p.m., Monday through Friday.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 260 CPA candidates annually.

(a) Direct and indirect costs or savings to those affected: No costs or savings will be realized since these changes reflect conformity to the drafting standards of KRS Chapter 13A.

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: The elimination of the 3 reference letters will save candidates and CPAs the cost of filing letters.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Some savings will be realized, since staff time will not be spent obtaining and checking the reference letters.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. There is no subgroup of CPA candidates to whom this applies.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:065. Individual and firm permit [~~Annual~~] fees.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: This administrative regulation describes the procedures and fees for a certified public accountant and public accounting firm to apply for and renew a permit to practice public accounting. [~~To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to the annual license fee.~~]

Section 1. Certified Public Accountant Permit. A person seeking to practice public accounting shall:

(1) Obtain a certificate in accordance with KRS 325.261 and 201

KAR 1:050.

(2) Complete and submit the "Initial Permit Application" or "Permit Renewal Application" form. These forms are incorporated by reference and may be inspected and a copy obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday.

(3) Submit a check or money order made payable to the "Kentucky State Board of Accountancy" in the amount of:

(a) Fifty (50) dollars for even numbered certificate holders issued permits in odd numbered years. This permit shall expire on July 1 of the year following the date it was issued.

(b) $100 for even numbered certificate holders issued permits in even numbered years. This permit shall expire on July 1 on the second year following the date it was issued.

(c) Fifty (50) dollars for odd numbered certificate holders issued permits in even numbered years. This permit shall expire on July 1 of the year following the date it was issued.

(d) $100 for odd numbered certificate holders issued permits in odd numbered years. This permit shall expire on July 1 on the second year following the date it was issued.

Section 2. Public Accounting Firm Permit. A partnership or professional service corporation, seeking to practice public accounting, shall initially apply for and biennially renew the permit to practice by submitting:

(1) A completed "Initial Firm Registration Application" and "Firm Renewal Application".

(2) A check made payable to the "Kentucky State Board of Accountancy" in the amount of $100; and

(3) A copy of a document from the Secretary of State's Office which affirms that the professional service corporation is registered.

Section 3. The "Initial Firm Registration Application" and "Firm Renewal Application" is incorporated by reference and may be inspected or a copy obtained at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

~~[Section 1. Each certified public accountant, partnership or corporation in Kentucky must secure a permit from the Board of Accountancy by paying an initial fee of fifty (50) dollars. Each such certified public accountant, each public accountant, each partnership, and each corporation registered with the board shall pay to the Board of Accountancy an annual renewal fee of fifty (50) dollars on or before July 1 of each year, for his or its permit to practice public accountancy in Kentucky during the twelve (12) month period beginning on that date.~~]

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 4,309 certified public accountants and 294 CPA firms.

(a) Direct and indirect costs or savings to those affected: This amendment reflects biennial rather than an annual permit renewal period, but the per annum licensee cost remains the same.

1. First year: A small decrease in administrative costs for filing renewal documents annually.

2. Continuing costs or savings: Savings will be the same each year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect on competition, since this is only a change in state license period.

(b) Reporting and paperwork requirements: A small decrease in filing paperwork every 2 years, rather than annually.

(2) Effects on the promulgating administrative body: The board administrative costs will be reduced by handling half of the permit renewals each year.

(a) Direct and indirect costs or savings:

1. First year: Increase in costs to establish new administrative procedures and notify CPAs.

2. Continuing costs or savings: All yearly administrative costs will be reduced by dividing the workload.

3. Additional factors increasing or decreasing costs: A reduction in annual postage costs.

(b) Reporting and paperwork requirements: Employee time for compliance will decrease costs.

(3) Assessment of anticipated effect on state and local revenues: No reduction in state revenues as described in (1)(a).

(4) Assessment of alternative methods; reasons why alternatives were rejected: No effect on board's trust and agency biennial revenue; reduced administrative costs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts with any other government policy.

(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: The enabling statute calls for half of the licensees to renew each year. The greatest difficulty of establishing this procedure is a method to maintain records of which CPAs renew in each year and communicating this to the CPAs. Therefore, the basis is the assigned permanent certificate number.

TIERING: Was tiering applied? No. Tiering is not appropriate, since all CPAs must maintain a current permit to practice.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Proposed Amendment)

201 KAR 1:080. Firm registrations ~~[Use of partnership name]~~.

RELATES TO: KRS 325.300, 325.380

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: Procedure if firm partners or shareholders change. ~~[To repromulgate administrative regulations of the State Board of Accountancy of Kentucky.]~~

Section 1. Upon [~~KRS 325.380(8) provides that no individual shall sign or affix a partnership name with any wording indicating that it is a partnership, unless the partnership holds a permit issued under KRS 325.330 which has not been revoked or suspended. In the event of~~] the death of a member of a firm which is composed of [~~but~~] two (2) partners or shareholders, [~~upon proper application to the board,~~] the board shall [~~may in its discretion~~] authorize the continuation of the use of the partnership name by the surviving partner or shareholder for a reasonable period of time. [~~, for the orderly winding up of the affairs of the partnership. In such case,~~] A reasonable period of time shall be for a [~~deemed to be a~~] period [~~of~~] not to exceed [~~in excess of~~] two (2) years from the date of the shareholder's or partner's death. The partner or shareholder shall advise the board in writing of this situation within thirty (30) days of the partner's or shareholder's death.

Section 2. When a partner or shareholder is admitted or withdrawn from the partnership or professional service corporation, the firm shall notify the board. This notification shall be in writing and sent to the board within thirty (30) days of the occurrence. If the admission or withdrawal of the partner or shareholder results in a change of the partnership or professional service corporation name, the partnership or professional service corporation shall file an "Initial Firm Registration Application" and pay the fee.

Section 3. If a partner or shareholder, whose surname is included in the firm name, retires from the partnership or professional service corporation, as a partner or shareholder, the firm may retain the retiring partner's or shareholder's name in the firm name if a withdrawal notice is submitted to the board.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 294 certified public accounting firms.

(a) Direct and indirect costs or savings to those affected:

1. First year: This amendment for conformity with the regulatory standards of KRS Chapter 13A; no effect on costs will occur; incorporates related material from material being repealed.

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: No effects since this reflects board procedures for many years.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts with any other governmental policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. There are no subgroups within the regulated CPA firms for purposes of this regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Proposed Amendment)

401 KAR 30:010. Definitions for 401 KAR Chapters 30 to 49.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.99, [~~224.033, 224.830 through 224.888, 224.994,~~] 40 CFR Part 260.11, 261 Appendix X, 268 Appendix I

STATUTORY AUTHORITY: KRS 224.10-100, [~~Chapter 13A, 224.033,~~] 40 CFR Part 260.11, 261 Appendix X, 268 Appendix I

NECESSITY AND FUNCTION: KRS 224.10-100 [~~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, special, and hazardous wastes. This chapter establishes the general administrative procedures that [~~which~~] are applicable to 401 KAR Chapters 31 to [~~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 401 KAR Chapters 30 to 49 [~~the waste management regulations~~] shall have the meanings given in this regulation.

(1) "Aboveground tank" see either "hazardous waste management unit-hazardous waste tanks-aboveground tank" or "solid waste site or facility-tank-aboveground tank."

(2) "Accumulated speculatively" see Section 1 of 401 KAR 31:010.

(3) "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 or a solid~~] waste site or facility would be damaged and thereby pose a threat to human health and the environment.

(4) "Active life" of a facility means the period from the initial receipt of [~~hazardous waste or solid~~] waste at a waste site or [~~the~~] facility until the cabinet receives certification of final closure.

(5) "Active portion" means any area of a facility where treatment, storage or disposal operations are being or have been conducted and which have not been closed. 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 cabinet.

(6) "Administrative application" see "application - administrative application."

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

(8) "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.

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

(10) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

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

(12) "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.

(13) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 30 to 48 [~~the waste management regulations for a permit type which are not on a form~~]. The term includes the following:

(a) "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.

(b) "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 to [~~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.~~]

(c) [~~"Notice of intent to apply for a solid waste permit" or~~] "Notice of intent" means the standard forms for applying for:

1. A solid waste site or facility permit as required by 401 KAR 47:160, 401 KAR 47:170 and 401 KAR 48:200; or

2. A special waste landfarming or composting permit as required by 401 KAR 45:030 and 401 KAR 45:100.

(d) "Administrative application" means the standard forms and format used for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:180.

(e) "Special waste application" means the forms approved by the cabinet for applying for a formal permit as specified in 401 KAR 45:030.

(f) [~~(e)~~] "Technical application" means the standard format for applying for a solid waste site or facility permit as specified in 401 KAR 47:160 and 401 KAR 47:190.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(19) "Board" shall have the meaning specified in KRS 224.46-810 [~~means the Kentucky regional integrated waste treatment and disposal facility siting board (KRS 224.2201)~~].

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

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

(22) "Cabinet" shall have the meaning specified in KRS 224.01-010. [~~means the Natural Resources and Environmental Protection Cabinet (KRS 224.005).~~]

(23) "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.

(24) "Cell" means a portion of any [~~a landfill or a sanitary~~] landfill which is isolated, usually by means of an approved barrier.

(25) "Certificate" shall have the meaning specified in KRS 224.46-810. [~~means a certificate of environmental safety and public necessity (KRS 224.2201).~~]

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

(27) "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.

(28) "Closed unit" means any solid waste unit that no longer receives [~~solid~~] waste as of May 8, 1990 [~~the effective date of this regulation~~] and has received all required final layers of cover material, or a special waste unit that no longer receives waste and has received all required final layers of cover material.

(29) "Closure" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(30) "Closure care" or "postclosure" means the routine care, maintenance, monitoring and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements [~~in Section 13 of 401 KAR 48:090, Section 15 of 401 KAR 48:070 and Section 3 of 401 KAR 48:170~~] are met.

(31) "Coal mining solid waste" means solid waste as defined by KRS 224.01-010 [~~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.

(32) "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.

(33) "Commercial solid waste" shall have the meaning specified in KRS 224.01-010. [~~means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes.~~]

(34) "Component" see "hazardous waste management unit-hazardous waste tanks-component" or "solid waste site or facility-tank-component."

(35) "Compost" shall have the meaning specified in KRS 224.01-101.

(36) "Composting" shall have the meaning specified in KRS 224.01-010.

(37) [~~(35)~~] "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.

(38) [~~(36)~~] "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.

(39) [~~(37)~~] "Construction/demolition debris landfill" see "solid waste site or facility-construction/ demolition debris landfill."

(40) [~~(38)~~] "Construction/demolition waste" see "solid waste site or facility."

(41) [~~(39)~~] "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.

(42) [~~(40)~~] "Contained landfill" see "solid waste site or facility - contained landfill."

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

(44) [~~(42)~~] "Contaminate" means introduce a substance that would cause:

(a) The concentration of that substance in the groundwater to exceed the maximum contaminant level specified in 401 KAR 30:031, Sections 5 and 6 of 401 KAR 47:030, or Section 8 of 401 KAR 34:060; or [~~, 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 30:031, 401 KAR 47:030, or Section 8 of 401 KAR 34:060[~~, Section 8~~].

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

(46) [~~(44)~~] "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.

(47) [~~(45)~~] "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.

(48) [~~(46)~~] "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.

(49) [~~(47)~~] "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.

(50) [~~(48)~~] "Destruction or adverse modification" means an [~~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.

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

(52) [~~(50)~~] "Director" means the director of the cabinet's division of waste management.

[~~(51) "Discharge" means but is not limited to spilling, leaking, pumping, pouring, emitting, emptying, or dumping (KRS 224.877(a)).~~]

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

(54) [~~(53)~~] "Disposal" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(55) [~~(54)~~] "Disposal facility" see "hazardous waste site or facility - disposal facility" or "solid waste site or facility-disposal facility".

(56) [~~(55)~~] "Elementary neutralization unit" see "hazardous waste site or facility - elementary neutralization unit."

(57) [~~(56)~~] "Emergency permit" see "permit-emergency/ permit".

(58) [~~(57)~~] "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Endangered Species Act, as amended, 16 USC 1536.

(59) [~~(58)~~] "Environmental emergency" shall have the meaning specified in KRS 224.01-400. [~~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).]~~

(60) [~~(59)~~] "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.

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

(62) [~~(61)~~] "EPA region" means the states and territories found in any one (1) of the [~~following~~] ten (10) regions recognized by the U.S. EPA. [~~:~~

~~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.~~]

(63) [~~(62)~~] "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.

(64) [~~(63)~~] "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 Chapters 47 and 48, approved by the secretary of the cabinet.

(65) [~~(64)~~] "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.

(66) [~~(65)~~] "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.

(67) [~~(66)~~] "Existing tank system" see "hazardous waste management unit - hazardous waste tank-existing tank system."

(68) [~~(67)~~] "Explosive gas" means methane (CH_4) [~~in 401 KAR 30:030, Section 1(1)~~].

(69) [~~(68)~~] "Existing unit" means any solid waste disposal unit that was [~~is~~] receiving solid waste as of May 8, 1990, and any special waste site or facility that was receiving waste as of the effective date of this amendment, [~~regulation~~] and has not received the final layers of cover material.

(70) [~~(69)~~] "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).

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

(72) [~~(71)~~] "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.

(73) [~~(72)~~] "Federal, state and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state or local hazardous waste control statutes, regulations or ordinances.

(74) [~~(73)~~] "Final closure":

(a) Of a hazardous waste site or facility means the closure of all hazardous waste management units at the facility 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 401 KAR 30:031, 401 KAR 47:030 and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170 or 401 KAR 48:200; and [~~and the environmental performance standards in 401 KAR 48:050.~~]

(c) Of a special waste site or facility means the approved closure of a special waste site or facility in accordance with the applicable requirements of 401 KAR 45:100, 401 KAR 45:110, and 401 KAR 30:031.

(75) [~~(74)~~] "Flood plain" means areas adjoining inland waters which are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes: [~~401 KAR 47:040.~~]

(a) "100-year floodplain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

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

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

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

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

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

(79) [~~(78)~~] "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 to [through] 39, and the notification and permitting requirements of KRS 224.01-400, 224.40-310, 224.46-510 to 224.46-580, and 224.50-130 to 224.50-413. [224.855 and 224.864 through 224.877.]

(80) [(79)] "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."

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

(82) "Hazardous constituent" shall have the meaning specified in KRS 224.01.010.

(83) [(81)] "Hazardous substance" shall have the meaning specified in KRS 224.01-400. [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)).]

(84) "Hazardous waste" shall have the meaning specified in KRS 224.01-010.

[(82) "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.]

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

(86) [(84)] "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. Hazardous waste management units include:

[(a) Hazardous waste tanks.]

(a) [1.] "Aboveground 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.

(b) [2.] "Component" means either the tank or ancillary equipment of a tank system.

(c) [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:

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

2. [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.

(d) [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.

(e) [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 commenced after July 14, 1986. [(See also "existing tank system".)]

(f) [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.

(g) [7.] "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(h) [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.

(i) [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.

(87) [(85)] "Hazardous waste site or facility" means any place at which hazardous waste is treated, stored, 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 (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 are joined only by ducts or connections carrying flue gas is not integrally designed; 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 device which:

1. [tank, container, transport vehicle, or vessel which] is used for neutralizing wastes that [which] are hazardous [wastes] only because they exhibit the corrosivity characteristic defined in 401 KAR 31:030, Section 3, or they are listed in 401 KAR 31:040 only for this reason; and [Chapter 31 or are wastes listed in 401 KAR Chapter 31 only for this reason.]

2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in this section.

(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 pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, or a cave.

(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. These [; such] facilities are disposal facilities if the waste will remain after closure.

(i) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of, [and] that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under 401 KAR 38:060, Section 6.

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

(k) "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 of, 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.

(l) "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.

(m) "Tank" means a stationary device designed to contain an accumulation of hazardous waste that [which] is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support and which does not meet the definition of any other unit.

(n) "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.

(o) "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.

(p) "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.

(q) "Wastewater treatment unit" means a device that:

1. Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the CWA; and

2. Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 401 KAR 31:010, Section 3; or generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 401 KAR 31:010, Section 3; or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 3 of 401 KAR 31:010; and

3. Meets the definition of tank or tank system in this regulation. [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.]

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

(89) [(87)] "Household solid waste" shall have the meaning specified in KRS 224.01-010. [means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.]

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

(91) [(89)] "Incinerator" see "hazardous waste site or facility - incinerator" or "solid waste site or facility-incinerator".

(92) [(90)] "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.

(93) [~~(91)~~] "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.

(94) [~~(92)~~] "Industrial furnace" see "hazardous waste site or facility - industrial furnace."

(95) [~~(93)~~] "Industrial solid waste" shall have the meaning specified in KRS 224.01-010. [~~means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under 401 KAR Chapters 32 through 39. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.~~]

(96) [~~(94)~~] "Inert landfill" see "solid waste site or facility - inert landfill."

(97) [~~(95)~~] "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.

(98) [~~(96)~~] "Inground tank" see "hazardous waste management unit - hazardous waste tank - inground tanks" or "solid waste site or facility-tanks-inground tanks".

(99) [~~(97)~~] "Injection well" see "hazardous waste site or facility-injection well", [~~or~~] "solid waste site or facility-injection well", or "special waste site or facility-injection well".

(100) [~~(98)~~] "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.

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

(102) [~~(100)~~] "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.

(103) [~~(101)~~] "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 the [~~such~~] application is made.

(104) [~~(102)~~] "Intermittent stream" means 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.

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

(106) [~~(104)~~] "Karst terrain" means a type of topography where limestone, dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(107) "Key personnel" shall have the meaning specified in KRS 224.01-010.

[~~(105)] "KPDES" means Kentucky Pollutant Discharge Elimination System.~~]

(108) [~~(106)~~] "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.

(109) "Land disposal" shall have the meaning specified in KRS 224.01-010.

(110) [~~(107)~~] "Landfarming facility" see "solid waste site or facility-landfarming facility" or "special waste site or facility-landfarming facility".

(111) [~~(108)~~] "Landfill" see "hazardous waste site or facility - landfill."

(112) [~~(109)~~] "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.

(113) [~~(110)~~] "Land treatment facility" see "hazardous waste site or facility-land treatment facility."

(114) [~~(111)~~] "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing special waste or solid waste landfill unit.

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

(116) [~~(113)~~] "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, 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 aboveground 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.

(117) [~~(114)~~] "Limited quantity generator" see "generator-limited quantity generator."

(118) [~~(115)~~] "Liner" means a continuous layer of natural or manmade material, beneath or on the sides of a [~~hazardous or solid~~] 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 waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(119) [~~(116)~~] "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.

(120) [~~(117)~~] "Management facility" see "solid waste site or facility-management facility".

(121) [~~(118)~~] "Major modification" means:

(a) For hazardous waste sites or facilities, 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 site or facility (Note: Minor modifications are described in Section 3 of 401 KAR 38:040); and

(b) For solid waste sites and facilities, a change meeting the criteria in Section 3 of 401 KAR 47:130.

(122) [~~(119)~~] "Manifest" shall have the meaning specified in KRS 224.01-010. [~~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.~~]

(123) [~~(120)~~] "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.

(124) "Materials recovery facility" shall have the meaning specified in KRS 224.01-010.

(125) [~~(121)~~] "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.

(126) [~~(122)~~] "Miscellaneous unit" see "hazardous waste site or facility - miscellaneous unit" or "solid waste site or facility - miscellaneous unit".

(127) [~~(123)~~] "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.

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

(129) [~~(125)~~] "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(130) [~~(126)~~] "Municipal solid waste" shall have the meaning specified in KRS 224.01-010. [~~means household solid waste and commercial solid waste.~~]

(131) "Municipal solid waste reduction" shall have the meaning specified in KRS 224.01-010.

[~~(127) "NPDES" means National Pollutant Discharge Elimination System (KRS 224.005(29)).~~]

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

(133) [~~(129)~~] "New tank system" see "hazardous waste management unit-hazardous waste tank-new tank system".

(134) [~~(130)~~] "Notice of intent to apply for a solid waste permit" see "application - notice of intent to apply for a solid waste permit".

(135) [~~(131)~~] "Off-site" means properties noncontiguous to the generation site.

(136) [~~(132)~~] "Onground tanks" see "hazardous waste management unit - hazardous waste tanks - onground tanks" or "solid waste site or facility - tank - onground tanks".

(137) [~~(133)~~] "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.

[~~(134)] "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.~~]

(138) [~~(135)~~] "Open burning" means the combustion of any material or solid waste 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.

(139) [~~(136)~~] "Open dump" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(140) [~~(137)~~] "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.

(141) [~~(138)~~] "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(142) [~~(139)~~] "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(143) [~~(140)~~] "Part A of the application" or "Part A" see "application - Part A application".

(144) [~~(141)~~] "Part B of the application" or "Part B" see "application - Part B application".

(145) [~~(142)~~] "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.

(146) [~~(143)~~] "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".

(147) [~~(144)~~] "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.

(148) [~~(145)~~] "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," "registered permit-by-rule," "research, development, and demonstration permit", 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 Section 2 of 401 KAR 38:060, [~~or~~] to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150 or to temporarily store, treat, or dispose of special waste in accordance with the provisions of Section 1 of 401 KAR 45:135.

(b) "Permit by rule" means authorization allowing certain classes of sites or facilities to manage waste consistent with 401 KAR Chapters 30 to 49, without submission of a registration or permit application to the cabinet. [~~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 47:030 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 401 KAR 47:150.

(c) "Registered permit by rule" means that certain classes of solid waste sites or facilities as specified in 401 KAR 47:080 have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200 or that certain classes of special waste sites or facilities as specified in 401 KAR 45:020 have a permit as provided in 401 KAR 45:070.

(d) "Research, development and demonstration permit" means a special waste site or facility or solid waste treatment or disposal facility using innovative and experimental technology as specified in sections of 401 KAR 47:150.

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

(150) [~~(147)~~] "Person" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(151) [~~(148)~~] "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.

(152) [~~(149)~~] "Pile" or "waste pile" see "hazardous waste site or facility-pile" or "solid waste site or facility-pile" or "special waste site or facility-pile".

(153) [~~(150)~~] "Point of compliance" means for special waste sites or facilities or solid waste site and facilities, groundwater monitoring wells located within 250 feet of the waste boundary as approved by the cabinet [~~in accordance with 401 KAR 48:300~~].

(154) [~~(151)~~] "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.

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

(156) [~~(153)~~] "Postclosure monitoring and maintenance" shall have the meaning specified in KRS 224.01-010. [~~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.~~]

[~~(154) "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)).~~]

(157) [~~(155)~~] "Processing facility" see "solid waste site or facility - processing facility".

(158) [~~(156)~~] "Proposed permit" or "draft permit" means a document prepared by the cabinet [~~under Section 3 of 401 KAR 47:140~~] indicating the cabinet's tentative decision to issue or deny, modify, revoke or terminate a permit. [~~A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in Section 2 of 401 KAR 47:140 are types of proposed permits. A denial of a request for modification, revocation or termination as discussed in Section 2 of 401 KAR 47:140 is not a proposed permit.~~]

(159) [~~(157)~~] "Publicly owned treatment works" or "POTW" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

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

(161) [~~(159)~~] "Recharge zone" means an area supplying the water which enters an underground drinking water source.

(162) [~~(160)~~] "Reclaimed" see Section 1 of 401 KAR 31:010.

(163) [~~(161)~~] "Recovered material" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(164) "Recovered material processing facility" shall have the meaning specified in KRS 224.01-010.

(165) [~~(162)~~] "Recycling" shall have the meaning specified in KRS 224.01-010. [~~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.~~]

(166) [~~(163)~~] "Recycling center" see "solid waste site or facility - recycling center".

(167) [(164)] "Recycling facility" see "solid waste site or facility - recycling facility".

(168) "Refuge-derived fuel" shall have the meaning specified in KRS 224.01-010.

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

(170) [~~(166)~~] "Regional integrated waste treatment and disposal demonstration facility" shall have the meaning specified in KRS 224.01-010. [~~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)).~~]

(171) [~~(167)~~] "Regulated unit" means hazardous waste land disposal sites or facilities, or portions of existing hazardous waste land disposal sites or facilities that continued to receive waste after January 26, 1983.

(172) [~~(168)~~] "Research, development and demonstration permit" see "permit - research, development and demonstration permit".

(173) [~~(169)~~] "Residential landfill" see "solid waste site or facility - residential landfill."

(174) [~~(170)~~] "Residual landfill" see "solid waste site or facility - residual landfill."

(175) [~~(171)~~] "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.

(176) [~~(172)~~] "Resource recovery" means the recovery of material or energy from waste.

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

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

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

(180) [~~(176)~~] "Sanitary landfill" see "solid waste site or facility - sanitary landfill".

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

(182) [~~(178)~~] "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.

(183) [~~(179)~~] "Schedule of compliance" means a schedule of remedial measures included in a permit or cabinet order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with KRS Chapter 224 and 401 KAR Chapters 30 to 49. [~~the waste management regulations.~~]

(184) [~~(180)~~] "Scrap metal" see Section 1 of 401 KAR 31:010.

(185) [~~(181)~~] "Secretary" shall have the meaning specified in KRS 224.01-010. [~~means the secretary of the Natural Resources and Environmental Protection Cabinet (KRS 224.005).~~]

(186) "Sewage system" shall have the meaning specified in KRS 224.01-010.

(187) [~~(182)~~] "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(188) [~~(183)~~] "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.

(189) [~~(184)~~] "Small quantity generator" see "generator - small quantity generator".

(190) [~~(185)~~] "Solid waste management" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(191) [~~(186)~~] "Solid waste management area" or "area" shall have the meaning specified in KRS 224.01-010. [~~means any county or group of counties so designated by the cabinet by approval of the local solid waste management plan (KRS 224.005).~~]

(192) [~~(187)~~] "Solid waste management facility" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(193) [~~(188)~~] "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup. [~~Such waste includes, but is not limited to, bricks, shredded or segmented tires, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, tree stumps, limbs, saw dust, leaves, yard waste, paper, paper products, metals, furniture, insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no liquids or hazardous metals that are incidental to any of the above and other inert waste as approved by the cabinet. Asbestos containing materials may be accepted only if the permit application includes procedures approved by the cabinet to handle these materials. Construction/demolition debris landfills shall not be for disposal of garbage, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, PCB containing waste, hazardous material spill residues, limited quantity generator hazardous waste, or any waste regulated by 401 KAR Chapters 31 and 32, whole tires, liquids, drums, fuel tanks, or other nonpermitted wastes.~~] The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050 and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) [~~(b)~~] "Contained landfill" means a solid waste site or facility that [~~which~~] accepts for disposal solid waste [~~including residential, commercial, institutional, industrial, municipal solid waste, shredded tires, household hazardous waste, limited quantity generator hazardous waste and spill cleanup residues that are not hazardous waste~~]. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050 and 401 KAR 48:070 to [~~through~~] 401 KAR 48:090.

(d) [~~(c)~~] "Convenience center" shall have the meaning specified in KRS 224.01-010. [~~means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes from individual households.~~]

(e) [~~(d)~~] "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) [~~(e)~~] "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

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

(h) [~~(g)~~] "Landfarming facility" means a facility for land application of sludges or other solid 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.

(i) [~~(h)~~] "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) [~~(i)~~] "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility" shall have the meaning specified in KRS 224.01-010.

(l) [~~(j)~~] "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or management.

(m) [~~(k)~~] "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid 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 less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(n) [~~(l)~~] "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) [~~(m)~~] "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) [~~(n)~~] "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 401 KAR 30:031 and [~~the "Environmental performance standards" in~~] 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(q) [~~(o)~~] "Sanitary landfill" means a facility for the disposal of solid waste that [~~which~~] complies with 401 KAR 30:031 and [~~the "environmental performance standards" specified in~~] 401 KAR 47:030.

(r) [~~(p)~~] "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.

(s) [~~(q)~~] "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

1. "Aboveground tank" means a device meeting the definition of "tank" in this subsection 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. "Inground tank" means a device meeting the definition of "tank" in this subsection 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.

4. "Onground tank" means a device meeting the definition of "tank" in this subsection 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.

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

7. "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 managing or processing solid waste without posing a threat of release of waste to the environment.

(t) [~~(r)~~] "Transfer facility" shall have the meaning specified in KRS 224.01-010. [~~means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation.~~]

(u) [~~(s)~~] "Unit" or "solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing 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.

(v) [~~(t)~~] "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, manages, processes, generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w) [~~(u)~~]1. "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.

2. "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.

(194) [~~(189)~~] "Solid waste unit" see "solid waste site or facility - unit".

(195) [~~(190)~~] "Special wastes" shall have the meaning specified in KRS 224.50-760. [~~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)).~~]

(196) "Special waste site or facility" means any place at which special waste is managed, processed, or disposed by landfilling, landfarming, composting, or any other method. The term includes:

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

(b) "Landfarming facility" means a facility for land application of sludges or other special waste 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.

(c) "Landfill" means a special waste site or facility for the disposal of specific wastes that is located, designated, constructed, operated, maintained, and closed in conformance with 401 KAR Chapter 45 and 401 KAR 30:031, and receives a case-by-case design review by the cabinet.

(d) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing special waste that is used for processing or management.

(e) "Surface impoundment" means a facility or part of a facility that 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.

(197) [~~(191)~~] "Spent material" see Section 1 of 401 KAR 31:010.

(198) [~~(192)~~] "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.

(199) [~~(193)~~] "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.

(200) "Storage" shall have the meaning specified in KRS 224.01-010.

(201) [~~(194)~~] "Storage facility" see "hazardous waste site or facility - storage facility."

(202) [~~(195)~~] "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.

(203) [~~(196)~~] "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.

(204) [~~(197)~~] "Surface impoundment" see "hazardous waste site or facility - surface impoundment", [~~and~~] "solid waste site or facility -

surface impoundment", or "special waste site or facility-surface impoundment".

(205) [~~(198)~~] "Tank" see "hazardous waste site or facility - tank" or "solid waste site or facility - tank".

(206) [~~(199)~~] "Tank system" see "hazardous waste management unit - hazardous waste tank - tank system" or "solid waste sites or facility - tank system".

(207) [~~(200)~~] "Technical application" see "application - technical application".

(208) [~~(201)~~] "Termination" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(209) [~~(202)~~] "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").

(210) [~~(203)~~] "Thermal treatment facility" see "hazardous waste site or facility - thermal treatment facility."

(211) [~~(204)~~] "Totally enclosed treatment facility" see "hazardous waste site or facility - totally enclosed treatment facility."

(212) [~~(205)~~] "Transfer facility" shall have the meaning specified in KRS 224.01-010. [~~means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous, or solid or special waste are held during the normal course of transportation.~~]

(213) [~~(206)~~] "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.

(214) [~~(207)~~] "Transportation" shall have the meaning specified in KRS 224.01-010. [~~means any off site movement of waste by any mode, and any loading, unloading, or storage incidental thereto (KRS 224.005).~~]

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

(216) [~~(209)~~] "Treatment" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(217) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(a) Whether the waste is amenable to the treatment process;

(b) What pretreatment, if any, is required;

(c) The optimal process conditions needed to achieve the desired treatment;

(d) The efficiency of a treatment process for a specific waste or wastes; or

(e) The characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of 401 KAR 31:010, Section 4(5) and (6), exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(218) [~~(210)~~] "Treatment facility" see "hazardous waste site or facility - treatment facility."

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

(220) [~~(212)~~] "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.

(221) [~~(213)~~] "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.

(222) [~~(214)~~] "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.")

(223) [~~(215)~~] "Underground tank" see "hazardous waste management unit - hazardous waste tank - underground tank" or "solid waste site or facility-tank-underground tank".

(224) "Universal collection" shall have the meaning specified in KRS 224.01-010.

(225) [~~(216)~~] "Unsaturated zone" or "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.

(226) [~~(217)~~] "Unfit for use" see "hazardous waste management unit - hazardous waste tank - unfit for use" or "solid waste site or facility - tank - unfit for use".

(227) [~~(218)~~] "Unit" see "solid waste site" or "facility - unit".

(228) [~~(219)~~] "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.

(229) [~~(220)~~] "Used or reused" see Section 1 of 401 KAR 31:010.

(230) [~~(221)~~] "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.

(231) [~~(222)~~] "Vessel" means any [~~includes every description of~~] watercraft used or capable of being used as a means of transportation on the water.

(232) [~~(223)~~] "Washout" means the carrying away of waste by waters as a result of flooding [~~of the base flood~~].

(233) [~~(224)~~] "Waste" shall have the meaning specified in KRS 224.01-010. [~~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.~~]

(234) [~~(225)~~] "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 or special 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.

(235) "Waste site or facility" shall have the meaning specified in KRS 224.01-010.

[~~(226) "Waste facility" means a hazardous waste site or facility or a solid waste site or facility.~~]

(236) [~~(227)~~] "Waste management district" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(237) [~~(228)~~] "Waste pile" see either "hazardous waste site or facility-pile" [~~or~~] "solid waste site or facility-pile", or "special waste site or facility-pile".

(238) [~~(229)~~] "Wastewater treatment unit" see "hazardous waste site or facility - wastewater treatment unit" or "solid waste site or facility - wastewater treatment unit".

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

(240) [~~(231)~~] "Water" or "waters of the Commonwealth" shall have the meaning specified in KRS 224.01-010. [~~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).~~]

(241) [~~(232)~~] "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.

(242) [~~(233)~~] "Wetlands" means land that has a predominance of hydric soils and 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, where:

(a) "Hydric soils" means soils that, in their undrained condition, are 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 either in water, or in a substrate that is at least periodically deficient of oxygen during a growing season as a result of excessive water content.

(243) "Water pollution" shall have the meaning specified in KRS 224.01-010.

(244) [~~(234)~~] "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.

(245) [~~(235)~~] "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, as amended
CFR	Code of Federal Regulations
cm	Centimeter
cm^2	Centimeter squared
CO	Carbon monoxide
CO_2	Carbon dioxide
CWA	Clean Water Act, as amended
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, as amended
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
USGS	United States Geological Survey
USPS	United States Postal Service

Section 3. References. The test methods cited in Title 401, Chapters 30 to [~~through~~] 49, are those listed in 40 CFR [~~Part~~] 260.11 as of June 21, 1990 [~~October 27, 1987~~], Appendix X of 40 CFR 261 as of January 14, 1985, [~~and~~] Appendix I of 40 CFR 268 as of June 4, 1987, and 401 KAR Chapters 5 to 8.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: This proposed amendment shall affect hazardous waste generators, transporters and treatment, storage and disposal facilities. As of July 26, 1991, there are 2,171 generators, 153 transporters, and 88 facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment will have no direct or indirect costs or savings to those affected.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (note effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the promulgating administrative body. The regulation contains definitions supplied for informational purposes only.

1. First year:There are no direct or indirect costs or savings to the promulgating administrative body. The regulation contains definitions supplied for informational purposes only.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues:There will be no effect on state or local revenues from the promulgation of this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation provides language which clarifies the exemption for wastewater treatment system and elementary neutralization tank systems. ALTERNATIVE 1: Less stringent: The cabinet cannot be less stringent and maintain authorization to administer the hazardous waste program. 2: More stringent: The proposed amendments are identical to federal regulations which adequately protect human health and the environment. 3: Present proposal: The present proposal adopts federal regulations at 40 CFR 260.10 and 40 CFR 270.2 as published in the Federal Register on September 2, 1988.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There is no statute, administrative regulation or government policy in conflict with the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or governmental policy in conflict.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. This regulation applies to owners and operators of hazardous waste treatment, storage, and disposal facilities, hazardous waste generators, and transporters of hazardous waste.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The proposed amendment is identical to federal regulations published in the Federal Register on September 2, 1988, at 40 CFR 260.10 and 40 CFR 270.2.I

2. State compliance standards: This regulation provides an interpretation of certain terms, corrected typographical errors, and other errors that originally appeared in the revised final standards for hazardous waste tank systems.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate provides an interpretation of certain terms, corrected typographical errors, and other errors that originally appeared in the revised final standards for hazardous waste tank systems.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The proposed amendment does not impose stricter requirements than the federal mandate. There is no need to justify imposition of stricter standards.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) This regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

~~[(4)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]~~

~~[1. Preliminary Application, SMP-03, revised August 3, 1984;]~~

~~[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]~~

~~[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]~~

~~[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]~~

~~[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]~~

~~[6. Notification of Operator Change, SMP-11, August, 1990;]~~

~~[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]~~

~~[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]~~

~~[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable~~]:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns and controls" in 405 KAR 7:020~~], the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined [~~(see the definition of "property to be mined" in 405 KAR 7:020)~~];

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

~~[(6) A statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application and by any person identified in subsection (3)(c) of this section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of these coal mining operations.]~~

(6) [~~(7)~~] The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) [~~(8)~~] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) [~~(9)~~] Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) [~~(10)~~] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands

which are contiguous to the area to be covered by the permit.

(10) [~~(11)~~] After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. The cabinet may suspend permits pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[~~(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(4) of this regulation.~~]

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or [~~,~~] any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator [~~as defined in KRS 350.450(4)(d),~~] the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If [~~Where~~] the private mineral estate to be mined has been severed from the private surface estate, the application shall contain: [~~also provide for lands within the permit area, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.~~]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sights within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit

area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Ground Water Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as

a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other beneficial use.

(2) If contamination, diminution, or interruption of a surface or groundwater source may result, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the service.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to those applications for amendments and revisions as follows:

(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new

surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis. [~~Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring a study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.~~]

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If [~~When~~] a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If [~~When~~] a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines,

pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this [~~such~~] data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405

KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval

of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the service.

(4) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to those applications for amendments and revisions as follows:

(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis. [~~Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring a plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.~~]

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans; [~~. This description shall explain:~~]

(b) A discussion of [~~(a)~~] how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If [~~(b) Where~~] a land use different from the premining land use is proposed, all supporting documentation required [~~submitted~~] for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of [~~(c)~~] the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

[~~(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.~~]

(e) [~~(2) The description shall be accompanied by~~] A copy of the comments concerning the proposed use from [~~by~~] the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) [~~(3)~~] Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

[~~Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a public roads transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the surface coal mining operation.~~]

[~~(1) The plan shall specify the legal weight limits for each portion of any public road or bridge over which the applicant proposes to transport coal.~~]

[~~(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to KRS 189.271 to exceed the weight limits on any road or bridge.~~]

[~~(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on the roads and bridges.~~]

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 6, 1992
FILED WITH LRC: March 6, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, April 30, 1992 in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by April 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by April 25, 1992, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on April 30, 1992. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation establishes application requirements for surface mining activities and its counterpart 405 KAR 8:040 establishes requirements for underground mining activities. In 1991 the cabinet received 1482 requests for permitting actions, including 429 applications for original permits and amendments, 701 applications for major and minor revisions (not including minor "field" revisions), and 352 applications for permit renewals and transfers. These regulation amendments directly affect permit applicants and indirectly affect the general public in the coal field regions. These amendments include several changes to conform to revised federal regulations and revised KRS Chapter 350. The most significant changes are the new requirements to provide information on fish and wildlife resources in the proposed permit area and adjacent area and to provide a plan for the protection and enhancement of those resources, in applications submitted on or after November 17, 1992. Another significant addition is the requirement to provide updated information on the permittee's officers, partners, directors, and principal shareholders when changes occur.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some increase in the cost of preparing an application for a new permit and for some, but not all, applications for revisions and amendments. These costs will be due to gathering fish and wildlife resource information and designing a protection and enhancement plan. These costs will be substantially higher where site-specific resource information is required and data must be collected in the field. These costs will vary significantly from permit to

permit because the scope and level of detail of the fish and wildlife information will be determined by the cabinet on a permit-by-permit basis in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service. Because these requirements will be determined permit-by-permit, any estimates of costs at this time are speculative and are necessarily misleading to some degree. With the understanding that its relevance is limited, the cabinet offers the following discussion. These proposed amendments are being submitted in lieu of proposed amendments filed with LRC on July 15, 1991 and recently withdrawn. The withdrawn amendments were considerably more detailed because they included uniformly applicable requirements based on agency consultation already completed, rather than permit-by-permit consultation. The withdrawn amendments incorporated by reference a technical document providing guidance on methods for collecting fish and wildlife information and methods for protecting and enhancing fish and wildlife, and providing formats for presenting the required information and plans in permit applications. In preparing for the July 15, 1991 filing, the cabinet conducted a field study of a single site to estimate the time and resources required to gather fish and wildlife data, analyze the data, and prepare a report. In the regulatory impact analysis filed with those proposed amendments, the cabinet estimated the cost would be about $1,600 for the site studied, which was relatively complex. The cabinet estimated that $1,500 to $2,000 would be a reasonable range of cost to gather aquatic biological data and terrestrial habitat data for a typical minesite. The cabinet recognized there would be cases where those costs would be higher due to factors such as a large permit area, a potential to impact several streams for which biological data was required, and the presence of wetlands. The cabinet estimated that where only terrestrial data was required, the cost would be substantially lower, in the $600 - $1,000 range. The cabinet again cautions that these earlier estimates are probably inapplicable to most permit areas under the presently proposed amendments, since the informational requirements will be determined on a permit-by-permit basis.

2. Continuing costs or savings: Same as first year .

3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs related to fish and wildlife resources information and protection and enhancement plans may decrease with time, as all parties become increasingly familiar with the requirements and as approaches become somewhat more uniform.

(b) Reporting and paperwork requirements: Additional paperwork regarding fish and wildlife information and protection and enhancement plans is required in permit applications. Additional paperwork is involved when reporting changes of the permittee's principal shareholders, officers,partners, and directors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be additional operational costs to the cabinet in reviewing fish and wildlife resource information and protection and enhancement plans in permit applications, including additional costs in consulting with state and federal fish and wildlife agencies. There will be additional costs for the training necessary to prepare technical staff for this work. One or more additional permit reviewers with expertise in fish and wildlife may be needed, although the cabinet cannot fully assess this need until it gains some experience under the new requirements. There will also be additional cost involved in reviewing and processing updated information submitted by permittees on principal shareholders, officers, partners, and directors.

2. Continuing costs or savings: Same as first year

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional paperwork for the cabinet due to these amendments. Permit applications will contain additional material to be processed. Additional correspondence with applicants and other agencies will be necessary.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal regulations require state regulatory authorities to determine, in consultation with state and federal fish and wildlife agencies, the scope and level of detail of fish and wildlife resources information that must be included in mining permit applications. The required consultation with state and federal fish and wildlife agencies can take place: (a) on a permit-by-permit basis; or (b) on a programmatic basis, whereby the fish and wildlife agencies assist the regulatory authority in developing regulations, technical requirements, guidance documents, or other standard documents, forms, criteria or methods which are then applied uniformly by the state regulatory authority to determine the scope and level of detail of required information. Initially, approach (a) was rejected by the cabinet in favor of approach (b). Approach (b) initially was favored by industry, the environmental community, and the cabinet because the high number of permits that must be processed in Kentucky makes the permit-by-permit approach somewhat more burdensome to all parties. On July 15, 1991 the cabinet proposed regulations that set forth the information requirements in detail, thus avoiding a permit-by-permit consultation in the great majority of cases. However, during the promulgation process, concerns were raised by the reviewing legislative committees and by industry and environmental representatives that delayed the promulgation of the proposed amendments and caused the cabinet to undertake a reevaluation of its basic approach. These concerns centered primarily around the need to collect site-specific aquatic biological data on a perceived high proportion of permit applications; the high level of detail in the regulations and in the guidance document (TRM #20) developed jointly by the cabinet and the Kentucky Department of Fish and Wildlife Resources; and the need to incorporate the guidance document into the regulations by reference. The cabinet discussed these concerns with the interested parties. While these discussions were taking place, the federal Office of Surface Mining Reclamation and Enforcement in January 1992 further complicated matters by announcing that it had approved the cabinet's annual funding grant only until March 31, 1992 and was considering various adverse actions if the cabinet did not have fish and wildlife regulations in place by that date. The cabinet concluded that the most prudent course of action was to withdraw the July 15, 1991 proposed amendments and instead to propose amendments that track the language of the corresponding federal regulations very closely and require permit-by-permit consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service. That is the purpose and the effect of these proposed amendments.

(5) Identify any statute, administrative regulation, or governmental 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 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 applicants under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1257, 1258, 1267; 30 CFR Parts 730-733, 735, 773.13(a), 778-780, 785.17(b),(d), 917.

2. State compliance standards. These amendments contain

changes to conform to revised federal regulations and revised KRS Chapter 350. The most significant changes are: 1) the requirement that applicants provide information on fish and wildlife resources in the permit area and adjacent area, with the scope and level of detail of the information determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service; 2) the requirement to provide a fish and wildlife protection and enhancement plan; and 3) the requirement to provide updated information when there are changes to the permittee's principal shareholders, officers, partners, or directors. These amendments incorporate by reference the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and modifying documents. These amendments require the cabinet, upon request, to provide the resource information and the protection and enhancement plan to the U.S. Fish and Wildlife Service for its review.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations (30 CFR 780.16) require mining permit applications to contain fish and wildlife resource information for the permit area and adjacent area, and to contain a plan for the protection and, where practicable, the enhancement of those resources. The resource information must be sufficient to design the required protection and enhancement plan. The scope and level of detail of the resource information must be determined by the regulatory authority in consultation with state and federal fish and wildlife agencies. Site-specific resource information must be provided when the permit area or adjacent area is likely to include: 1) listed or proposed endangered or threatened species of plants or animals or their designated critical habitats; 2) habitats of unusually high value for fish and wildlife, such as important streams and wetlands; or 3) other species or habitats identified through agency consultation as requiring special protection under state or federal law. Upon request, the regulatory authority must provide the resource information and the protection and enhancement plan to the U.S. Fish and Wildlife Service for its review.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirement to provide updated information on principal shareholders, officers, partners, and directors when changes occur is not in the federal mandate. (Other federal regulations and corresponding regulations of the cabinet require the permittee to provide updated ownership and control information within thirty days after a cessation order is issued.) These amendments incorporate by reference the Corps of Engineers 1987 Wetland Delineation Manual, whereas the federal surface mining regulations do not mandate a specific method for delineating wetlands.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirement regarding updated ownership and control information is established in KRS Chapter 350. The Corps of Engineers 1987 Wetland Delineation Manual is incorporated to comply with KRS Chapter 13A.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.151, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for underground mining activities. This regulation recognizes the distinct differences between surface mining activities and underground mining activities. This regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This regulation further specifies certain showings to be made by the applicant to obtain a permit.

Section 1. General. (1) Applicability.

(a) This regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this regulation.

~~[(3)(a) The following forms, which are required to be submitted by applicants, are hereby incorporated by reference:]~~

~~[1. Preliminary Application, SMP-03, revised August 3, 1984;]~~

~~[2. Application for a Comprehensive Mining and Reclamation Permit, SMP-01-R, November, 1985;]~~

~~[3. Application for Mining Permit Revision, SMP-02-REV, December, 1987;]~~

~~[4. Application for Renewal of a Comprehensive Mining and Reclamation Permit, SMP-01-N1, September, 1987;]~~

~~[5. Application for Coal Marketing Reclamation Deferment, SMP-09, October, 1984;]~~

~~[6. Notification of Operator Change, SMP-11, August, 1990;]~~

~~[7. Notification of Change in Corporate Permittee and/or Corporate Name, SMP-10, December, 1987; and]~~

~~[8. Application for Transfer, Assignment or Sale of Permit Rights, SMP-08, October, 1982.]~~

~~[(b) The forms incorporated by reference in paragraph (a) of this subsection may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security Number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security Number and employer identification number of the:

(a) Applicant;

(b) Applicant's resident agent; and

(c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020, as applicable~~]:

(a) The person's name, address, Social Security Number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant [~~under the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020~~], the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

[~~(6) A statement of any current or previous coal mining permits in the United States held by the applicant during the five (5) years preceding the application, and by any person identified in subsection (3)(c) of this section and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.~~]

(6) [~~(7)~~] The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) [~~(8)~~] The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) [~~(9)~~] Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) [~~(10)~~] A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) [~~(11)~~] After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. The cabinet may suspend permits pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

[~~(12) The applicant shall submit the information required by this section and Section 3 of this regulation on the appropriate forms, incorporated by reference in Section 1(3) of this regulation.~~]

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or [~~,~~] any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing

regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator [~~as defined in KRS 350.450(4)(d),~~] the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain [~~also provide~~], for lands to be affected by those operations within the permit area: [~~, a copy of the document of conveyance that grants or reserves the right to extract the coal by surface mining methods.~~]

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this regulation. The descriptions required by this regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for

listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this regulation and be based on the

information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the service.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to those applications for amendments and revisions as follows:

(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis. [~~Permit applications shall not be required under this section to contain a study of fish and wildlife unless and until federal regulations requiring a study have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.~~]

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime

farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If [~~When~~] a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If [~~When~~] a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this [~~such~~] data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas

and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other

openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1) The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.

(2) If the survey shows that no structures or renewable resource lands exist, or no material damage or diminution could be caused in the event of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided in the application under this section.

(3) If the survey shows that structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the cabinet determines that damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and

2. The extent, if any, to which planned and controlled subsidence is intended.

(b) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle-of-draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;

4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess

spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; and

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and

hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

(a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.

(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.

(4) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:160. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet, each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the service.

(4) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992, and shall apply to those applications for amendments and

revisions as follows:

(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis. [~~Permit applications shall not be required under this section to contain a fish and wildlife plan unless and until federal regulations requiring a plan have been promulgated and this regulation has been amended as necessary to be consistent with the corresponding federal regulations.~~]

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses [,] following reclamation of the land to be affected within the proposed permit area by surface operations and [~~or~~] facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans; [~~. This description shall explain:~~]

(b) A discussion of [~~(a)~~] how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If [~~(b) Where~~] a land use different from the premining land use is proposed, all supporting documentation required [~~submitted~~] for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of [~~(c)~~] The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

[~~(d) Where grazing is the proposed postmining land use, the detailed management practices necessary to properly implement the postmining use for grazing.~~]

(e) [~~(2) The description shall be accompanied by~~] A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area [~~surface areas~~] to be affected by surface operations and [~~or~~] facilities [~~within the proposed permit area~~] and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) [~~(3)~~] Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

[~~Section 38. MRP; Transportation on Public Roads. The application shall include or be accompanied by a transportation plan and map (at least the scale and detail of the separate county maps published by the Kentucky Transportation Cabinet) which shall set forth the portions of the public road system, if any, over which the applicant proposes to transport coal extracted in the underground mining activities.~~]

[~~(1) The plan shall specify the legal weight limits for each portion of any public road or bridge over which the applicant proposes to transport coal.~~]

[~~(2) The plan shall include any proposal by the applicant to obtain a special permit pursuant to KRS 189.271 to exceed the weight limits on any road or bridge.~~]

[~~(3) The plan shall contain a certification by a duly authorized official of the Kentucky Transportation Cabinet attesting the accuracy of the plan in regard to the locations and identities of roads and bridges on the public road system and the accuracy of the specifications of weight limits on the roads and bridges.~~]

Section 38. [~~39.~~] MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 6, 1992
FILED WITH LRC: March 6, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, April 30, 1992 in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by April 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by April 25, 1992, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on April 30, 1992. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation establishes application requirements for underground mining activities and its counterpart 405 KAR 8:030 establishes requirements for surface mining activities. In 1991 the cabinet received 1482 requests for permitting actions, including 429 applications for original permits and amendments, 701 applications for major and minor revisions (not including minor "field" revisions), and 352 applications for permit renewals and transfers. These regulation amendments directly affect permit applicants and indirectly affect the general public in the coal field regions. These amendments include several changes to conform to revised federal regulations and revised KRS Chapter 350. The most significant changes are the new requirements to provide information on fish and wildlife resources in the proposed permit area and adjacent area and to provide a plan for the protection and enhancement of those resources, in applications submitted on or after November 17, 1992. Another significant addition is the requirement to provide updated information on the permittee's officers, partners, directors, and principal shareholders when changes occur.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some increase in the cost of preparing an application for a new permit and for some, but not all, applications for revisions and amendments. These costs will be due to gathering fish and wildlife resource information and designing a protection and enhancement plan. These costs will be substantially higher where site-specific resource information is required and data must be collected in the field. These costs will vary significantly from permit to permit because the scope and level of detail of the fish and wildlife information will be determined by the cabinet on a permit- by-permit basis in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service. Because these requirements will be determined permit-by-permit, any estimates of costs at this time are speculative and are necessarily misleading to some degree. With the understanding that its relevance is limited, the cabinet offers the following discussion. These proposed amendments are being submitted in lieu of proposed amendments filed with LRC on July 15, 1991 and recently withdrawn. The withdrawn amendments were considerably more detailed because they included uniformly applicable requirements based on agency consultation already completed, rather than permit-by-permit consultation. The withdrawn amendments incorporated by reference a technical document providing guidance on methods for collecting fish and wildlife information and methods for protecting and enhancing fish and wildlife, and providing formats for presenting the required information and plans in permit applications. In preparing for the July 15, 1991 filing, the cabinet conducted a field study of a single site to estimate the time and resources required to gather fish and wildlife data, analyze the data, and prepare a report. In the regulatory impact analysis filed with those proposed amendments, the cabinet estimated the cost would be about $1,600 for the site studied, which was relatively complex. The cabinet estimated that $1,500 to $2,000 would be a reasonable range of cost to gather aquatic biological data and terrestrial habitat data for a typical minesite. The cabinet recognized there would be cases where those costs would be higher due to factors such as a large permit area, a potential to impact several streams for which biological data was required, and the presence of wetlands. The cabinet estimated that where only terrestrial data was required, the cost would be substantially lower, in the $600 - $1,000 range. The cabinet again cautions that these earlier estimates are probably inapplicable to most permit areas under the presently proposed amendments, since the informational requirements will be determined on a permit-by-permit basis.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs related to fish and wildlife resources information and protection and enhancement plans may decrease with time, as all parties become increasingly familiar with the requirements and as approaches become somewhat more uniform.

(b) Reporting and paperwork requirements: Additional paperwork regarding fish and wildlife information and protection and enhancement plans is required in permit applications. Additional paperwork is involved when reporting changes of the permittee's principal shareholders, officers,partners, and directors.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:There will be additional operational costs to the cabinet in reviewing fish and wildlife resource information and protection and enhancement plans in permit applications, including additional costs in consulting with state and federal fish and wildlife agencies. There will be additional costs for the training necessary to prepare technical staff for this work. One or more additional permit reviewers with expertise in fish and wildlife may be needed, although the cabinet cannot fully assess this need until it gains some experience under the new requirements. There will also be additional cost involved in reviewing and processing updated information submitted by permittees on principal shareholders, officers, partners, and directors.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional paperwork for the cabinet due to these amendments. Permit applications will contain additional material to be processed. Additional correspondence with applicants and other agencies will be necessary.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal regulations require state regulatory authorities to determine, in scope and level of detail of fish and wildlife resources information that must be included in mining permit applications. The required consultation with state and federal fish and wildlife agencies can take place: (a) on a permit-by-permit basis; or (b) on a programmatic basis, whereby the fish and wildlife agencies assist the regulatory authority in developing regulations, technical requirements, guidance documents, or other standard documents, forms, criteria or methods which are then applied uniformly by the state regulatory authority to determine the scope and level of detail of required information. Initially, approach (a) was rejected by the cabinet in favor of approach (b). Approach (b) initially was favored by industry, the environmental community, and the cabinet because the high number of permits that must be processed in Kentucky makes the permit-by-permit approach somewhat more burdensome to all parties. On July 15, 1991 the cabinet proposed regulations that set forth the information requirements in detail, thus avoiding a permit-by-permit consultation in the great majority of cases. However, during the promulgation process, concerns were raised by the reviewing legislative committees and by promulgation of the proposed amendments and caused the cabinet to undertake a reevaluation of its basic approach. These concerns centered primarily around the need to collect site-specific aquatic biological data on a perceived high proportion of permit applications; the high level of detail in the regulations and in the guidance document (TRM #20) developed jointly by the cabinet and the Kentucky Department of Fish and Wildlife Resources; and the need to incorporate the guidance document into the regulations by reference. The cabinet discussed these concerns with the interested parties. While these discussions were taking place, the federal Office of Surface Mining Reclamation and Enforcement in January 1992

further complicated matters by announcing that it had approved the cabinet's annual funding grant only until March 31, 1992 and was considering various adverse actions if the cabinet did not have fish and wildlife regulations in place by that date. The cabinet concluded that the most prudent course of action was to withdraw the July 15, 1991 proposed amendments and instead to propose amendments that track the language of the corresponding federal regulations very closely and require permit-by-permit consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service. That is the purpose and the effect of these proposed amendments.

(5) Identify any statute, administrative regulation, or governmental 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 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 applicants under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1257, 1258, 1266, 1267; 30 CFR Parts 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b),(d), 917.

2. State compliance standards. These amendments contain changes to conform to revised federal regulations and revised KRS Chapter 350. The most significant changes are: 1) the requirement that applicants provide information on fish and wildlife resources in the permit area and adjacent area, with the scope and level of detail of the information determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service; 2) the requirement to provide a fish and wildlife protection and enhancement plan; and 3) the requirement to provide updated information when there are changes to the permittee's principal shareholders, officers, partners, or directors. These amendments incorporate by reference the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and modifying documents. These amendments require the cabinet, upon request, to provide the resource information and the protection and enhancement plan to the U.S. Fish and Wildlife Service for its review.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations (30 CFR 784.21) require mining permit applications to contain fish and wildlife resource information for the permit area and adjacent area, and to contain a plan for the protection and, where practicable, the enhancement of those resources. The resource information must be sufficient to design the required protection and enhancement plan. The scope and level of detail of the resource information must be determined by the regulatory authority in consultation with state and federal fish and wildlife agencies. Site-specific resource information must be provided when the permit area or adjacent area is likely to include: 1) listed or proposed endangered or threatened species of plants or animals or their designated critical habitats; 2) habitats of unusually high value for fish and wildlife, such as important streams and wetlands; or 3) other species or habitats identified through agency consultation as requiring special protection under state or federal law. Upon request, the regulatory authority must provide the resource information and the protection and enhancement plan to the U.S. Fish and Wildlife Service for its review.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The requirement to provide updated information on principal shareholders, officers, partners, and directors when changes occur is not in the federal mandate. (Other federal regulations and corresponding regulations of the cabinet require the permittee to provide updated ownership and control information within thirty days after a cessation order is issued.) These amendments incorporate by reference the Corps of Engineers 1987 Wetland Delineation Manual, whereas the federal surface mining regulations do not mandate a specific method for delineating wetlands.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional requirement regarding updated ownership and control information is established in KRS Chapter 350. The Corps of Engineers 1987 Wetland Delineation Manual is incorporated to comply with KRS Chapter 13A.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 16:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1265, 33 USC 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.57, 816.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1265, 33 USC 1344

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities, and for restoration and reclamation of surface areas affected by mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [~~such~~] resources where practicable.

Section 1. General. [~~Protection of Fish, Wildlife, and Related Environmental Values.~~] (1) The [~~Any~~] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [~~of the activities~~] on fish, wildlife, and related environmental values, and shall achieve enhancement of those [~~such~~] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities, used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

4. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbances to, enhance where practicable, restore, or

replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes; and

(c) Avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(3) This section shall apply to operations under permit applications that were subject to 405 KAR 8:030, Sections 20 and 36.

Section 2. Protection of Endangered and Threatened Species. (1)(a) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The permittee shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(b) No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[~~(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.~~]

[~~(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, "Powerline Contacts by Eagles and Other Large Birds," or in alternative guidance manuals approved by the cabinet.~~]

[~~(4) Each permittee shall, to the extent possible using the best technology currently available:~~]

[~~(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;~~]

[~~(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;~~]

[~~(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;~~]

[~~(d) Restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife;~~]

[~~(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;~~]

[~~(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 16:060, Section 11 or restoring stream channels as required in 405 KAR 16:080, Section 2;~~]

[~~(g) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the cabinet;~~]

[~~(h) To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the cabinet as part of a management plan.~~]

Section 3. Reclamation Strategies and Wildlife Enhancement Techniques. (1) Where [~~(i) If~~] fish and wildlife [~~habitat~~] is to be a [~~primary or secondary~~] postmining land use, the permittee [~~operator~~] shall[~~, in addition to the requirements of 405 KAR 16:200~~]:

(a) [~~1.~~] Select plant species to be used on reclaimed areas[~~, based~~] on the basis of the following criteria: their proven nutritional value for fish or [~~and~~] wildlife; their use[~~s~~] as cover for fish or [~~and~~] wildlife; and their ability to support and enhance fish or [~~and~~] wildlife habitat after release of performance bonds; and

(b) Group and distribute plants [~~2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed~~] in a manner which optimizes edge effect, cover, and other benefits to [~~for~~] fish and wildlife.

(2) [~~(j)~~] Where cropland is to be the [~~alternative~~] postmining land use, [~~on lands diverted from a fish and wildlife premining land use~~] and where appropriate for wildlife- and crop- management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. [~~; and~~]

(3) [~~(k)~~] Where [~~the primary land use is to be~~] residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [~~land use,~~] intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife [~~birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use~~].

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 6, 1992
FILED WITH LRC: March 6, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, April 30, 1992 in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by April 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by April 25, 1992, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any

time before 4:30 p.m. (EDT) on April 30, 1992. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation establishes performance standards for the protection of fish, wildlife, and related environmental values. This regulation applies to surface mining activities and its counterpart 405 KAR 18:180 applies to underground mining activities. Together, these regulations affect about 3950 permanent program operations. In addition to affecting mining operations, this regulation also affects the general public that may be adversely affected by mining activities' impacts on fish and wildlife resources. This regulation will affect the surface owner by affecting the reclamation of the land. administrative regulation contains the existing performance standards for protection of fish, wildlife, and related environmental values by surface coal mining operations. It requires that the permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and shall achieve enhancement of those resources where practicable. It sets forth specific protection measures and contains reclamation strategies and wildlife enhancement techniques. These amendments contain changes to conform to federal regulations. These amendments prohibit mining activities that are likely to jeopardize the continued existence of endangered or threatened species or likely to result in the destruction or adverse modification of designated critical habitats of such species; require the permittee to promptly notify the cabinet of any endangered or threatened species on the permit area of which the permittee becomes aware; and require the cabinet, upon notification, to consult with state and federal fish and wildlife agencies and to determine whether and under what conditions the permittee may proceed.

(a) Direct and indirect costs or savings to those affected:

1. First year: There has been a performance standard for protection of fish and wildlife since the permanent regulatory program began in 1982. However, there will be a more effective implementation of these requirements in the future because the permittee must include a protection and enhancement plan in his permit application and implement the approved reclamation strategies. There will be some additional cost in implementing the approved fish and wildlife protection and enhancement measures during the mining and reclamation process. The costs will vary considerably from operation to operation. Some permittees may incur additional costs resulting from delays or special measures required when endangered or threatened species are encountered.

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: These amendments require permittees to notify the cabinet when endangered or threatened species are encountered.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: In general there should not be a significant increase in the cabinet's cost of operation, although there may be some increase in required inspection time to ensure that the approved fish and wildlife protection and enhancement plan is complied with. There will be additional field activity when endangered or threatened species are encountered. Some additional training of cabinet personnel will be required.

2. Continuing costs or savings: Same as first year .

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be some additional paperwork for the cabinet in consulting with other agencies when endangered or threatened species are encountered.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: n July 15, 1991 the cabinet proposed, but recently withdrew, amendments to this regulation that were somewhat more detailed, particularly regarding buffer zone variances for operations near important streams and requirements for aquatic biological monitoring in certain circumstances. A letter of objection was attached to those amendments by the Administrative Regulation Review Subcommittee. As a result of a general reevaluation of amendments relating to fish and wildlife resources proposed by the cabinet on July 15, 1991 the cabinet decided to withdraw those amendments and instead propose amendments that tracked very closely the language of the corresponding federal regulations. That is the purpose and effect of these amendments.

(5) Identify any statute, administrative regulation, or governmental 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 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 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1265; 30 CFR Parts 730-733, 735, 816.57, 816.97, 917 .

2. State compliance standards. This administrative regulation contains the existing performance standards for protection of fish, wildlife, and related environmental values by surface coal mining operations. It requires that the permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and shall achieve enhancement of those resources where practicable. It sets forth specific protection measures and contains reclamation strategies and wildlife enhancement techniques. These amendments contain changes to conform to federal regulations. These amendments prohibit mining activities that are likely to jeopardize the continued existence of endangered or threatened species or likely to result in the destruction or adverse modification of designated critical habitats of such species; require the permittee to promptly notify the cabinet of any endangered or threatened species on the permit area of which the permittee becomes aware; and require the cabinet, upon notification, to consult with state and federal fish and wildlife agencies and to determine whether and under what conditions the permittee may proceed.

3. Minimum or uniform standards contained in the federal mandate. The federal performance standards for protection and enhancement of fish and wildlife (30 CFR 816.97) are virtually identical to this administrative regulation as amended.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation as amended is virtually identical to the corresponding federal regulations.

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 18:180. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.405, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1266, 33 USC 1344

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.57, 817.97, 917, 16 USC 668 et seq., 1531 et seq., 30 USC 1253, 1255, 1266, 33 USC 1344

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities, and for restoration and reclamation of surface areas affected by underground mining activities. This regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values, and for the enhancement of those [~~such~~] resources where practicable.

Section 1. General. [~~Protection of Fish, Wildlife, and Related Environmental Values.~~] (1) The [~~Any~~] permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts [~~of the activities~~] on fish, wildlife, and related environmental values, and shall achieve enhancement of those [~~such~~] resources where practicable.

(2) Each permittee shall:

(a) To the extent possible using the best technology currently available:

1. Ensure that electric powerlines and other transmission facilities, used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the cabinet determines that these requirements are unnecessary;

2. Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law;

3. Design fences, overland conveyors, and other potential barriers to permit passage of large mammals, except where the cabinet determines that the designs are unnecessary; and

4. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(b) Avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes; and

(c) Avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(3) This section shall apply to operations under permit applications that were subject to 405 KAR 8:040, Sections 20 and 36.

Section 2. Protection of Endangered and Threatened Species. (1)(a) No underground mining activity shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior or which is likely to result in the destruction or adverse modification of a designated critical habitat of those species in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.). The permittee shall promptly report to the cabinet any state- or federally-listed endangered or threatened species within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(b) No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the cabinet any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the cabinet shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the Kentucky Department of Fish and Wildlife Resources and, after consultation, shall identify whether, and under what conditions, the permittee may proceed.

(2) Nothing in this title shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 as amended (16 USC 1531 et seq.) or the Bald Eagle Protection Act as amended (16 USC 668 et seq.).

[~~(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.~~]

[~~(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area shall be designed and constructed in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the cabinet.~~]

[~~(4) Each permittee shall to the extent possible using the best technology currently available:~~]

[~~(a) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;~~]

[~~(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses or overpasses and construct the necessary passages. No new barrier shall be located in known and important wildlife migration routes;~~]

[~~(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic forming materials;~~]

[~~(d) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;~~]

[~~(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas. Wetlands shall be preserved or created, rather than drained or otherwise permanently abolished;~~]

[~~(f) Afford protection to aquatic communities by avoiding stream channels as required in 405 KAR 18:060, Section 9 and 405 KAR 18:210, Section 4 or restoring stream channels as required in 405 KAR 18:080, Section 2;~~]

[~~(g) Not use persistent pesticides on the area during underground mining and reclamation activities unless approved by the cabinet;~~]

[~~(h) To the extent possible prevent, control, and suppress range forest and coal fires which are not approved by the cabinet as part of a management plan;~~]

Section 3. Reclamation Strategies and Wildlife Enhancement

Techniques. (1) Where [~~(i) If~~] fish and wildlife [~~habitat~~] is to be a [~~primary or secondary~~] postmining land use, the permittee [~~operator~~] shall[~~, in addition to the requirements of 405 KAR 18:200~~]:

(a) [~~1.~~] Select plant species to be used on reclaimed areas[~~, based~~] on the basis of the following criteria: their proven nutritional value for fish or [~~and~~] wildlife; their use[~~s~~] as cover for fish or [~~and~~] wildlife; and their ability to support and enhance fish or [~~and~~] wildlife habitat after release of performance bonds; and

(b) Group and distribute plants [~~2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed~~] in a manner which optimizes edge effect, cover, and other benefits to [~~for~~] fish and wildlife. [~~;~~]

(2) [~~(j)~~] Where cropland is to be the [~~alternative~~] postmining land use [~~on lands diverted from a fish and wildlife premining land use~~], and where appropriate for wildlife- and crop- management practices, the permittee shall intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types of birds and other animals. [~~; and~~]

(3) [~~(k)~~] Where [~~the primary land use is to be~~] residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the permittee shall [~~land use,~~] intersperse reclaimed lands with greenbelts, utilizing species of grass, shrubs, and trees useful as food and cover for wildlife [~~birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use~~].

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 6, 1992
FILED WITH LRC: March 6, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, April 30, 1992 in the Department for Surface Mining Reclamation and Enforcement's Main Conference Room (Room B-31) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by April 25, 1992. The scheduled hearing will be cancelled if the contact person has not received any written notice of intent to testify by April 25, 1992, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on April 30, 1992. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This regulation establishes performance standards for the protection of fish, wildlife, and related environmental values. This regulation applies to underground mining activities and its counterpart 405 KAR 16:180 applies to surface mining activities. Together, these regulations affect about 3950 permanent program operations. In addition to affecting mining operations, this regulation also affects the general public that may be adversely affected by mining activities' impacts on fish and wildlife resources. This regulation will affect the surface owner by affecting the reclamation of the land. This administrative regulation contains the existing performance standards for protection of fish, wildlife, and related environmental values by surface coal mining operations. It requires that the permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and shall achieve enhancement of those resources where practicable. It sets forth specific protection measures and contains reclamation strategies and wildlife enhancement techniques. These amendments contain changes to conform to federal regulations. These amendments prohibit mining activities that are likely to jeopardize the continued existence of endangered or threatened species or likely to result in the destruction or adverse modification of designated critical habitats of such species; require the permittee to promptly notify the cabinet of any endangered or threatened species on the permit area of which the permittee becomes aware; and require the cabinet, upon notification, to consult with state and federal fish and wildlife agencies and to determine whether and under what conditions the permittee may proceed.

(a) Direct and indirect costs or savings to those affected:

1. First year: There has been a performance standard for protection of fish and wildlife since the permanent regulatory program began in 1982. However, there will be a more effective implementation of these requirements in the future because the permittee must include a protection and enhancement plan in his permit application and implement the approved reclamation strategies. There will be some additional cost in implementing the approved fish and wildlife protection and enhancement measures during the mining and reclamation process. The costs will vary considerably from operation to operation. Some permittees may incur additional costs resulting from delays or special measures required when endangered or threatened species are encountered.

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: These amendments require permittees to notify the cabinet when endangered or threatened species are encountered.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: In general there should not be a significant increase in the cabinet's cost of operation, although there may be some increase in required inspection time to ensure that the approved fish and wildlife protection and enhancement plan is complied with. There will be additional field activity when endangered or threatened species are encountered. Some additional training of cabinet personnel will be required.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be some additional paperwork for the cabinet in consulting with other agencies when endangered or threatened species are encountered.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: On July 15, 1991 the cabinet proposed, but recently withdrew, amendments to this regulation that were somewhat more detailed, particularly regarding buffer zone variances for operations near important streams and requirements for aquatic biological

monitoring in certain circumstances. A letter of objection was attached to those amendments by the Administrative Regulation Review Subcommittee. As a result of a general reevaluation of amendments relating to fish and wildlife resources proposed by the cabinet on July 15, 1991 the cabinet decided to withdraw those amendments and instead propose amendments that tracked very closely the language of the corresponding federal regulations. That is the purpose and effect of these amendments.

(5) Identify any statute, administrative regulation, or governmental 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 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 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266; 30 CFR Parts 730-733, 735, 817.57, 817.97, 917.

2. State compliance standards. This administrative regulation contains the existing performance standards for protection of fish, wildlife, and related environmental values by surface coal mining operations. It requires that the permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and shall achieve enhancement of those resources where practicable. It sets forth specific protection measures and contains reclamation strategies and wildlife enhancement techniques. These amendments contain changes to conform to federal regulations. These amendments prohibit mining activities that are likely to jeopardize the continued existence of endangered or threatened species or likely to result in the destruction or adverse modification of designated critical habitats of such species; require the permittee to promptly notify the cabinet of any endangered or threatened species on the permit area of which the permittee becomes aware; and require the cabinet, upon notification, to consult with state and federal fish and wildlife agencies and to determine whether and under what conditions the permittee may proceed.

3. Minimum or uniform standards contained in the federal mandate. The federal performance standards for protection and enhancement of fish and wildlife (30 CFR 817.97) are virtually identical to this administrative regulation as amended.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation as amended is virtually identical to the corresponding federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised March 13, 1992, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures[~~, July 14, 1991~~]. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts [~~(Revised 1/15/92)~~]
KSR 02-00-11	Inmate Personal Accounts (Revised 3/13/92)
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout) [~~(Added 1/15/92)~~]
KSR 07-00-09	Inventory Control of Underground Storage Tanks [~~(Added 1/15/92)~~]
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas

KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02	Unit D - General Operational Procedures [~~(Revised 1/15/92)~~]
KSR 10-01-03	Unit D - Inmate Tracking System and Records System [~~(Revised 1/15/92)~~]
KSR 10-01-04	Unit D - Administrative Segregation [~~(Revised 1/15/92)~~]
KSR 10-01-05	Unit D - Disciplinary Segregation [~~(Revised 1/15/92)~~]
KSR 10-01-06	Unit D - Protective Custody [~~(Revised 1/15/92)~~]
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers [~~(Revised 1/15/92)~~]
KSR 10-01-09	Unit D - Hold Ticket Residents [~~(Revised 1/15/92)~~]
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access [~~(Revised 1/15/92)~~]
KSR 10-01-11	Unit D - Behavior Problem Control
KSR 10-00-12	Unit D - Designated Staff Visits
KSR 10-00-13	Unit D - Property Room Access
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-04	Restoration of Forfeited Good Time
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services [~~(Revised 1/15/92)~~]
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations (Revised 3/13/92)
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives [~~(Revised 1/15/92)~~]
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs [~~(Revised 1/15/92)~~]
KSR 20-00-03	Academic School Program
KSR 20-00-04	Criteria for Participation in A [~~Jefferson Community~~] College Program (Revised 3/13/92)
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS , Deputy Secretary
APPROVED BY AGENCY: March 13, 1992
FILED WITH LRC: March 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 23, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 579 employees of the Kentucky State Reformatory, 1141 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures, revised March 5, 1992 [~~November 15, 1991~~], are incorporated by reference and shall be referred to as the Eastern Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

EKCC 01-01-01 Institutional Legal Assistance (Revised 3/5/92)
EKCC 01-02-01 Public Information and News Media Access (Revised 3/5/92)
EKCC 01-06-01 Inmate Death (Revised 3/5/92)
EKCC 01-06-02 Crime Scene Camera (Revised 3/5/92)
EKCC 01-07-01 Institutional Tours of EKCC (Revised 3/5/92)
EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies (Revised 3/5/92)
EKCC 01-07-03 Outside Consultation and Research (Revised 3/5/92)
EKCC 01-08-01 Monthly Reports (Revised 3/5/92)
EKCC 01-09-01 Duty Officer Responsibilities (Revised 3/5/92)
EKCC 01-10-01 Annual Planning Document and Conference (Revised 3/5/92)
EKCC 01-10-02 Organization and Assignment of Responsibility (Revised 3/5/92)
EKCC 01-10-03 Institutional Planning (Revised 3/5/92
EKCC 01-13-01 Organization of Operations Manual (Revised 3/5/92)
EKCC 01-13-02 Monitoring of Operations, Policies and Procedures (Revised 3/5/92)
EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedures (Revised 3/5/92)
EKCC 01-13-04 Meetings Conducted and Their Purpose (Revised 3/5/92)
[~~EKCC 02-01-01 Canteen Cards: Issuance and Distribution Deleted 3/5/92~~]
EKCC 02-01-02 Inmate Canteen (Revised 3/5/92)
EKCC 02-02-01 Fiscal Management: Agency Funds (Revised 3/5/92)
EKCC 02-05-01 Fiscal Management: Budget (Revised 3/5/92)
EKCC 02-08-01 Property Inventory (Revised 3/5/92)
EKCC 02-08-02 Warehouse Operation and Inventory Control (Revised 3/5/92)
EKCC 02-08-03 Inventory Control, Nonexpendable Items (Revised 3/5/92) [~~(Added 11-15-91)~~]
EKCC 02-08-04 Warehouse Policy and Procedure (Revised 3/5/92) [~~(Added 11-15-91)~~]
EKCC 02-11-01 Purchase and Supply Requisition (Revised 3/5/92)
EKCC 02-12-01 Fiscal Management: Audits (Revised 3/5/92)
EKCC 02-13-01 Fiscal Management: Accounting Procedures (Revised 3/5/92)
EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts (Revised 3/5/92)
[~~EKCC 03-01-01 Construction Crew Entry/Exit Deleted 3/5/92~~]
[~~EKCC 03-02-01 Operation in Inclement Weather/Dense Fog/Essential Emergency Personnel (Added 11-15-91) Deleted 3/5/92~~]
[EKCC 03-08-01 Replacement of Damaged or Destroyed Personal Property Deleted 3/5/92]
[~~EKCC 03-09-01 Use of Interns and Students Deleted 3/5/92~~]
[~~EKCC 03-18-01 Fiscal Management: Insurance Deleted 3/5/92~~]
EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses (Revised 3/5/92)
EKCC 04-02-01 Emergency Preparedness Training (Revised 3/5/92)
EKCC 04-02-02 Advisory Training Committee (Added 3-5-92)
EKCC 05-01-01 Inmate Participation in Authorized Research (Revised 3/5/92)
EKCC 05-02-01 Information System (Revised 3/5/92)
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers (Revised 3/5/92)
EKCC 06-03-01 Case Record Management (Revised 3/5/92) [~~Of~~

~~fender Records~~]
[~~EKCC 08-02-01 Fire Safety Deleted 3/5/92~~]
[~~EKCC 08-02-02 Fire Procedures (Revised 11-15-91) Deleted 3/5/92~~]
[~~EKCC 08-02-03 Fire Prevention Deleted 3/5/92~~]
[~~EKCC 08-03-01 Emergency Preparedness Manual Deleted 3/5/92~~]
[~~EKCC 08-03-03 Emergency Medical Transportation Deleted 3/5/92~~]
[~~EKCC 08-05-01 Emergency Squad: Selection, Training and Evaluation Deleted 3/5/92~~]
[~~EKCC 08-06-01 Control of Flammable, Hazardous, Toxic and Caustic Chemicals and Materials (Added 11-15-91) Deleted 3/5/92~~]
[~~EKCC 08-06-02 Hazardous Chemicals and Materials Safety Date Sheets (Added 11-15-91) Deleted 3/5/92~~]
[~~EKCC 09-04-01 Inmates Immediate Family, Bedside Visits; and Funeral Trips Deleted 3/5/92~~]
[~~EKCC 09-06-01 Unauthorized Items Deleted 3/5/92~~]
[~~EKCC 09-08-01 Unit Searches/Control of Excess Property Deleted 3/5/92~~]
[~~EKCC 09-08-02 Contraband, Dangerous Contraband, Search Policy Deleted 3/5/92~~]
[~~EKCC 09-09-01 Transportation of Inmates Deleted 3/5/92~~]
[~~EKCC 09-10-01 Institutional Inspections Deleted 3/5/92~~]
[~~EKCC 09-12-01 Key Control Deleted 3/5/92~~]
[~~EKCC 09-13-01 Institutional Post Orders Deleted 3/5/92~~]
[~~EKCC 09-14-01 Count Procedures (Revised 11-15-91) Deleted 3/5/92~~]
[~~EKCC 09-15-01 Standards for Maintaining Perimeter Safety Deleted 3/5/92~~]
[~~EKCC 09-15-02 Lobby/Reception: Entry and Exit Procedure Deleted 3/5/92~~]
[~~EKCC 09-15-05 Post #1 Entry and Exit Procedures (Added 11-15-91) Deleted 3/5/92~~]
[~~EKCC 09-19-01 Contraband Outside Institutional Perimeter Deleted 3/5/92~~]
[~~EKCC 09-20-01 Drug Abuse/Intoxicants Testing Deleted 3/5/92~~]
[~~EKCC 09-21-01 Collection, Preservation of Evidence Deleted 3/5/92~~]
[~~EKCC 09-22-01 Restricted Areas Deleted 3/5/92~~]
[~~EKCC 09-23-01 Regulation of Inmate Movement Deleted 3/5/92~~]
[~~EKCC 09-24-01 Guidelines for Unit Staff Deleted 3/5/92~~]
[~~EKCC 09-24-02 Rules and Regulations of the Unit (Added 11-15-91) Deleted 3/5/92~~]
[~~EKCC 09-25-01 Procedures for Prohibiting Inmate Authority over Other Inmates Deleted 3/5/92~~]
[~~EKCC 09-26-01 Security Activity Logs Deleted 3/5/92~~]
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions (Revised 3/5/92)
EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release (Revised 3/5/92) [(~~Revised 11-15-91~~)]
EKCC 10-02-03 Grooming Standards for Special Management (Revised 3/5/92)
EKCC 11-02-01 Meal Planning for General Population (Revised 3/5/92)
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products (Revised 3/5/92)
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets (Revised 3/5/92)
EKCC 11-04-01 Food Service: Inspections and Sanitation (Revised 3/5/92)
EKCC 11-04-02 Medical Screening of Food Handlers (Revised 3/5/92)
EKCC 11-05-01 Food Service: Security (Revised 3/5/92)
EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities (Revised 3/5/92)
EKCC 11-07-01 Dining Room Guidelines (Revised 3/5/92)
EKCC 11-08-01 OJT Food Service Training Placement (Revised 3/5/92)
EKCC 12-01-01 Vermin and Insect Control (Revised 3/5/92)
EKCC 12-02-01 Inmate Dress and Use of Access Areas (Revised 3/5/92)
EKCC 13-01-01 Pharmacy Policy (Revised 3/5/92)
EKCC 13-02-01 Emergency Medical Procedure (Revised 3/5/92)
EKCC 13-02-02 Disaster and Mass Casualty Plan (Revised 3/5/92)
EKCC 13-02-03 Consultations (Revised 3/5/92)
EKCC 13-02-04 Medical [~~Hospital~~] Services (Revised 3/5/92)
EKCC 13-01-05 Health Evaluations (Revised 3/5/92)
EKCC 13-02-06 Sick Call (Revised 3/5/92)
EKCC 13-02-07 First Aid Kits (Revised 3/5/92)
EKCC 13-02-08 Transportation of Injured or Ill Staff (Revised 3/5/92)
EKCC 13-02-09 Emergency Dental Care (Revised 3/5/92)
EKCC 13-02-10 Dental Services for Special Management Units (Revised 3/5/92)
EKCC 13-02-11 Suicide Prevention and Intervention Program (Revised 3/5/92) [(~~Added 11-15-91~~)]
EKCC 13-05-01 Aids and Hepatitis B (Revised 3/5/92)
EKCC 13-07-01 Serious Illness, Major Injuries, Death (Revised 3/5/92)
EKCC 13-08-01 Psychiatric and Psychological Services (Revised 3/5/92)
EKCC 13-08-02 Psychiatric and Psychological Services Team (Revised 3/5/92)
EKCC 13-09-01 Optometric Services (Revised 3/5/92)
EKCC 13-10-01 Detoxification (Revised 3/5/92)
EKCC 13-11-01 Therapeutic Diets (Revised 3/5/92)
EKCC 13-12-02 Resident Transfer/Medical Profiles (Revised 3/5/92)
EKCC 13-13-01 Syringes, Needles and Sharps Control (Revised 3/5/92)
EKCC 13-14-01 Fire and Emergency Evacuation Plan (Revised 3/5/92)
EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements (Revised 3/5/92)
EKCC 13-16-01 Medical Records (Added 3/5/92
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule (Revised 3/5/92)
EKCC 14-04-01 Inmate Legal Services (Revised 3/5/92)
EKCC 14-06-01 Inmate Grievance Procedure (Revised 3/5/92)
EKCC 14-07-01 Inmate Rights and Responsibilities (Added 3/5/92)
EKCC 15-01-01 Hair and Grooming Standards: Inmate Barber Shop (Added 3/5/92)
EKCC 15-05-01 Restoration of Forfeited Good Time (Revised 3/5/92)
EKCC 15-06-01 Due Process/Disciplinary Procedure (Revised 3/5/92)
EKCC 16-01-01 Inmate Visiting (Revised 3/5/92) [(~~Revised 11-15-91~~)]
EKCC 16-02-01 Inmate Correspondence (Revised 3/5/92)
EKCC 16-03-01 Inmate Telephone Procedures (Added 3/5/92
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff (Revised 3/5/92)
EKCC 16-05-02 Unit Bulletin Boards (Revised 3/5/92)
EKCC 17-01-01 Authorized Inmate Personal Property (Revised 3/5/92)
EKCC 17-01-02 Personal Property Control (Revised 3/5/92)
EKCC 17-02-01 Assessment/Orientation (Revised 3/5/92)
EKCC 17-04-01 Inmate Reception Process at the EKCC (Revised 3/5/92)
EKCC 18-01-01 Inmate Classification (Revised 3/5/92)

EKCC 18-10-01	Preparole Progress Report (Revised 3/5/92)
EKCC 18-13-01	Meritorious Housing (Added 3/5/92)
EKCC 19-04-01	Inmate Work Program (Revised 3/5/92)
EKCC 20-01-01	Educational Program (Added 3/5/92)
EKCC 21-01-01	Library Services (Revised 3/5/92)
EKCC 22-02-01	Recreation and Inmate Activities (Added 3/5/92)
EKCC 23-01-01	Religious Services (Revised 3/5/92)
EKCC 23-01-02	Muslim Services - Ramadan (Revised 3/5/92)
EKCC 24-01-01	Social Services and Counseling Program (Revised 3/5/92) [~~(Added 11-15-91)~~]
EKCC 25-02-01	Inmate Discharge Procedure (Revised 3/5/92)
EKCC 25-03-01	Prerelease Preparation (Revised 3/5/92)
EKCC 25-04-01	Inmate Furloughs (Revised 3/5/92) [~~Extended Visits (Furlough)~~]
EKCC 25-06-01	Community Center Program (Revised 3/5/92)
EKCC 26-01-01	Citizens Involvement and Volunteers (Revised 3/5/92)

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: March 5, 1992
FILED WITH LRC: March 5, 1992 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 23, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Campbell, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 370 employees of the Eastern Kentucky Correctional Complex, 1269 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS [~~156.031,~~] 156.160, 157.370, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.370
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the physical welfare and safety of public school children, the transportation of such children to and from school, and the operation of school buses; and KRS 157.370 references the method of calculating transportation costs for the state public school funding program. This regulation establishes guidelines and procedures whereby the Department of Education, through its Division of Pupil Transportation answerable to the chief state school officer, may offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes for the Fund to Support Education Excellence in Kentucky which are necessary to determine the calculated pupil transportation program cost for each district which provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8 and 9, and shall keep the curriculum up-to- date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training curriculum.

Section 3. No person shall be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of twenty-five (25) hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the chief state school officer. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. The Division of Pupil Transportation shall have the authority to make safety inspections of any and all school buses and special type vehicles either owned by the board or contracted to the board being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, the Division of Pupil Transportation shall have the authority to prohibit further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. The Division of Pupil Transportation shall have the authority to prohibit the use of school buses or special type vehicles used for the transportation of pupils, which have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky. These vehicles shall remain out of service until approved by the Division of Pupil Transportation as meeting the minimum safety

standards for Kentucky school buses of the same model year.

Section 6. The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district providing transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the Fund to Support Education Excellence in Kentucky and the Division of Pupil Transportation in making a pupil transportation system survey for the district.

Section 8. The Division of Pupil Transportation shall be responsible for the training and certification of state school bus inspectors.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1992 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 17, 1992, five days prior to 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. The 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: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Stewart M. Roscoe

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: Indeterminate cost or savings, but will improve school bus safety.

2. Continuing costs or savings: The cost of school bus maintenance will be monitored annually to determine if program results in savings or school bus safety.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: To remain at the present level.

(2) Effects on the promulgating administrative body: Will require the organization and administration of training.

(a) Direct and indirect costs or savings:

1. First year: Cost $20,000.

2. Continuing costs or savings: Cost $10,000.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Issuance of training certificates and maintenance of a data bank.

(3) Assessment of anticipated effect on state and local revenues: Reduce school bus maintenance cost.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposal is the most economical method of improving school bus safety and lowering maintenance 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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This program will standardize school bus inspection procedures, improve safety and lower maintenance costs.

TIERING: Was tiering applied? No. This regulation will apply equally to all school districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 5:030. Superintendents' responsibilities.

RELATES TO: KRS 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320

NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation provides the district superintendent with the regulations necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a state certified inspector [~~competent person~~]. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Fund to Support Education Excellence in Kentucky.

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on

all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8 and 9 and shall be conducted by a state certified instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver shall complete annually for certification renewal, in accordance with 702 KAR 5:080, Section 9. The in-service training shall include at least eight (8) hours of required instruction conducted by a certified instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 7. District school bus inspectors shall complete an annual four (4) hour update conducted by a state certified school bus inspector and instructor.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1992 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 17, 1992, five days prior to 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. The 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: Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Stewart M. Roscoe

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: Indeterminate cost or savings, but will improve school bus safety.

2. Continuing costs or savings: The cost of school bus maintenance will be monitored annually to determine if program results in savings or school bus safety.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: To remain at the present level.

(2) Effects on the promulgating administrative body: Will require the organization and administration of training.

(a) Direct and indirect costs or savings:

1. First year: Cost $20,000.

2. Continuing costs or savings: Cost $10,000.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Issuance of training certificates and maintenance of a data bank.

(3) Assessment of anticipated effect on state and local revenues: Reduce school bus maintenance cost.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposal is the most economical method of improving school bus safety and lowering maintenance 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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This program will standardize school bus inspection procedures, improve safety and lower maintenance costs.

TIERING: Was tiering applied? No. This regulation will apply equally to all school districts.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 2:070. Veterans' preference procedure.

RELATES TO: KRS 151B.025

STATUTORY AUTHORITY: KRS 151B.025

NECESSITY AND FUNCTION: To establish the procedure for giving veterans preference or priority in enrolling in vocational courses where there is a waiting list.

Section 1. When considering enrollment applications of persons eligible for veterans' educational and training benefits for the purpose of placing their names on applicants' waiting lists, vocational schools under the management and control of the State Board for Adult and Technical Education shall use the date that veterans entered military service rather than their date of discharge.

Section 2. In order for persons who are eligible for veterans' educational and training benefits to receive priority preference on applicants' waiting lists, they must make official application to the vocational school within one (1) year [~~the six (6) months period~~] following the veteran's date of discharge from military service.

Section 3. This procedure for establishing priority preference shall apply only for an eligible person's first and initial application for enrollment in a vocational training course. It shall not apply when a person has completed and received veterans' benefits for one (1) course and then wishes to enroll in another.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: February 20, 1992

FILED WITH LRC: March 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992 at 10 a.m., EDT in Room 306, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested

in attending this hearing shall notify this agency in writing by April 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 78 Kentucky Tech facilities.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional paperwork required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 780 KAR 2:090, Section 4(5)

(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: Revision of 780 KAR 2:070, Section 2 will eliminate language which is not consistent with 780 KAR 2:090, Section 4(5) (effective 7/5/91). This is a technical cleanup only for consistency.

TIERING: Was tiering applied? No. Not applicable.

LABOR CABINET
Department for Workplace Standards
(Proposed Amendment)

803 KAR 1:063. Trading time.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY AND FUNCTION: KRS 337.295 authorizes the commissioner to issue regulations for special items usual in a particular employer-employee relationship. The function of this regulation is to define the criteria to be met by public employers who wish to permit employees engaged in fire protection activities and any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act to use the practice of "trading time."

Section 1. A common practice or agreement among employees engaged in fire protection activities and employees of a carrier by air subject to the provisions of title II of the Railway Labor Act is that of substituting for one another on regularly scheduled tours of duty (or for some part thereof) in order to permit an employee to absent himself or herself from work to attend to purely personal pursuits. This practice is commonly referred to as "trading time."

Section 2. The practice of "trading time" will be deemed to have no effect on hours of work if the following criteria are met:

(1) The trading of time is done voluntarily by the employees participating in the program and not at the behest of the employer;

(2) The reason for trading time is due, not to the employer's business operations, but to the employee's desire or need to attend to personal matters; and

(3) A record is maintained by the employer of all time traded by his employees.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: February 20, 1992

FILED WITH LRC: February 21, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 27, 1992, at 10 a.m. at the Kentucky Labor Cabinet, 1049 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 22, 1992, 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 received. 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: Mr. Charles E. McCoy, Kentucky Labor Cabinet, Department of Workplace Standards, Division of Employment Standards & Mediation, 1049 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles E. McCoy

(1) Type and number of entities affected: All employers and employees covered by KRS 337.275 and 337.285. No actual number available.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved.

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: No reporting requirements and only paperwork requirements are maintaining a record of employees time when volunteering to participate in the program.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

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

(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: No conflict

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Not necessary.

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__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will benefit local government employees if they elect to participate in the trading of time.

3. State the aspect or service of local government to which this administrative regulation relates. Only applies to employees engaged in fire protection activities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It pertains only to employees who voluntarily choose to participate in a program approved by the employing agency. It does not mandate any requirement on any employer or employee.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:025. Kentucky Building Code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This regulation includes the substance of 815 KAR 7:020, which is being repealed. This amendment is necessary to update the reference to NFPA Pamphlets dealing with sprinkler systems to the latest edition. This change was approved by the Board of Housing on January 23, 1992. [~~These amendments are necessary to allow an alternate method of compliance for separation between tenant spaces in attics when the walls are perpendicular to the roof trusses; to upgrade the elevator standards to the latest edition of the elevator code; to provide alternate facility dimensions for accessibility for disabled children in day care and elementary schools.~~]

Section 1. Adoption of Building Code. (1) The "BOCA National Building Code/1990," Eleventh Edition, Articles 2 through 32 and Appendices A through D, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length herein, except as amended in Section 2 through 33 of this regulation. Copies are available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Article 1, Administration and Enforcement, is hereby deleted in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

Section 2. Article 2, Definitions. Amend Article 2 by adding the following definitions:

(1) "Alarm verification" means a feature of automatic fire detection systems to reduce unwanted alarms wherein automatic fire detectors report alarm conditions for a minimum period of time, or confirm alarm conditions within a given period, after being automatically reset to be accepted as a valid alarm initiation signal.

(2) "Detector, heat" means an alarm-initiating device that detects abnormally high temperature or rate-of-temperature rise.

(3) "Exit discharge, level of" means the horizontal plane located by the point at which an exit terminates and an exit discharge begins.

(4) "Fire alarm box, manual" means a manually operated alarm-initiating device that activates a fire protective signaling system.

(5) "Fire command station" means the principal location where the status of the detection, alarm, communications and control systems is displayed and from which the system has the capability for manual control.

(6) "Heated slab" means slab-on-grade construction in which the heating elements or hot air distribution system is in contact with or placed within the slab or the subgrade.

(7) "Infiltration" means the uncontrolled inward air leakage through cracks and interstices in any building element and around windows and doors of a building caused by the pressure effects of wind or the effect of differences in the indoor and outdoor air density.

(8) "Multiple single-family dwelling" means a building or portion thereof containing more than two (2) dwelling units.

(9) "Opaque areas" means all exposed areas of a building envelope which enclose conditioned space, except openings for windows, skylights, doors and building service systems.

(10) "Overall thermal transfer value (OTTV)" means the thermal transfer into a building through the walls or roof due to solar heat gain and outdoor-indoor temperature differences as determined by Equations 3 and 4 (see Article 31).

(11) "Shading coefficient (SC)" means the solar heat gain of fenestration divided by the solar heat gain of one-eighth (1/8) inch clear glass.

$$SC = \frac{\text{Solar Heat Gain of Fenestration}}{\text{Solar Heat Gain of 1/8-inch Clear Glass}}$$

(12) "Smoke detector, multiple station" means single-station smoke detectors which are capable of being interconnected so that actuation of one (1) causes all integral or separate audible alarms to operate.

(13) "Smoke detector, single station" means an assembly incorporating the detector, control equipment and the alarm- sounding device in one (1) unit, which is operated from a power supply either in the unit, or obtained at the point of installation.

(14) "Supervisory device" means an initiating device used to monitor the conditions that are essential for the proper operation of automatic fire suppression systems (i.e., switches used to monitor the position of gate valves, a low air-pressure switch on a dry-pipe sprinkler system, etc.)

(15) "Voice/alarm signaling system" means a system that provides, to the occupants of a building, dedicated manual or automatic facilities, or both, for originating and distributing voice

instructions, as well as alert and evacuation signals pertaining to a fire emergency.

(16) "Wireless initiating device" means an initiating device which communicates with associated control or receiving equipment by means of wireless transmission medium.

Section 3. Article 3, Use Group Classification. Amend Article 3 by making the following additions, deletions or changes:

(1) Amend subsection 304.1 to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities, shall be classified in Use Group E. Educational type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, used for business training or vocational training shall be classified in the same use group as the business or vocation taught. 304.1.1 Day Care Facilities: A day care facility which provides care for more than four (4) persons for less than twenty-four (24) hours per day shall be classified as Use Group E."

(2) Delete subsection 307.3.1, Child care facility, in its entirety.

(3) Amend subsection 309.5, Use Group R-4 Structures, to read as follows: "309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the One (1) and Two (2) Family Dwelling Code listed in Appendix A. All of these structures shall be designed and built in accordance with the requirements of this code for a Use Group R-3 structure, or with the requirements of the one (1) and two (2) family dwelling code, except that the requirements of the State Plumbing Code (Article 28) shall supersede those conflicting requirements of the One (1) and Two (2) Family Dwelling Code. This choice shall be made by the builder at the time of plans submission. A builder may use Exception #4 of Section 809.4 to determine minimum size of egress windows."

(4) Create a new subsection to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2 or Type 3 construction, may be constructed without a sprinkler system if all of the following requirements have been met:

(a) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(b) A fire protective signaling system (manual fire alarm) and automatic fire detection system (smoke detection) with notification to the local fire service shall be provided with installation in accordance with Sections 1016, 1017 and 1020 of this code.

(c) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(d) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building.

Section 4. Article 4, Types of Construction Classification. Amend Article 4 by making the following additions, deletions or changes:

(1) Amend Table 401, Fire-resistance Ratings of Structure Elements (In Hours), by creating a footnote to read as follows: "Note 1. The fire partitions and floor/ceiling assembly ratings in R-2 buildings may be reduced to one (1) half (1/2) hour if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and if equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(2) Amend the notation under "Dwelling unit separations" in column "Structure element" within Table 401 to read as follows: "(Sections 910.0, 913.0 and Notes f, j and l)."

Section 5. Article 5, General Building Limitations. Amend Article 5 by making the following additions, deletions or changes:

(1) Amend subsection 504.2, Exterior walls, by adding one (1) sentence at the end of the paragraph to read as follows: "The entire perimeter of one (1) story unlimited area buildings shall have a minimum fire separation distance of thirty (30) feet (9144 mm)."

(2) Amend subsection 505.1 by changing the number "103.0" to read "106.0."

(3) Amend subsection 511.1 by changing the number "124.0" to read "123.0."

(4) Delete subsections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1 Barrier Free Design. Please see 815 KAR 7:060 (Article 33) for construction requirements providing for accessible buildings and facilities."

(5) Delete subsection 513.1, Approval, in its entirety.

Section 6. Article 6, Special Use and Occupancy Requirements. Amend Article 6 by making the following additions, deletions or changes:

(1) Amend subsection 602.2, Maintenance and inspection, to read as follows: "602.2 Maintenance and inspection: All fire protection systems shall be maintained in an operative condition at all times and shall be periodically inspected and tested in accordance with the fire prevention code listed in Appendix A."

(2) Amend Section 608.1, Attached Garages, by adding the following exception: "Exception: In lieu of the required one and three quarter (1 3/4) inch or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water system shall be permitted."

(3) Create a new subsection 623.1.1 to read as follows: "623.1.1 New facilities: The Cabinet for Human Resources, Department for Health Services, shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all pool facilities. See 902 KAR 10:120, Kentucky public swimming and bathing facilities regulation."

Section 7. Article 7, Interior Environmental Requirements. Amend Article 7 by making the following additions, deletions or changes:

(1) Create a new subsection 701.2 to read as follows: "701.2 Alternative Mechanical System: HVAC systems in occupancies reviewed under NFiPA 101 pursuant to Section 126.1 of this code shall be installed in accordance with NFiPA 90A or NFiPA 90B in lieu of the mechanical code listed in Appendix A."

(2) Delete subsections 702.1 through 702.3 in their entirety.

(3) Amend subsection 708.1.3, Furred Ceilings, by adding the following exception: "Exception: In Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The two-thirds (2/3) area requirements listed in this section shall still be met."

(4) Amend subsection 709.3 to read as follows: "709.3 Alternative mechanical ventilation: Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

Section 8. Article 8, Means of Egress. Amend Article 8 by making the following additions, deletions or changes:

(1) Delete subsection 804.2.1 in its entirety.

(2) Amend Table 806.1.2 by adding a notation to Industrial areas

to read as follows: "Note: Use a value of 200 gross for purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33, applicability."

(3) Create a new subsection 807.3.2 to read as follows: "807.3.2 Protection of egress: A required means of egress shall not discharge directly into a vehicular path unless guards are provided to protect vehicles from hitting the exit door in any outward opened position and to direct pedestrians in a path running parallel to the vehicular path. The guards shall prevent the exit door from being blocked by movable objects such as dumpsters or parked vehicles."

(4) Amend Table 809.3, Buildings with One Exit, to read as follows:

TABLE 809.3
BUILDINGS WITH ONE EXIT

Use Group	Maximum No. of stories above grade	Maximum occupants, travel distances[d] or dwelling units per floor
All	1 story	50 occupants
B[b],F,M,S[a]	2 stories	30 occupants and a 75-foot travel distance
R-2	2 stories[e]	4 dwelling units and a travel distance of 50 feet
R-2	3 stories[c]	4 dwelling units

Note a. For the required number of exits for open parking structures, see Section 809.5

Note b. For the required number of exits for air traffic control towers, see Section 617.0.

Note c. Buildings of Use Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2 shall have a maximum height of three (3) stories above grade.

Note d. One (1) foot = 304.8 mm.

Note e. When equipped with an NFiPA 13D sprinkler system listed in Appendix A, the travel distance shall be increased to seventy-five (75) feet and the number of dwelling units per floor shall be increased to eight (8), but not more than four (4) units shall share a single exit."

(5) Amend subsection 809.4, Emergency Escape, by adding two (2) additional exceptions to read as follows: "4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 Use Groups) and one (1) and two (2) family dwellings may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)" and "5. An outside window or exterior door for emergency escape shall not be required in R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(6) Amend Table 810.4, Corridor Fire-resistance Rating, to read as follows:

TABLE 810.4
CORRIDOR FIRE-RESISTANCE RATING

Use Group	Total Required Capacity of all Exits from Corridor	Required Fire-resistance Rating Without sprinkler system	Required Fire-resistance Rating With sprinkler system[d]
H	>30	NP[e]	1 hr.
A,B,E,F,M,S	>30	1 hr.	0
I-1,R[a],[f]	>10	1 hr.	1/2 hr.
I-2	All	1 hr.	0[b]
I-3	All	NP	0[c]

Note a. For reduction in fire-resistance rating for Use Group R, see Section 810.4, Exception 2.

Note b. For requirements for Use Group I-2, see Section 610.3.

Note c. For reduction in fire-resistance rating for Use Group I-3, see Table 611.8.

Note d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Note e. NP = Not Permitted.

Note f. In R-2 occupancies when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A, the required fire resistance rating shall be one-half (1/2) hour."

(7) Amend the exception to 810.4.1, Corridor walls as separation walls, to read as follows: "Exception: Tenant separation and dwelling unit separation walls which are also corridor walls shall not be required to have a fire-resistance rating greater than that required by Table 810.4 where the building is equipped throughout with an automatic sprinkler system in accordance with Sections 1004.2.1, 1004.2.2 or 1004.2.3."

(8) Amend subsection 813.4.2, Panic Hardware, as follows:

(a) Amend the first sentence to read as follows: "All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100, shall be equipped with approved panic hardware."

(b) Create an exception to subsection 813.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if:

1. They are free-swinging; and

2. The calculated occupant load does not exceed 150; and

3. The latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

(9) Amend subsection 816.3, Maximum slope, to read as follows: "816.3, Maximum slope: The maximum slope of means of egress ramps shall be one (1) unit vertical in eight (8) units horizontal (1:8); except ramps required in accordance with Article 33 for persons with physical handicaps, in which case the maximum slope shall be: one (1) unit vertical in eight (8) units horizontal (1:8) if the rise is limited to three (3) inches (76 mm); one (1) unit vertical in ten (10) units horizontal (1:10) if the rise is limited to six (6) inches (152 mm); or one (1) unit vertical in twelve (12) units horizontal (1:12) otherwise."

(10) Amend subsection 817.12, Exterior Stairways, by deleting the first sentence to read as follows: "817.12 Exterior stairways: Exterior stairways shall not be accepted as an exit in the following cases:

1. Buildings of Use Group I-2 which exceed four (4) stories or fifty (50) feet in height.

2. Buildings of Use Group I-3.

3. Floors that exceed five (5) stories or sixty-five (65) feet in height above the level of exit discharge."

Section 9. Article 9, Fire-resistive Construction. Amend Article 9 by making the following additions, deletions, or changes:

(1) Amend subsection 901.2, Penetrations, to read as follows: "Plans for buildings shall indicate where penetrations shall be made for electrical, mechanical, plumbing and communication conduits, pipes and systems, and shall also indicate the materials and methods for maintaining the required structural integrity, fire-resistance rating and firestopping. Approved penetration assemblies shall be used for all combustible penetrations of fire-resistant rated building elements as specified in Section 910.3.1."

(2) Amend subsection 903.4, Interior Hangings and Decorations, to read as follows: "Interior hangings and decorations shall comply with Section 903.4.1."

(3) Delete subsections 903.4.2, 903.4.3 and 903.4.4 in their entirety.

(4) Create a new subsection 904.4 to read as follows: "904.4 Combustible pipe: Combustible pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(5) Create a new subsection 904.4.1 to read as follows: "904.4.1 Vertical combustible pipe: Vertical combustible pipes shall comply with Sections 910.3.1 and 915.3.2."

(6) Create a new subsection 910.3.1, Through-Penetration System, to read as follows: "910.3.1 Through-Penetration System: Combustible cable trays, conduits, tubes or pipes shall be allowed to penetrate a rated assembly if they are protected with an approved through penetration protection system that has been tested in accordance with ASTM E-814 listed in Appendix A. Exception: In buildings of Use Groups R-1 and R-2 when all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) level below the highest level of exit discharge, the through penetrations shall not be required to be protected with an ASTM E-814 system, if equipped with an NFiPA sprinkler system listed in Appendix A".

(7) Amend subsection 913.4, Penetration protection, by creating an additional exception to read as follows: "4. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure if the following conditions exist:

(a) The cross-sectional area does not exceed thirty-five (35) square inches (22581 mm^2; and

(b) The duct does not penetrate more than three (3) floors; and

(c) The duct does not serve more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) These ducts shall be restricted for use as a bathroom or kitchen exhaust and combustion air supply and relief."

(8) Amend subsection 921.7.2.1, Use Group R, by creating an additional exception to read as follows: "6. When dwelling unit separation walls are constructed to the underside of a fire-resistance rated roof/ceiling assembly or to a ceiling with sixty (60) minute finish rating, the attic draftstopping complying with subsection 921.7.2.2 (i.e., horizontal draftstopped areas not exceeding 3,000 square feet) shall be deemed equivalent."

Section 10. Article 10, Fire Protection Systems. Amend Article 10 by making the following additions, deletions or changes:

(1) Amend subsection 1002.8 by amending the exception to read as follows: "Exception: Use Group R-1 buildings (hotels, motels, etc.) where all guestrooms are not more than one (1) story above the lowest level of exit discharge of the exits serving the guestroom (e.g., a two (2) story building with basement). Each guestroom shall have at least one (1) door opening directly to an exterior exit access which leads directly to the exits."

(2) Amend subsection 1002.9 by creating two (2) exceptions to read as follows:

(a) "Exception 1. Two (2) Story Buildings with Basement. Use Group R-2 buildings (apts., condos, dorms, etc.) where all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (e.g., a two (2) story building with a basement)."

(b) "Exception 2. Existing buildings. R-2 buildings that exceed two (2) stories but which do not have more than six (6) dwelling units. This exception shall not apply to buildings constructed after the effective date of this code."

(3) Create a new subsection 1004.2.3 to read as follows: "1004.2.3 NFiPA 13D Systems. A sprinkler system in accordance with NFiPA 13D listed in Appendix A shall be permitted in the following occupancies:

(a) In buildings of Use Group R-2 if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit (i.e., a two (2) story building with a basement).

(b) In Existing Buildings of Use Group R-2 that exceed two (2) stories but have no more than six (6) dwelling units. This shall not apply to buildings constructed after the effective date of this code.

(c) In Use Group R-1 occupancies complying with Section 1002.8."

(4) Amend subsection 1005.6.3, Domestic connection, to read as follows: "1005.6.3 Domestic connection: Two (2) check (one (1) way) valves, one (1) of which may be an alarm check valve, shall be provided at the point where the suppression system piping is connected to the domestic water piping. Shutoff valves shall not be permitted in the suppression system piping. Water supply shall be controlled by the riser control valve to the domestic water piping.

Exception: Shutoff valves in the sprinkler system piping are permitted if the valves are supervised in accordance with Section 1020.0."

(5) Amend subsection 1015.1, Yard Hydrants, to read as follows:

(a) "1015.1 Private hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFiPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than six (6) inches in diameter."

(b) Create a new subsection of 1015.2 to read as follows: "1015.2 Public hydrants: Public hydrants not covered by National Fire Protection Association (NFiPA) Pamphlet #24 listed in Appendix A shall conform to the standards of the administrative authority of the jurisdiction as provided for by local ordinance."

(6) Amend subsection 1016.4.1, Use Group A-4 or E, by creating an additional exception to read as follows: "Exception 2. Church buildings which do not exceed 10,000 square feet and in which single station smoke detectors are installed as follows:

a. Smoke detectors may be single station and wired in series so as to sound alarm in sanctuary.

b. Smoke detectors shall be installed in fellowship hall and more hazardous areas such as furnace rooms, mechanical rooms and storage rooms, but shall not be as required in Sunday school classrooms.

c. Detector spacing shall be thirty (30) feet on center in corridors and 900 square feet per detector in open spaces, or in accordance

with the manufacturer's specifications."

(7) Create an additional exception to subsection 1018.3.2, Use Group R-2, to read as follows: "3. Smoke detectors shall not be required in bedrooms of Use Group R-2 occupancies if all dwelling units are not more than one (1) story above the lowest level of exit discharge and not more than one (1) story below the highest level of exit discharge of exits serving the dwelling unit and when equipped with an NFiPA 13D sprinkler system listed in Appendix A."

(8) Amend subsection 1020.2, Fire protection signaling systems, to read as follows: "1020.2 Fire protection signaling systems: All required fire protective signaling systems in the following occupancies shall transmit alarm and trouble signals to an approved central-station system, proprietary system or remote-station system.

1. Day care centers with more than 100 clients.

2. Health care facilities licensed by the Cabinet for Human Resources."

Section 11. Article 11, Structural Loads. Amend Article 11 by making the following additions, deletions or changes:

(1) Create a new subsection 1100.2 to read as follows: "1100.2 Certificate of compliance: Design compliance with the provisions of this article and Article 12 shall be satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building code official."

(2) Amend subsection 1105.4, Existing Live Load, by changing "Section 103.3" to "Section 106.3".

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties to further explain the map which shows the assigned earthquake risk zone for each.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Lewis	Perry
Boone	Franklin	Lincoln	Pike
Bourbon	Gallatin	Logan	Powell
Boyd	Garrard	Madison	Pulaski
Boyle	Grant	Magoffin	Robertson
Bracken	Grayson	Marion	Rockcastle
Breathitt	Green	Martin	Rowan
Breckinridge	Greenup	Mason	Russell
Bullitt	Hancock	Meade	Scott
Butler	Hardin	Menifee	Shelby
Campbell	Harrison	Mercer	Simpson
Carroll	Hart	Metcalfe	Spencer
Carter	Henry	Monroe	Taylor
Casey	Jackson	Montgomery	Todd
Christian	Jefferson	Morgan	Trimble
Clark	Jessamine	Muhlenberg	Warren
Clay	Johnson	McCreary	Washington
Clinton	Kenton	McLean	Wayne
Cumberland	Knott	Nelson	Whitley
Daviess	Knox	Nicholas	Wolfe
Edmonson	Larue	Ohio	Woodford

Earthquake Risk Zone #2

Bell	Hopkins
Caldwell	Letcher
Calloway	Lyon
Crittenden	Trigg
Harlan	Union
Henderson	Webster

Earthquake Risk Zone #3

Ballard	Hickman
Carlisle	Livingston
Fulton	Marshall
Graves	McCracken

(4) Amend subsection 1113.1.1 by creating the following exception: "Exception: In Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

Section 12. Article 12, Foundation Systems and Retaining Walls. Amend Article 12 by making the following additions, deletions or changes: Amend Subsection 1205.1 to read as follows: "Except when erected upon solid rock or otherwise protected from frost, foundation walls, piers and other permanent supports of all buildings and structures larger than 100 square feet (9.30 m^2) in area or ten (10) feet (3048 mm) in height shall extend below the frost line of the locality, to a minimum depth of twenty-four (24) inches, or whichever is deeper, and spread footings of adequate size shall be provided if necessary to distribute properly the load within the allowable bearing value of the soil. Alternatively, the structures shall be supported on piles if solid earth or rock is not available. Footings shall not be founded on frozen soils unless the frozen condition is of a permanent character."

Section 13. Article 13, Materials and Tests. Amend Article 13 by making the following additions, deletions or changes:

(1) Delete subsection 1301.3 in its entirety.

(2) Delete subsections 1308.1 through 1308.8 in their entirety.

Section 14. Article 14, Masonry, is hereby adopted in its entirety.

Section 15. Article 15, Concrete, is hereby adopted in its entirety.

Section 16. Article 16, Gypsum and Plaster, is hereby adopted in its entirety.

Section 17. Article 17, Wood, is hereby adopted in its entirety.

Section 18. Article 18, Steel, is hereby adopted in its entirety.

Section 19. Article 19, Lightweight Metal Alloys, is hereby adopted in its entirety.

Section 20. Article 20, Plastic, is hereby adopted in its entirety.

Section 21. Article 21, Exterior Walls. Amend Article 21 by making the following additions, deletions or changes: Create a new subsection to read a follows: "2100.2 Approval of plans: Plans showing compliance with Section 2101.6.1 through 2101.6.11.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 22. Article 22, Vertical and Sloped Glass and Glazing. Amend Article 22 by making the following additions, deletions or changes:

(1) Create a new subsection 2201.1.1 to read as follows: "2201.1.1 Labeling requirements: Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a location within the Commonwealth of Kentucky shall be permanently labeled by etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label

shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(2) Amend Paragraph 7 of subsection 2203.2, Specific Hazardous Locations, to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m^2) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of the glazing, and the finish floor or walking surface is extended on both sides of said glazing. In lieu of safety glazing, glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

Section 23. Article 23, Roofs and Roof Coverings, is hereby adopted in its entirety except subsection 2308.2 is amended to read as follows: "2308.2 Structural and construction loads: The roof covering system and the material and equipment loads that will be encountered during installation of the roof covering system shall not exceed the capacity of the structural roof components."

Section 24. Article 24, Masonry Fireplaces, is hereby adopted in its entirety.

Section 25. Article 25, Mechanical Equipment and Systems. Amend Article 25 by making the following additions, deletions or changes:

(1) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(2) Create a new subsection 2500.3 to read as follows: "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1, as required by Kentucky boiler regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Create a new subsection 2500.4 to read as follows: "2500.4 Mechanical Code: All mechanical equipment and systems which are not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code/1990 including all applicable standards listed within Appendix A."

(a) Create a new subsection 2500.4.1 to read as follows: "2500.4.1 Mechanical ventilation: Mechanical ventilating systems may be designed in accordance with the provisions of ASHRAE Standard 62-1989 listed in Appendix A as an equivalent alternative to the BOCA National Mechanical Code/1990."

(b) Create a new subsection 2500.4.2 to read as follows: "2500.4.2 Design of mechanical systems: The building code official may use the actual occupant load in lieu of Table 806.1.2 in the design of mechanical ventilating systems. This applies to both the BOCA National Mechanical Code/1990 and ASHRAE 62-1989 listed in Appendix A."

(4) Create a new Section 2511.0 entitled "Rangehoods" to read as follows: "2511.1 Rangehoods: Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four (4) feet above the cooking surface."

(5) Create a new subsection, 2511.2, Commercial Exhaust System not Required, to read as follows: "2511.2 Commercial Exhaust System not Required: In churches and in other occupancies where the range is merely a convenience for occasional use and where there is minimal or nonexistent grease laden vapors, commercial exhaust systems shall not be required."

Section 26. Article 26, Elevator, Dumbwaiter, and Conveyor Equipment, Installation and Maintenance. Amend Article 26 by making the following additions, deletions or changes:

(1) Amend subsection 2602.4.1 to read as follows: "2602.4.1 Periodic inspection intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(2) Amend subsection 2603.4 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(3) Amend subsection 2607.4 to read as follows: "2607.4 Location of vents: Vents shall be located at the top of the hoistway, and shall open either directly to the outer air or through noncombustible ducts to the outer air. Holes in the machine room floors for the passage of ropes, cables or other moving elevator equipment shall be limited so as not to provide greater than two (2) inches (51 mm) of clearance on all sides."

(4) Create a new subsection 2607.4.1 to read as follows: "2607.4.1 Mechanical ventilation: Mechanical ventilation shall be allowed in buildings other than Use Groups R-1, R-2, I-1, I-2 and similar uses with overnight sleeping quarters if outside exposure for the required vents is not possible. The mechanical ventilation shall conform to the mechanical code listed in Appendix A."

(5) Amend subsection 2607.5 to read as follows: "2607.5 Area of vents: Except as provided for herein, the area of the vents shall not be less than three and one-half (3 1/2) percent of the area of the hoistway nor less than three (3) square feet (0.28 m^2) for each elevator car, and not less than three and one-half (3 1/2) percent nor less than one-half (1/2) square foot (0.047 m^2) for each dumbwaiter car in the hoistway, whichever is greater. Of the total required vent area, not less than one-third (1/3) shall be of the permanently open type unless all vents activate upon detection of smoke from any of the elevator lobby smoke detectors. Where mechanical ventilation conforming to the mechanical code listed in Appendix A provides equivalent venting, the required vent area shall be reduced if compliance with subsection 2607.4.1 is met."

(6) Create a new Section 2612.0 entitled "Vertical Chairlifts and Wheelchair Lifts: to read as follows: "2612.1 General: Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts may have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements.

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

(7) Create a new section 2613.0 entitled "Machine Rooms and Related Construction for Passenger and Freight Elevators and Dumbwaiters" to read as follows: "2613.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and

shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required to the hoistway enclosure in Table 401."

Section 27. Article 27, Electric Wiring, Equipment and Systems. Amend Article 27 by making the following additions, deletions or changes:

(1) Amend subsection 2700.1, Scope, by adding the following sentence: "Tentative Interim Amendments issued to NFiPA 70 and accepted by the department shall be permitted to be used for interpretations of NFiPA 70."

(2) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with Kentucky Administrative Regulation 815 KAR 35:015."

(3) In subsections 2702.1, 2702.3, and 2703.1 delete the words "code official" and insert in lieu thereof the words "certified electrical inspector."

(4) Delete subsections 2701.3, 2704.3, and 2704.4 in their entirety.

Section 28. Article 28, Plumbing Systems. Amend Article 28 by deleting sections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations. Copies are available from the Kentucky Division of Plumbing, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601."

Section 29. Article 29, Signs, is deleted in its entirety.

Section 30. Article 30, Precautions During Building Operations. Amend subsection 3005.2 by deleting the words, "Section 2805.4" and insert in lieu thereof the words, "Article 28, 815 KAR 20:090 and Article 9, respectively."

Section 31. Article 31, Energy Conservation, is hereby adopted in its entirety.

Section 32. Article 32, Repair, Alteration, Addition to and Change of Use of Existing Buildings. Amend Article 32 by making the following additions, deletions or changes:

(1) Amend subsection 3202.1 to read as follows: "3202.1 General: The provisions in Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(2) Amend subsection 3202.1.5 to read as follows: "3202.1.5 Handicapped requirements: All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1. Federal regulations issued by the Department of Justice may be more stringent than this Code."

Section 33. Create a new subsection, 3303.2, Preschool, day care and elementary school modifications, to read as follows: "Preschool, day care and elementary school modifications: The standards set forth in "Recommendations for Accessibility to serve Physically Handicapped Children in Elementary Schools" dated March, 1986, may be used for providing handicapped accessibility for students in lieu of the listed dimensions and heights identified in this Article. This document is published jointly by the General Services Administration, the United States Postal Service, and the Departments of Defense and Housing and Urban Development, and a copy may be obtained from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036. Copies are also available at the Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday."

Section 34. Appendix A, Referenced Standards. Amend Appendix A by making the following additions, deletions or changes:

(1) Amend the reference to the BOCA National Fire Prevention Code 1990 listed in Appendix A by adding the following language: "The Kentucky Standards of Safety (815 KAR 10:040 - Fire Prevention Code) as amended by the Kentucky Department of Housing, Buildings and Construction."

(2) Elevators. Amend the reference to Safety Code for Elevators and Escalators to read "A17.1-1990"]."

(3) Add the following language and list of National Fire Protection Association (NFiPA) Pamphlets to Appendix A:

"These National Fire Protection Association (NFiPA) Pamphlets are listed for use in fire suppression design and installation only if referenced in a specific code required by Articles 2 through 32 of this code.

Aircraft Hangars	#409
Pyroxylin Plastics	#40C
Flammable Liquids	#30
Laboratories	#45
Fireworks	#1124
L.P. Gas Storage	#58
High Piled Storage in Excess of 12 ft. in height	#231
Rubber Tire Storage	#231D
Baled Cotton Storage	#231E
Rolled Paper Storage	#231F
Rangehoods	#96
Computer Rooms	#75
Archives and Record Centers	#232AM
L.P. Gas Storage and Handling	#59A
Explosion Prevention Systems	#69
Code for the Manufacture and Storage of Aerosol Products	#30B
Installation of Closed-head Foam Water Sprinkler Systems	#16A
Fur Storage	#81
Cooling Towers	#214
Marinas and Boatyards	#303"

(4) Amend Appendix A by changing the edition date to "1990" for the following National Fire Protection Association (NFiPA) Pamphlets: #10, #12B, #14, #15, #17, #17A, #30, #32, #43A, #50, #72E, #80, #82, #99, #418, #495 and #704.

(5) Amend Appendix A and all Articles of the Code by removing all reference to "NFiPA Pamphlets #72A, #72C, #72D, #72F" and in its place list NFiPA Pamphlet #72-90."

(6) Amend Appendix A by adding reference to "NFiPA Pamphlet Number 13D Sprinkler Systems for 1 & 2 Family Dwellings and Mobile Homes, 1991 [~~1989~~] Edition."

(7) Amend Appendix A by changing the Edition date to "1991" for National Fire Protection Association (NFiPA) Pamphlets #13 and #13R.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 7, 1992

FILED WITH LRC: March 12, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, April 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, (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 received. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals, users of the Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes clarification of standards as interpreted by the department.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to persons using KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the Code books.

1. First year: See above.

2. Continuing costs or savings: Printing of revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews code sections for adoption or amendment within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied in the sense that all standards are updated to the latest edition.

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__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.010, 318.020, 318.040, 318.050, 318.054

NECESSITY AND FUNCTION: KRS 318.040 requires the department to conduct examinations for master and journeyman plumber applicants. This regulation relates to those requirements and the fees required. It also relates to the time, place and methods of examinations. This amendment is necessary to increase the fees of licensed master and journeyman plumbers to a level sufficient to meet the costs of carrying out the plumbing program when taken together with permit fees in 815 KAR 20:050. This amendment was approved by the Plumbing Code Committee on February 24, 1992. [~~This amendment is necessary to assure the qualifications of licensed plumbers by requiring practical experience and to create more flexibility in the testing procedures to the administrative authority. This amendment was approved by the Plumbing Code Committee on April 24, 1991.~~]

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. Applications for examination for master or journeyman plumber's licenses shall be submitted to the Department of Housing, Buildings and Construction on forms furnished by the department. Each application shall be properly notarized and accompanied by a fee of $150 [~~$100~~] for a master plumber's license or fifty (50) [~~twenty-five (25)~~] dollars for a journeyman plumber's license. A signed photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years shall accompany each application. Application fees shall be submitted at least two (2) weeks prior to the date of examination and

remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for master or journeyman plumber's licenses shall be conducted during the months of February, May, August and November of each year. Special examinations may be conducted at other times as the Department of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to all persons having applications on file.

(3) Materials required for journeyman plumbers' examinations. Applicants for journeyman plumber's licenses shall furnish the materials required for the practical examination.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be $250 [~~$150~~] for master plumbers and forty (40) [~~thirty (30)~~] dollars for journeyman plumbers.

(2) Remittance of renewal fees. Renewal fees shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Expiration, Renewal or Reinstatement of License. All licenses issued under KRS 318.040 shall expire on June 30 as prescribed in KRS 318.054.

Section 5. Requirements for Master Plumber Applicants. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements to become licensed as a master plumber:

(1) The applicant possessed a valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application and has been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(2) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(3) All applicants shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant understands the Kentucky plumbing laws, is capable of the design of a plumbing system and understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, and preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(4) The passing grade for master plumbers shall be eighty (80) percent.

Section 6. Requirements for Journeyman Plumber Applicants. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements to become licensed as a journeyman plumber:

(1) The applicant has completed two (2) consecutive years experience as an apprentice plumber. Proof of this requirement shall be satisfied by submission of a W-2 form, affidavit of a Kentucky licensed master plumber, or other proof of experience acceptable to the Department.

(2) The applicant successfully completes the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, as well as preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(3) The examination shall also include completing a practical section in which the applicant shall demonstrate ability to properly install plumbing by engaging in certain activities such as properly caulk a cast iron soil pipe spigot into a cast iron hub and soldering copper solder connections.

(4) The passing grade for journeyman plumbers shall be seventy-five (75) percent.

Section 7. All Master Plumbers and Journeyman Plumbers shall notify the department of the name of their business and its address, their employer and his address and any time a change of employment is made.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: March 4, 1992

FILED WITH LRC: March 12, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, (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 received. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Approximately 2,200 master plumbers and 4,000 journeyman plumbers licensed each year, and approximately 220 master plumber applicants and 550 journeyman plumber applicants tested each year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct cost each fiscal year to those affected will be as follows: master plumbers - $220,000 (2,200 x $100); journeyman plumbers - $40,000 (4,000 x $10); master plumber applicants - $11,000 (220 x $50); journeyman plumber applicants - $13,750 (550 x $25).

2 Continuing costs or savings: Cost will remain constant except as stated immediately below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Increase or decrease will be in direct proportion to the increase or decrease in plumbers license issued or increase or decrease in applicants tested.

(b) Reporting and paperwork requirements: Licensing and testing procedures are in place and only forms will need to be revised.

(2) Effects on the promulgating administrative body: Revenue producing amendment to meet approximately $284,750 of estimated $604.750 plumbing program funding deficit in each fiscal year.

(a) Direct and indirect costs or savings: Revenue producing with no impact on indirect savings or costs.

1. First year: Increased fees of $284,750 each fiscal year.

2. Continuing costs or savings: Revenue will remain the same except as indicated below.

3. Additional factors increasing or decreasing costs: Increase or decrease in revenue will be in direct proportion to the increase or decrease in plumber license issued and applicants tested.

(b) Reporting and paperwork requirements: Licensing and testing procedures are in place and only forms will need to be revised.

(3) Assessment of anticipated effect on state and local revenues: Approximately $284,750 in additional revenue to the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Existing approach of charging fees to provide service is in place and only require modification as requested.

(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: The Division of Plumbing has not requested increase in license fees since 1976 nor exam fees since 1982.

TIERING: Was tiering applied? Yes. Tiering was applied because the master plumber licenses were increased by a larger proportion than the journeyman plumber license. The responsibilities of the master plumber are greater in proportion to the journeyman plumber.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.030, 318.134

NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state. This amendment is necessary to raise the fees to cover the costs of inspections and otherwise administer the State Plumbing Code. This amendment was approved by the Plumbing Code Committee on February 24, 1992. [~~This amendment is necessary to clarify the fee requirements as they relate to new plumbing installation permits.~~]

Section 1. Issuance of Permits. (1) Permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the following requirements are met:

(a) Application is made for the permit prior to the beginning of the work; and

(b) The homeowner files with his application an affidavit stating that he shall abide by the terms of this section; and

(c) All work shall be performed in compliance with the state plumbing code; and

(d) All the work shall be personally performed by the owner; and

(e) Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period. This requirement may be waived by the department if the applicant is actually installing the plumbing for his own use.

(4) A permit shall not be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes; however, a permit shall be required for the addition of a backflow prevention device to an existing potable water supply.

Section 2. When a Permit is Required. A plumbing installation permit shall be required for the following:

(1) For all new plumbing installations.

(2) For all existing plumbing installations if a fixture, soil or waste opening or conductor is to be moved or relocated.

(3) For each individual unit of a multistory building if there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced, or for the addition of a backflow prevention device to an existing water service.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For taking over a plumbing installation originally permitted to another master plumber or for assuming responsibility to correct and test an installation made by someone else.

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be twenty-three (23) [~~fifteen (15)~~] dollars plus:

(a) Four (4) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances.

(b) Four (4) dollars for each domestic water heater.

(c) Four (4) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be twenty-three (23) [~~fifteen (15)~~] dollars plus;

(a) Five (5) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Five (5) dollars for each domestic water heater.

(c) Five (5) dollars for each conductor opening.

(d) Five (5) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing

installation permit shall be ten (10) dollars. Alternatively, if more than one (1) water heater is replaced within a building, a permit shall be issued under Sections 1 or 2 of this regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or provide testing for an installation made by someone else, the permit fee shall be the base fee of twenty-three (23) [~~fifteen (15)~~] dollars only.

(5) All persons securing plumbing permits shall be entitled to three (3) plumbing inspections at no additional cost. All plumbing inspections in excess of three (3), shall be charged at the rate of three (3) dollars per inspection.

(6) All plumbing installation permits issued under this regulation shall expire one (1) year after date of issuance. If construction is begun within one (1) year after date of issuance, the permit shall not expire until completion of the planned plumbing installation.

Section 4. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3 of this regulation.

Section 5. The Department of Housing, Buildings and Construction shall appear before the State Plumbing Code Committee no later than March 1, 1992, and each year thereafter for a review of the fee structure set forth in this regulation, and the State Plumbing Code Committee may approve the existing fee structure or recommend increases or reductions.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 4, 1992
FILED WITH LRC: March 12, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South. Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, (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 received. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Approximately 40,000 combined plumbers, contractors or building owners who would purchase a plumbing permit each year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct cost to those affected would be $320,000 (40,000 x $8).

2. Continuing costs or savings: Cost will remain the same except as indicated immediately below.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Increase or decrease will be in direct proportion to increase or decrease in the number of plumbing permits issued. Further downturn in the economy will mean fewer permits.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Revenue producing amendment to meet approximately $320,000 of estimated $604,750 plumbing program funding deficit in each fiscal year.

(a) Direct and indirect costs or savings:

1. First year: Increased fees of $320,000 each fiscal year.

2. Continuing costs or savings: Cost will remain the same except as indicated below.

3. Additional factors increasing or decreasing costs: Increase or decrease will be in direct proportion to increase or decrease in the number of plumbing permits issued. Further downturn in the economy will mean fewer permits.

(b) Reporting and paperwork requirements: Procedures for issuing permits are in place and only form will need to be revised.

(3) Assessment of anticipated effect on state and local revenues: Approximately $320,000 in additional revenue to the state.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Existing approach of charging fees to provide service is in place and only require modification as requested.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(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. Tiering was applied in that different plumbing installations require different amounts of time and complexity.

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

902 KAR 13:050. Training, examination, [and] certification and recertification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt [~~rules and~~] regulations relating to emergency medical technicians (EMTS). The function of this regulation is to establish requirements for training, examination, certification[~~, and renewal~~] and recertification of emergency medical technicians.

Section 1. EMT Training Course Requirements. The training course shall:

(1) Include the Basic Emergency Medical Technician: National Standard Curriculum (Third Edition, 1984) of the U.S. Department of Transportation [~~and such additions, deletions or changes to the curriculum as prescribed by the cabinet~~] and the accompanying text [~~entitled~~] "Emergency Care" (Fifth Edition, 1990), [~~published by~~] The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. Each of [~~A copy of~~] these publications is incorporated [~~, included~~] by reference. They [~~as if full incorporated herein,~~] shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection and copying [~~between 8 a.m. and 4:30 p.m.,~~] Monday through Friday from 8 a.m. until 4:30 p.m.;

(2) Be not less than 119 [~~at least 103~~] hours in duration;

(3) Be taught by an EMT instructor certified by the cabinet, and

at least one (1) EMT instructor-trainee, or one (1) additional EMT instructor;

(4) Have, prior to commencement of the class, a class number assigned by the cabinet;

(5) Be limited to thirty (30) students;

(6) Utilize equipment, texts, television tapes and other materials approved by the cabinet;

(7) Have all required equipment available at the training site for the scheduled lessons and not permit sharing of equipment between classes unless the classes are conducted at the same location and the equipment is equally available to all classes; and

(8) Not permit a student to be on call while classes are in session.

Section 2. Responsibilities of the Instructor. (1) The EMT class instructor shall:

(a) Require each student to sign in, on the same date as the lesson to be presented, on an attendance sheet provided by the cabinet;

(b) Submit to the cabinet, two (2) weeks prior to the starting date of the class, a "Basic Course Inventory" form verifying that all equipment, texts, television tapes, and other materials specified are on hand, in proper working order and placed in secure storage;

(c) Submit to the cabinet, within two (2) weeks following the completion of each course:

1. The master "Grade Sheet";

2. "Answer Sheets" for each of the four (4) written examinations;

3. "Final Practical Examination" for each student who completed the class;

4. "Master Attendance Sheet";

5. "Attendance Sheet" for each lesson;

6. "Application for Emergency Medical Technician" for each student; and

7. The fee prescribed by 902 KAR 13:030, Section 1(1).

(2)(a) The following forms are incorporated by reference:

1. "Basic Course Inventory" (1992);

2. "Grade Sheet" (10/71);

3. "Answer Sheet", number one (1), two (2), three (3) and four (4) (1992);

4. "Master Attendance Sheet" (1992);

5. "Attendance Sheet" (EHS-4 9/71);

6. "Application for Emergency Medical Technician" (1992).

(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday (computerized facsimiles may be substituted provided all required information is provided).

(3) The EMT class instructor may permit more than one (1) lesson absence per student, if the absence is made up:

(a) With the approval of the instructor; or

(b) In a subsequent EMT training course provided the lesson made up is the same one that was missed.

[~~(3) Not be started until completed course inventory form is received by the cabinet verifying that all equipment, texts, television tapes, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;~~

~~(4) Not share equipment between courses unless such equipment is housed in the same building and is available equally to all EMT classes;~~

~~(5) Utilize equipment, texts, television tapes and other materials approved by the cabinet;~~

~~(6) Be taught by an EMT instructor certified by the Cabinet for Human Resources;~~

~~(7) Have at least one (1) EMT instructor trainee, or one (1) additional EMT instructor;~~

~~(8) Have a class certification number assigned by the cabinet;~~

~~(9) Be limited to thirty (30) students; and~~

~~(10) Not permit more than one (1) lesson absence per student, unless made up at the discretion of the instructor, or made up in a subsequent EMT training course. The lesson made up shall be the same lesson that was missed.~~

~~(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet.~~

~~(12) Require the instructor at the end of each course to provide the cabinet the following: master grade sheet, answer sheets for all written exams, final practical exams, application for certification with prescribed fee, master attendance form and attendance sheets for each lesson.~~]

Section 3. [~~2.~~] EMT Certification Examination. The cabinet shall prescribe the format and content of the EMT[~~'s~~] certification examination[~~s~~] which shall consist of two (2) parts:

(1) Written.

(a) The written examination shall consist of [~~be in~~] four (4) separate examinations, the fourth to be inclusive of the entire course [~~parts~~].

(b) An absolute overall passing grade of not less than eighty (80) [~~seventy five (75)~~] percent, shall be required for courses which begin after the effective date of this regulation. [~~In the event an applicant's overall average is less than seventy five (75) percent, but is seventy (70) percent or more, the applicant may, upon proper application, retake the part in which he made the lowest score. However, should the applicant again fail, he shall be required to retake the entire EMT training course before being eligible for reexamination.~~]

(2) Practical.

(a) The applicant shall [~~successfully~~] pass all required stations [~~parts~~] of the final practical examination.

(b) If [~~In the event~~] he fails to [~~successfully~~] pass all required stations [~~portions of the final practical examination~~], he shall be permitted one (1) opportunity to retake the required stations [~~part~~] which he failed to pass.

(c) If [~~However, should~~] the applicant fails again [~~fail~~] to pass the required stations [~~particular part of the examination~~], he shall be required to retake the entire EMT training course before being eligible for reexamination.

(3) An instructor who is employed by the same ambulance service, public service or industrial organization for whom an [~~the~~] EMT class is conducted shall not evaluate in the practical examination of that class.

[~~Section 3. Certification of EMTs and EMT-A. The cabinet shall certify EMTs based upon the type of service to be rendered. An EMT engaged in ambulance service shall be issued certification as an "emergency medical technician ambulance (EMT-A)."~~]

Section 4. Expiration of Certification. An [~~All~~] EMT certificate[~~s~~] shall expire two (2) years from the date of issuance.

Section 5. Recertification [~~Renewal of Certification; In-service Training of~~] Continuing Education Requirements. (1) [~~By September 1, 1991, in order to renew a certificate, the emergency medical technician shall,~~] During his period of certification, an EMT shall attain at least twenty-four (24) continuing education hours, with no less than twelve (12) hours being practical skills in a structured instructional setting. Effective July 1, 1992, a minimum of two (2) of the twenty-four (24) contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education from a curriculum approved by the cabinet.

(2) An EMT shall:

(a) Maintain [~~of which shall be in hands-on skills, of in-service~~

~~training or continuing education, or a combination thereof, and in addition show~~] evidence of current certification in cardiopulmonary resuscitation (CPR) as required by:

1. The American Heart Association; or

2. The American National Red Cross; and

(b) Submit evidence of continuing education and current CPR certification to the cabinet prior to the expiration of his EMT certification.

(3) An applicant for recertification shall receive credit for completion of [~~(1) Subject matter requirements for EMT in service training or continuing education.~~

~~(a) To receive credit for in service training or continuing education, the applicant for recertification may take in service training or~~] continuing education on a [~~any~~] subject:

(a) Covered by the United States Department of Transportation basic emergency medical technician curriculum, outlined in Section 1 of this regulation; [~~3rd edition,~~] or

(b) [~~any subject~~] For which instruction is authorized by the cabinet [~~for Human Resources for the emergency medical technician program in Kentucky~~].

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education as a physician, registered nurse, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for continuing education credit if it meets the criteria of subsection (2) of this section.

(6) [~~(b)~~] The applicant for recertification shall submit evidence of successful completion of instruction in at least six (6) different subject areas, with a maximum of four (4) hours per subject area, of emergency medical technician course subject matter instruction or skills instruction[~~, in addition to cardiopulmonary resuscitation~~].

(7)(a) The EMT shall submit to the cabinet a record of his continuing education on an "EMT Official Record of Continuing Education/Inservice" (EMT/R-90) form.

(b) The form shall:

1. Be signed by the EMT;

2. Contain a certification as to the truth of the information supplied; and

3. Include a statement that misrepresentation of the information may be cause for suspension or loss of certification.

(c) "EMT Official Record of Continuing Education/Inservice", (EMT/R-90), is incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m. Monday through Friday.

(8) [~~(c)~~] The following shall [~~are~~] not be eligible for credit as [~~in service training or~~] continuing education:

(a) [~~1.~~] Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

(b) [~~2.~~] Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

Section 6. EMT Instructors for Continuing Education. (1) [~~(d) Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days before the expiration of the EMT's certification on forms supplied by the cabinet.~~

~~(e) The form provided by the cabinet shall contain a certification as to the truth of the information supplied and a statement that all training claimed conforms to the requirements of this regulation and a warning that submission of false information constitutes a violation of law.~~

~~(f) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.~~

~~(g) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 is eligible for in service training or continuing education credit if it meets the criteria of paragraph (a) of this subsection.~~

~~(2) Instructors for EMT in service training and continuing education.~~] The following persons shall be [~~are considered as~~] qualified to conduct [~~in service training and~~] continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the cabinet [~~for Human Resources~~];

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches [~~who is teaching within the area authorized by his certification~~] a course which qualifies [~~will qualify~~] for emergency medical technician in-service training or continuing education; or

(f) Other presenters who are preapproved by the cabinet.

(2) As applicable, a [~~(f)~~] physician[~~s~~], registered nurse[~~s~~], paramedic[~~s~~] or emergency medical technician instructor[~~s~~] currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section [~~paragraphs (a) through (e) of this subsection, as applicable~~].

Section 7. [~~(3)~~] Cardiopulmonary Resuscitation Requirement. (1) During the two (2) year [~~second year of the~~] certification period, the EMT shall maintain current [~~obtain or renew~~] certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted:

1. By, or under the authority of, the American Heart Association or the American National Red Cross; or

2. [~~under its authority~~] By an instructor certified by the American Heart Association or the American National Red Cross;

(b) The course shall be:

1. Taught for record; and

2. [~~shall be~~] Certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization;

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Mouth to mouth, [~~/~~] mouth to nose or mouth to stoma resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1)(c) [~~(3)~~] of this section.

(2) [~~(c)~~] The applicant for renewal of certification shall forward to the cabinet [~~for Human Resources~~] a copy of both sides of the certificate issued to him indicating successful completion of the CPR course as required in Section 5(1)(d) of this regulation.

Section 8. [~~(4) In service training and~~] Continuing Education Requirements for Emergency Medical Technician Instructors and Instructor Trainers. (1) An EMT instructor and an EMT instructor trainer shall attain twenty-four (24) continuing education hours during his certification period.

(2) [~~(a)~~] An emergency medical technician instructor or instructor trainer may [~~shall~~] meet the [~~in-service training or~~] continuing education requirements for recertification by:

(a) Conducting [~~in the following manner:~~

~~1. Conduct~~] an emergency medical technician course;

(b) Teaching [~~or~~

~~2. Teach~~] one (1) or more lessons of an emergency medical technician course;

(c) Teaching [~~or~~

~~3. Teach~~] one (1) or more lessons of an in-service training or continuing education course;

(d) Conducting [~~or~~

~~4. Conduct~~] a final practical examination or challenge examination for an emergency medical technician course; or

(e) Conducting an EMT instructor training course.

(3) During his two (2) year certification period [~~and~~

~~(b) If any of paragraph (a)1 through 4 of this subsection is claimed for recertification, the total number of hours spent in instructional or examination continuing education shall not be less that sixteen (16) hours. Any combination totaling sixteen (16) or more hours may be used; and~~

~~(c) An emergency medical technician instructor trainer may utilize time spent in conducting an emergency medical technician instructor course or evaluation in lieu of time required in paragraph (a) of this subsection; and~~

~~(d)~~] an emergency medical technician instructor or instructor trainer shall attend:

(a) At least one (1) [~~either the~~] annual emergency medical technician instructor conference; or

(b) At least one (1) [~~the~~] annual training session for newly appointed instructors.

(4) Continuing education hours obtained [~~Time spent~~] at these [~~such~~] conferences may be used as credit toward the time required in subsection (2) of this section.

(5) An [~~paragraph (a) or (b) of this subsection; and~~

~~(c) Additionally, each~~] emergency medical technician instructor or instructor trainer shall:

(a) Meet the cardiopulmonary resuscitation requirement outlined in Section 7(1) of this regulation;

(b) [~~or shall~~] Teach a cardiopulmonary resuscitation course for record; or

(c) [~~shall~~] Teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 9. [~~6.~~] Temporary Extension of Certification. (1) Upon submission of a written request prior to the certification expiration date, an EMT or EMT instructor may be granted one (1) six (6) month extension per certification period. Six (6) months following the effective date of this regulation, the cabinet shall grant only a thirty (30) day grace period following a certification expiration date to allow for administrative processing.

(2) Continuing education hours shall be obtained prior to the certification expiration date.

(3) Upon written application to the cabinet, an EMT or EMT instructor who is a member of a National Guard or military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after the individual's release from active duty or return to the United States, whichever occurs first.

(4) An EMT who has not renewed his EMT certification within the time limitations specified in subsection (1) or (2) of this section may be eligible for certification by:

(a) Successfully completing the reentry challenge examination as outlined in Section 10 of this regulation; or

(b) By retaking and successfully completing the entire EMT training course. [~~Certificate. Upon a showing of undue hardship in obtaining the required in service training or continuing education for renewal, the cabinet may extend a certificate for an additional six (6) months.~~]

Section 10. [~~7.~~] Challenge Examination Procedure. (1) The standards for the Kentucky Challenge Examination shall be the same as the standards for the EMT certification examination outlined in Section 3 of this regulation.

(2) The following shall be eligible to take the Kentucky Challenge Examination:

(a) U.S. military personnel on active duty, or within a period of one (1) year from the date of discharge, who submit:

1. Proof of having successfully completed training equivalent to the Department of Transportation EMT curriculum outlined in Section 1 of this regulation; and

2. Proof of current CPR certification.

(b) An EMT certified in another state who submits proof of current EMT and CPR certification.

(c) An EMT whose Kentucky certification has not been expired for more than five (5) years and who was in good standing when his certification expired.

(3) An application for the Kentucky Challenge Examination shall submit:

(a) A letter of request to take the examination;

(b) The fee prescribed by 902 KAR 13:030, Section 1(2); and

(c) A completed "Application for Emergency Medical Technician Challenge Only", (1992).

(4) The "Application for Emergency Medical Technician Challenge Only" form (1992) is incorporated by reference and may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

(5) An applicant [~~Upon proper application, to include a letter from an employer demonstrating need for certification, and payment of the prescribed fee, the following may take the Kentucky "Challenge Examination," consisting of both written and practical parts, the standards for such examination being the same as for an emergency medical technician course:~~

~~(1) U.S. Military Corpsmen, within a period of one (1) year from the date of discharge, who have either a:~~

~~(a) U.S. Army MOS 91B or 91C; or~~

~~(b) Its equivalent for other services.~~

~~(2) Emergency medical technicians, currently certified in other states.~~

~~(3) Individuals~~] whose emergency medical technician certification has not been expired for [~~not~~] more than five (5) years and who was [~~were~~] in good standing when his certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification;

(b) Proof of current CPR certification which meets the requirements of Section 7(1)(a) and (b) of this regulation [~~A confirmation statement of intent to remain active~~];

(c) Proof of having completed four (4) hours of MAST Trouser training, taught by an instructor who meets the criteria in Section 6 of this regulation; and

(d) [~~(c)~~] Proof of completion of at least twenty-four (24) [~~sixteen (16)~~] hours of [~~in-service training or~~] continuing education taught by an instructor who meets [~~meeting~~] criteria [~~as~~] in Section 6 [~~5(2)~~] of this regulation.

(6) Continuing education hours shall [~~, to~~] include:

(a) A minimum of one (1) hour in each of the following areas:

1. Airway management;
2. Diabetic emergencies;
3. Cardiovascular emergencies;
4. Multiple trauma;
5. Overdose and [/] poisoning;
6. EMS related legal issues; [~~medical/legal (EMS related),~~] and
7. Patient assessment.

(b) No less than two (2) continuing education hours in Acquired Immune Deficiency Syndrome (AIDS) education equivalent to the requirement specified in Section 5(1)(b) of this regulation.

Section 11. Exemptions from EMT Regulations. The Kentucky certification requirements for an EMT shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT certified in another state who comes into Kentucky:

(a) To transport patients into or through the state; or

(b) For the purpose of returning a patient to his out-of-state residence. [~~In addition, the applicant shall submit proof of having completed four (4) hours of MAST Trouser Training, taught by an instructor meeting criteria as in Section 5(2) of this regulation; and~~

~~(d) Proof of current certification in cardiopulmonary resuscitation as required by Section 5(3) of this regulation.~~

Section 12. 902 KAR 13:040 related to "Exemptions" from EMT regulations is hereby repealed.

C. HERNANDEZ, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: March 6, 1992
FILED WITH LRC: March 11, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 16, 1992, five days prior to 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. The 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: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert P. Calhoun

(1) Type and number of entities affected: This amendment increases training requirements. Approximately 13,000 EMTs, 250 instructors and 2,000 new applicants will be affected.

(a) Direct and indirect costs or savings to those affected: There may be additional costs to individuals to obtain increased training. Costs will be minimal.

1. First year: Minimal increased costs to individuals for increased training.

2. Continuing costs or savings: Minimal increased costs to individuals for increased training.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors are involved.

(b) Reporting and paperwork requirements: Entities affected will be required to show documentation as proof of training in AIDS education.

(2) Effects on the promulgating administrative body: This amendment will require additional staff time to verify and approve increased training.

(a) Direct and indirect costs or savings: There will be less than a 1% increase in personnel costs to verify and approve increased training.

1. First year: There will be less than a 1% increase in personnel costs to verify and approve increased training.

2. Continuing costs or savings: There will be less than a 1% increase in staff personnel costs to verify and approve increased training.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs.

(b) Reporting and paperwork requirements: Affected entities must document additional training.

(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: No alternatives were assessed since additional AIDS education was mandated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amendment will not conflict, overlap, or duplicate any statute, regulation or policy.

(a) Necessity of proposed regulation if in conflict: This amendment is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This amendment is not in conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering is not appropriate since all EMTs must meet the same educational requirements.

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__ No X

If yes, complete questions 2-4.

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to EMT training and will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to EMT training and will not affect any aspect of local government

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation relates to EMT training and will not affect local government or any services.

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

902 KAR 45:005. Retail food code.

RELATES TO: KRS 219.011 to 219.081, 219.991(1)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 219.031
NECESSITY AND FUNCTION: Senate Bill 30 of the 1990 General Assembly combines food service requirements of KRS 219.011 to 219.081 with KRS 217.005 to 217.215 and 217.992(4), the Kentucky Food, Drug and Cosmetic Act. This act authorizes the Cabinet for Human Resources to regulate food service establishments and retail food stores in Kentucky. The function of this regulation is to establish a uniform code for the regulation of all food service establishments and retail food stores within the Commonwealth of Kentucky for the purpose of protecting the public health.

Section 1. Definitions. As used in this regulation:

(1) "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.

(2) "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.

(3) "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

(4) "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

(5) "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

(6) "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(7) "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

(8) "Equipment" means stoves, ranges, hoods, ovens (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

(9) "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(10) "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(11) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(12) "Liquid waste" means the discarded fluid discharge from any fixture, appliance, area or appurtenance.

(13) "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.

(14) "Mobile food unit" means a food service establishment that is designed to be readily movable.

(15) "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

(16) "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

(17) "Perishable food" means food of such type or in such condition or physical state that it may spoil or otherwise become unfit for human consumption.

(18) "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2).

(19) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or

2. Slower growth of Clostridium botulinium.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or

2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) value of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and

5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinium cannot occur.

(20) "Pushcart" means a nonself-propelled vehicle limited to serving nonpotentially hazardous foods or commissary-wrapped food maintained at safe temperatures or limited to the preparation and serving of frankfurters.

(21) "Reconstituted" means dehydrated food products combined with water or other liquids.

(22) "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

(23) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(24) "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

(25) "Shellfish" means clams, mussels, or oysters.

(26) "Sewage" means liquid waste containing fecal material or organic material from garbage grinders.

(27) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one-time, one-person use and then discarded.

(28) "Tableware" means all multiuse eating and drinking utensils.

(29) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food.

(30) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware and tableware.

(31) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. Applicability. The requirements of this regulation are applicable to all food service establishments, retail food stores, or a combination of both within the same establishment, as defined by KRS 217.015, located within the Commonwealth of Kentucky.

Section 3. Application for Permit to Operate. Any person desiring to operate a food service establishment or a retail food store shall make written application for a permit on form DFS-208 provided by the cabinet. If the application is for a retail food store and food service combined operation in one (1) establishment under one (1) ownership, the application shall designate: "retail food and food service combination". Such application shall include the name and address of the applicant, the location and type of the proposed food service establishment, and the signature of the applicant. If the application is for a temporary food service establishment, it shall also include the dates of the proposed operation. Prior to approval of an application for permit, the cabinet shall inspect the proposed food service establishment to determine compliance with the provisions of this regulation. The cabinet shall issue a permit to the applicant if the inspection reveals that the proposed food service establishment complies with the requirements of this regulation.

Section 4. Food Supplies. (1) Food shall be wholesome and free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all applicable federal and state laws relating to food and food labeling. The use of food and food products canned, prepared or processed in the home is prohibited.

(2) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the Grade A quality standards as established by law and regulation. Dry milk and milk products shall be made from pasteurized milk and milk products.

(3) All shellfish, fresh or frozen shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, mussels, clams) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and the interstate certification number issued by the state or foreign shellfish control agency and shall comply with applicable cabinet regulations. Shellstock source information shall be maintained on the container until it is empty and then shall be kept on file at the establishment for ninety (90) days.

(4) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid or pasteurized dry egg or egg products shall be used; except that hard-boiled peeled eggs, commercially prepared and packaged, may be used.

(5) All meat and meat products, poultry and poultry products shall have been inspected and passed for wholesomeness under an official governmental regulatory program.

(6) All fish and fish products shall be from approved sources that comply with all applicable federal and state laws relating to food and food labeling.

Section 5. Food Protection. (1) Food shall be protected while being stored, prepared, displayed, served, or transported from potential contamination including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage or condensation. The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times, except during necessary periods of preparation and service. Shell eggs shall be stored at sixty (60) degrees Fahrenheit or below.

(2) Precluding unsafe additives. Food shall be protected against contamination resulting from the addition of unsafe or unapproved food or color additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Subchapter B, Part 170 - Food Additives.

(3) Spoiled, damaged, returned or detained food items shall be segregated from other foods pending final disposition. A designated area shall be established for temporarily holding returned and damaged food items awaiting disposition. The area shall be marked or identified as, "Not for sale or consumption".

(4) In the event of fire, flood, power outage, water cutoff, or similar catastrophic event that might result in the contamination of food, or that might prevent potentially hazardous foods from being held at required temperatures, the person in charge shall immediately contact the cabinet. Upon receiving notice of this occurrence, the cabinet shall take whatever action that it deems appropriate to protect the public health.

Section 6. Food Storage. (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(2) Containers of food shall be stored a minimum of six (6) inches above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

(a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture;

(b) Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

(3) Food or containers of food shall not be stored under exposed sewer or nonpotable water lines, except for automatic fire protection sprinkler heads. Food shall not be stored in toilet rooms or toilet room vestibules.

(4) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against contamination from food requiring washing or cooking. Food shall be stored in such a way that protects it from cross-contamination.

(5) Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice or water.

(6) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, flour, meal and similar products, not stored in the container or package in which it was obtained shall be stored in a container identifying the food by common name.

(7) Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of forty-five (45) degrees Fahrenheit or below during storage. Each mechanically refrigerated facility storing potentially hazardous foods shall be

provided with a numerically scaled indicating thermometer, accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers accurate to plus or minus three (3) degrees Fahrenheit may be used in lieu of indicating thermometers.

(8) The temperature of potentially hazardous foods requiring refrigeration shall be forty-five (45) degrees Fahrenheit or below except during necessary periods of preparation.

(9) Frozen foods shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit or below.

(10) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers, or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head, provided: tubes, cold plates and etc., are kept clean, in good repair, and are constructed from approved materials. Ice used for cooling and maintaining cold temperatures of stored food and food containers shall not be used for human consumption.

(11) Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of potentially hazardous food at the required temperature of 140 degrees Fahrenheit or above during storage. Each hot food facility storing potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to plus or minus three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer accurate to within plus or minus three (3) degrees Fahrenheit shall be readily available and used by the establishment personnel to check internal food temperatures.

(12) The internal temperature of potentially hazardous foods requiring hot storage shall be 140 degrees Fahrenheit or above except during necessary periods of preparation and such hot potentially hazardous foods to be transported shall be held at an internal temperature of 140 degrees Fahrenheit at all times during transportation.

Section 7. Food Preparation. (1) Food shall be prepared with the least possible manual contact, using suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

(2) Raw fruits and raw vegetables shall be washed thoroughly before being cooked or served; this requirement shall not apply to whole, uncut fruits and raw vegetables for sale in retail food stores.

(3) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit prior to being placed in steam tables or other hot storage facilities except that:

(a) Poultry, poultry stuffings, and stuffed meats shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(b) Raw pork and products containing raw pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(c) Rare roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, and rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate customer.

(4) Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

(5) Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

(6) Potentially hazardous foods that were cooked and then refrigerated shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bainmaries, warmers, and other hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(7) Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when they will be stored in sanitized, covered containers not exceeding one (1) gallon in capacity and cooled to forty-five (45) degrees Fahrenheit or below.

(8) Metal stem-type numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided and used to assure attainment of proper internal cooking temperatures of all potentially hazardous foods.

(9) Potentially hazardous foods shall be thawed:

(a) In refrigerated units in a way that the temperature of the food does not exceed forty-five (45) degrees Fahrenheit; or

(b) Under potable running water of a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

(c) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

Section 8. Food Display and Service. (1) Potentially hazardous foods shall be kept at a temperature of forty-five (45) degrees Fahrenheit or lower or at a temperature of 140 degrees Fahrenheit or higher during display and service.

(2) Food, except raw fruits and vegetables, on display shall be protected from consumer contamination by the use of package overwrapping; counter service line or salad bar food guards; display cases; or other effective means.

(3) Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement if the refilling process is contamination free. Clean tableware shall be made available and a sign shall be posted in self-service food area to inform customers of this requirement.

(4) Suitable utensils shall be used by employees or provided for consumers self-service to avoid unnecessary contact with food. Between uses during service, utensils shall be:

(a) Stored in food containers with the food they are being used to serve; or

(b) Stored clean and dry; or

(c) Stored in running water; or

(d) In the case of dispensing utensils and malt collars used in serving frozen desserts, stored either in a running water dipper well, or clean and dry.

(5) Ice for consumer use shall be dispensed only with scoops, tongs, or other ice-dispensing utensils by either employees or self-service or through automatic self-service ice-dispensing equipment. Between uses during service, ice-dispensing utensils and ice receptacles shall be stored in a way that protects them from contamination.

(6) Sugar, condiments, seasonings, and dressings for self-service use shall be provided only in individual packages or from dispensers or containers that protect their contents.

(7) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or served from an approved bulk milk dispenser. When a bulk dispenser for milk or milk products is not available and portions of less than one-half (1/2) pint are required for

mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half (1/2) gallon capacity.

(8) Cream, half and half, or nondairy creamers or whitening agents shall be provided in an individual service container, protected pour-type pitcher or drawn from a refrigerated dispenser designed for such service; milk, cream, half-and-half or nondairy creamers in unopened commercially filled containers may be sold without restriction as to container size in retail food stores.

(9) Once served to a consumer, individual portions of food shall not be served again. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome, may be re-served.

Section 9. Food Transportation. During transportation, food and food utensils shall be in covered containers or completely wrapped or packaged so as to be protected from contamination. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this regulation relating to protection and storage of food. Cold, potentially hazardous foods shall be maintained at forty-five (45) degrees Fahrenheit or below during transportation.

Section 10. Employee Health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment, except as noted in Section 38 of this regulation.

Section 11. (1) Personal Cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet. Employees shall keep their fingernails clean and trimmed.

(2) Handwashing shall take place at a handwashing lavatory or designated service sink and not at food preparation sink or at a warewashing sink.

Section 12. Clothing. (1) The outer clothing of all employees shall be clean and suitable for the task to be performed.

(2) Hairnets, hats, scarfs, or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of establishments shall arrange their hair to prevent the contamination of food, equipment and utensils.

Section 13. Employee Practices. (1) Employees shall eat food, drink, or use tobacco only in designated areas. Such an area shall not be designated if consuming food there might result in contamination of other food, equipment, utensils, or other items needing protection.

(2) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(3) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices.

(4) Employees shall remove all insecure jewelry, and during periods when food is manipulated by hand, remove from hands any jewelry that cannot be adequately sanitized.

Section 14. Equipment and Utensils Materials. (1) Multiuse equipment and utensils shall be made and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils and single-service articles shall not impart odors, color or taste, nor contribute to the contamination of food.

(2) If soft solder or hard solder (silver solder) is used, it shall be composed of safe materials and be corrosion resistant.

(3) Hard maple or equivalently nonabsorbent materials that meet the general requirements set forth in subsection (1) of this section may be used for cutting blocks, cutting boards, salad bowls, bakers' tables, and wooden paddles in confectionary operations for pressure scraping kettles when manually preparing confections at a process temperature of 230 degrees Fahrenheit or above. The use of wood as a food-contact surface under other circumstances is prohibited, except in the case of single service articles such as chopsticks, coffee stirrers, ice cream spoons and similar articles.

(4) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (1) of this section are permitted for repeated use. The use of equipment and utensils made of materials not meeting the requirements of this section is prohibited.

(5) Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

Section 15. Equipment and Utensils Design and Fabrication. (1) All equipment and utensils, including plastic ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult to clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is heated, such as in grills and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited, except that in equipment, such as ice makers or hot oil cooking equipment and hot oil filtering systems, the use of such threads shall be minimized.

(2) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.

(3) Sinks, dish tables, and drain boards shall be self-draining.

(4) Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

(a) Without being disassembled; or

(b) By disassembling without the use of tools; or

(c) By easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open-end wrench.

(5) Pipes, tubes, valves, and lines contacting food and intended for in-place cleaning shall be so designed and fabricated that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and

(b) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(c) The system is self-draining or capable of being completely evacuated.

(6) Thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled, and accurate to plus or minus three (3) degrees Fahrenheit.

(7) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated so as to be

smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(8) Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto food-contact surfaces. Filters where used, shall be readily removable for cleaning and replacement.

Section 16. Equipment Installation and Location. (1) Equipment, including ice makers and ice storage equipment, shall not be located under exposed sewer lines, nonpotable water lines, stairwells or other sources of contamination. This prohibition does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or mounted on legs at least four (4) inches high and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is portable within the meaning of subsection (2) of this section if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor mounted equipment, unless readily movable, shall be:

(a) Sealed to the floor; or

(b) Installed on raised platforms of concrete or other smooth masonry in a way that prevents liquids or debris from seeping or settling underneath, between, or behind the equipment in spaces that are not fully open for cleaning and inspection; or

(c) Elevated on legs at least six (6) inches off the floor, except that vertically mounted floor mixers may be elevated as little as four (4) inches off the floor if no part of the floor under the mixer is more than six (6) inches from cleaning access. Unless sufficient space is provided for easy cleaning between and behind each unit of floor mounted equipment, the space between it and adjoining equipment units and between it and adjacent walls shall be closed or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(5) Aisles and working spaces between units of equipment and between equipment and walls should be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

(6) Equipment which was installed prior to the effective date of this regulation and which does not meet fully all of the requirements of this section, shall be deemed acceptable, if it is in good repair, capable of being maintained in a sanitary condition and the food-contact surfaces are nontoxic. Such equipment shall be so located and installed as to enable reasonable compliance with the requirements of this section.

Section 17. Equipment and Utensil Cleaning and Sanitization. (1) Tableware shall be cleaned and sanitized after each use.

(2) Kitchenware and food-contact surfaces of equipment used in the preparation, service, display or storage of potentially hazardous foods shall be cleaned and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking and filtering devices and systems. Food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

(5) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used during service for wiping food spills on food-contact surfaces shall be clean, dry, and used for no other purpose. Moist cloths used for wiping food-contact surfaces of equipment shall be clean and rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section. Moist cloths, or sponges, used for cleaning nonfood-contact surfaces shall be clean and used for no other purpose. These cloths shall be rinsed frequently or stored in one (1) of the sanitizing solutions permitted by subsection (7)(a) of this section.

(7) When manual cleaning and sanitizing is used, sinks shall be cleaned prior to use. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil. Equipment and utensils shall be thoroughly washed in a hot detergent solution at a temperature of at least ninety-five (95) degrees Fahrenheit in the first compartment, rinsed in the second compartment and shall be sanitized in the third compartment according to one (1) of the methods included in paragraph (a)1 through 4 of this subsection.

(a) All tableware and the food-contact surfaces of all other equipment and utensils shall be sanitized by:

1. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170 degrees Fahrenheit; or

2. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and having a temperature of at least seventy- five (75) degrees Fahrenheit; or

3. Immersion for at least one (1) minute in a clean solution containing at least twelve and five-tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0) and having a temperature of at least seventy-five (75) degrees Fahrenheit; or

4. Immersion in a clean solution containing other chemical sanitizing agents approved by the department that will provide the equivalent bactericidal effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five (75) degrees Fahrenheit for one (1) minute; or

5. Treatment with steam free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under subsection (7)(a)4 of this section when used for immersion sanitization in the case of equipment too large to sanitize by immersion.

(b) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "B", Substances Utilized to Control the Growth of Microorganisms, Section 178.1010 Sanitizing Solutions, and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(c) A three (3) compartment sink shall be used if cleaning and sanitization of equipment or utensils is done manually; retail food establishments that were operating with a valid and effective permit

prior to the effective date of this regulation not having a three (3) compartment sink that can demonstrate an acceptable procedure for cleaning and sanitizing equipment and utensils may be exempt from this requirement by the cabinet. Sinks shall be large enough to permit the complete immersion of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if cleaning and sanitizing cannot be accomplished by immersion. Those retail food stores that do not cut, process or package any foods, but purchase and offer for sale only prepackaged foods shall not be required to provide a three (3) compartment sink.

(d) Dish tables or drain boards of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the warewashing facilities.

(e) When hot water is used for sanitizing, the following facilities shall be provided and used:

1. An integral heating device or fixture installed in or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees Fahrenheit; and

2. A numerically scaled indicating thermometer accurate to plus or minus three (3) degrees Fahrenheit convenient to the sink that can be used for frequent checks of water temperature; and

3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(8) When mechanical cleaning and sanitizing is used, cleaning and sanitizing may be done by spray-type or immersion warewashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. Such machines and devices shall be properly installed and maintained in good repair. Automatic detergent dispensers and wetting agent dispensers, if any, shall be properly installed and maintained.

(a) The pressure of water supplied to spray-type warewashing machines shall be not less than fifteen (15) or more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the machine. A suitable gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure of the final rinse water.

(b) Easily readable numerically scaled indicating thermometers accurate to plus or minus three (3) degrees Fahrenheit shall be provided that indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(c) Rinse water tanks shall be so protected by baffles or other effective means as to minimize the entry of wash water into the rinse water. Conveyors in warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as determined by specifications attached to the machines.

(d) Drain boards shall be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the warewashing facilities.

(e) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to their being cleaned in a warewashing machine. After flushing, scraping, or soaking, equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are subject to the unobstructed application of detergent wash and clean rinse waters and that permits free draining. Clean rinse water shall remove particulate matter and detergent residues. All warewashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(9) When chemicals are used for sanitization, they shall be automatically dispensed in such concentration and for such a period of time as to provide effective bactericidal treatment of equipment and utensils. Wash water shall be kept clean. In machines using chemicals for sanitization (single-tank, stationary-rack, door-type machines, and spray-type glass washers), the temperature of the wash water shall be not less than 120 degrees Fahrenheit. The sanitizing rinse water shall be not less than seventy-five (75) degrees Fahrenheit nor less than the temperature specified by the machine manufacturer.

(10) Where machines using hot water sanitization are used, wash waters and pumped rinse waters shall be kept clean. Water shall be maintained at not less than the temperatures stated in paragraphs (a) to (e) of this subsection; existing machines not fully meeting the requirements of this subsection may be acceptable, if capable of meeting such time and temperature requirements as are acceptable by the cabinet. Wash and pumped rinse temperatures shall be measured in the respective tanks, and final rinse temperatures shall be measured at the manifold.

(a) Single tank, stationary rack, dual temperature machine:

1. Wash temperature: 150 degrees Fahrenheit.

2. Final rinse temperature: 180 degrees Fahrenheit.

(b) Single tank, stationary rack, single temperature machine:

1. Wash temperature: 165 degrees Fahrenheit.

2. Final rinse temperature: 165 degrees Fahrenheit.

(c) Single tank, conveyor machine:

1. Wash temperature: 160 degrees Fahrenheit.

2. Final rinse temperature: 180 degrees Fahrenheit.

(d) Multiple tank, conveyor machine:

1. Wash temperature: 150 degrees Fahrenheit.

2. Pumped rinse temperature: 160 degrees Fahrenheit.

3. Final rinse temperature: 180 degrees Fahrenheit.

(e) Single tank, pot, pan, and utensil washer (either stationary or moving rack):

1. Wash temperature: 140 degrees Fahrenheit.

2. Final rinse temperature: 180 degrees Fahrenheit.

(11) All equipment and utensils shall be air-dried.

Section 18. Equipment and Utensil Storage. (1) Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, and bowls shall be handled without contact with inside surfaces or with surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and movable equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer or nonpotable water lines. This requirement does not apply to automatic fire protection sprinkler heads.

(a) Utensils shall be air-dried before being stored or shall be stored in a self-draining position on suitably located racks.

(b) Wherever practical, stored utensils shall be covered or inverted. Facilities for the storage of spoons, knives, and forks shall be provided and shall be designed to present the handle to the employee or consumer.

(3) If presetting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table is occupied.

(4) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination.

(a) Single-service articles shall be commercially packaged for individual use or shall be available to the consumer from a dispenser in a way that prevents contamination of surfaces that may contact

food or the user's mouth. Handling of single-service articles in bulk shall be conducted in a way that protects them from contamination. Storage shall not be in toilet rooms or vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

(b) Single-service articles shall be used only once.

Section 19. Sanitary Facilities and Controls. (1)(a) The water supply shall be potable, adequate, and from an approved public supply of a municipality or water district, if available.

(b) If a public water supply of a municipality or a water district is not available, the supply for the establishment shall be developed and approved pursuant to applicable requirements of the Cabinet for Natural Resources and Environmental Protection.

(c) If a public water supply of a municipality or water district becomes available, connections shall be made to it and the private supply shall be discontinued.

(d) Retail food stores holding a valid and effective permit prior to the effective date of this regulation shall not be required to have hot and cold running water if:

1. Only prepackaged foods are sold; or

2. Cutting and slicing is limited to ready-to-eat, cold-cut foods, and performed in a sanitary manner complying with this regulation.

(e) Hot and cold running water under pressure shall be provided in all areas where food is prepared, or equipment, utensils or containers are washed.

(f) Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in the Code of Federal Regulations, Title 21, Food and Drug Administration Chapter 1, Subpart "D", Specific Usage Additives Section 173.310 Boiler Water Additives.

(2) Bottled and packaged potable water shall be obtained from a source that complies with all applicable laws and regulations and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original containers.

(3) All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed of approved materials and operated pursuant to applicable laws and regulations.

Section 20. Sewage. All sewage shall be disposed of into a public sewerage system, if available. If a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; if a public sewerage system becomes available, connections shall be made thereto and the private sewerage system shall be disconnected. Only nonwater- carried disposal methods which have been approved by the cabinet for temporary use shall be used and operation of such facilities shall be in conformance with applicable state laws and regulations.

Section 21. Plumbing. (1) All plumbing shall be sized, installed, and maintained pursuant to the State Plumbing Code. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or source of pollution through which the safe water supply might become contaminated. All reservoir-type and other produce foggers or misters shall be operated, maintained, and cleaned in a manner consistent with the manufacturer's most recent specifications.

(2) A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed pursuant to applicable state laws and regulations and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system shall be installed to preclude the possibility of backflow. Devices to protect against backflow and backsiphonage shall be installed at all fixtures and equipment wherever backflow or backsiphonage may occur. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps shall be located to be easily accessible for cleaning.

(5) Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment or utensils are placed.

Section 22. Toilet Facilities. (1) In existing food service establishments, adequate toilet facilities shall be provided and shall be so located as to be readily accessible to employees at all times. In new establishments, or establishments that are extensively altered, toilet facilities shall be provided pursuant to the requirements of the State Plumbing Code.

(2) Toilets and urinals shall be designed to be easily cleanable.

(3) Toilet room doors shall be solid, tight-fitting, and self- closing, and shall be closed except during cleaning or maintenance. Doors may be louvered if installed pursuant to the State Fire Marshal's regulations.

(4) Toilet facilities, including vestibules, if any, shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials, and the receptacles in toilet rooms used by women shall be covered.

Section 23. Lavatory Facilities. (1) Lavatories shall be installed pursuant to the State Plumbing Code and shall be equipped with hot and cold running water or running water tempered by means of a mixing valve or combination faucet. Steam mixing valves are prohibited. Hand cleansing soap or detergent, and approved sanitary towels or other approved hand drying devices are to be conveniently located at each lavatory. If disposable towels are used, waste receptacles shall be located near the lavatory. Common towels are prohibited.

(2) Lavatories shall be located within or immediately adjacent to all toilet rooms. In all new establishments, and establishments which are extensively altered, lavatories shall be conveniently located within the food preparation area and warewashing area. Sinks used for food preparation or for washing equipment or utensils shall not be used for hand- washing.

(3) Lavatories, soap dispensers, and hand drying devices and all related facilities shall be kept clean and in good repair.

Section 24. Garbage and Refuse. (1) Garbage and refuse shall be kept in durable insect-proof and rodent-proof containers that are leak-proof and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and may be used for storage inside the food service establishment when protected from insects and rodents.

(2) Containers, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. Drain plugs, where required, shall be in place at all times, except during cleaning.

(3) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(4) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate

food, equipment, utensils, or food-preparation areas. In new establishments, suitable facilities, including hot water and detergent, shall be provided and used for washing containers.

(5) The garbage and refuse on the premises shall be stored in a place inaccessible to insects and rodents. Outside storage of plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(6) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent- proof, and shall be large enough to store the garbage and refuse containers that accumulate.

(7) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

(8) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(9) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to applicable regulations of the Cabinet for Natural Resources and Environmental Protection. Areas around incineration facilities shall be kept clean and orderly.

(10) Nonsewage liquid waste shall be disposed of in a manner that will not create a public health nuisance.

Section 25. Insect and Rodent Control. (1) Effective measures intended to eliminate the presence of rodents and flies, roaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Openings to the outside shall be effectively protected against the entrance of rodents and shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to one (1) inch.

Section 26. Construction and Maintenance of Physical Facilities. (1) The floors of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, and toilet rooms and vestibules shall be constructed of smooth, durable materials such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair.

(2) Carpeting, if used, shall be properly installed, easily cleanable and maintained in good repair. Carpeting is prohibited in toilet rooms, food preparation areas, and in warewashing areas where it would be exposed to large amounts of grease and water.

(3) Sawdust, wood shavings, peanut hulls, or similar material on the floors in food processing areas is prohibited.

(4) Properly installed floor drains shall be provided in floors that are water flushed for cleaning or that receive discharge of water or other fluid waste from equipment. Such floors shall be constructed of sealed concrete, terrazzo, ceramic tile, or similar material graded to drain all parts of the floor.

(5) The floor of each walk-in refrigerator shall be graded to drain all parts of the floor to the outside through a waste pipe, doorway, or other opening; or equipped with a floor drain.

(6) Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, materials, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(7) In all new establishments utilizing concrete, terrazzo, ceramic tile or similar material, and where water flush cleaning methods are used, junctures of walls with floors shall be coved and sealed. In all other cases, the junctures between the walls and floors shall not present an open seam of more than one 1/32 of an inch.

(8) Utility service lines and pipes shall not be unnecessarily exposed on floors in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(9) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(10) The walls, including nonsupporting partitions, wall coverings, and ceilings of all food preparation and warewashing areas and of toilet rooms shall be smooth, nonabsorbent, and easily cleanable. The use of rough or unfinished building materials such as brick, concrete blocks, wooden beams, or shingles is prohibited in those locations except by special plan approval by the cabinet.

(11) Studs, joists, and rafters shall not be exposed in walk-in refrigerators, food preparation areas, warewashing areas and in toilet rooms except by special plan approval by the cabinet.

(12) Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in food preparation and warewashing areas and in toilet rooms. Exposed lines and pipes shall be installed in a way that does not obstruct or prevent cleaning.

(13) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(14) Covering material such as sheet metal, linoleum, vinyl, and similar materials shall be easily cleanable and nonabsorbent and shall be attached and sealed to the wall and ceiling surfaces so as to leave no open spaces or cracks.

(15) Concrete or pumice blocks used for interior wall construction shall be finished and sealed to provide an easily cleanable surface.

Section 27. Cleaning Physical Facilities. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with push brooms. All cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. In new establishments, or establishments that are extensively altered, readily accessible service sinks or curbed cleaning facilities shall be provided.

Section 28. Lighting. (1) At least thirty (30) foot-candles of natural or artificial light shall be provided to all working surfaces and to all other surfaces and equipment in food preparation, warewashing, and hand washing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all walk-in refrigerators, food storage areas and dining and entry areas, except that this requirement applies to dining areas only during cleaning operations.

(2) Shielding to protect against broken glass falling into food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service and display facilities and facilities where utensils and equipment are cleaned and stored. Shatter proof bulbs may be approved by the cabinet without further shielding. Heat lamps shall be protected by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

Section 29. Ventilation. (1) All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, smoke and fumes. Ventilation systems shall be installed and operated according to applicable state laws and regulations and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

(2) Rooms, including toilet room areas, and equipment, from which aerosols, obnoxious odors, or noxious fumes or vapors may originate shall be vented effectively to the outside.

(3) Intake air ducts, if any, shall be designed and maintained to prevent the entrance of dust, dirt, insects and other contaminating materials.

Section 30. Dressing Areas and Lockers. (1) If employees routinely change clothes within the establishment, areas shall be designated for that purpose. Those areas shall not be located in areas used for food preparation, storage, or service or for warewashing or storage, except that a storage room containing only completely packaged food may be so designated.

(2) Enough lockers or other suitable facilities shall be provided and used for the storage of employees' clothing and other belongings. If dressing areas are designated, the lockers or other facilities shall be located within those areas.

Section 31. Poisonous or Toxic Materials. (1) Only those poisonous or toxic materials required to maintain the establishment in a sanitary condition or required for sanitization of equipment or utensils shall be present in retail food establishments.

(2) Containers of poisonous or toxic materials, including insecticides and rodenticides, shall be prominently and distinctly labeled pursuant to the requirements of applicable law.

(3) Insecticides and rodenticides shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose.

(4) Working containers used for storing cleaners and sanitizers taken from bulk supplies shall be identified with the common name of the material.

(5) Poisonous or toxic materials stored or displayed for retail sale shall be separated by spacing or partitioning from, and not stored above, food, single service articles or single use articles intended for use with food.

(6) Detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, lubricants and other chemicals shall not be stored above or intermingled with food equipment, utensils, single service articles, single use articles intended for use with food, except that: this requirement does not prohibit the convenient location and availability of cleaning and sanitizing agents at warewashing facilities.

(7) Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, or in a way that constitutes a hazard to employees or other persons.

(8) Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons nor in a way other than in full compliance with the manufacturer's labeling. All pesticides and other materials whose label has a "warning" statement or displays the "skull and crossbones" and any other hazardous product that may be designated by the cabinet shall be handled and bagged separately at check-out counters.

(9) Personal medications shall not be stored in food storage, preparation, or service areas.

(10) First aid supplies shall be stored in a way that prevents them from contaminating food and food contact surfaces.

Section 32. Premises. (1) Retail food establishments and all parts of the property used in connection with operation of the establishment shall be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of the establishment shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust. These surfaces shall be drained and shall be kept clean.

(3) Only articles necessary to the operation and maintenance of the establishment shall be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and warewashing areas and the presence in those areas of persons not authorized to be there by the permit holder or person in charge is prohibited.

(5) No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. A solid self-closing door shall separate food service operations from any living or sleeping area.

(6) No laundry operation shall be conducted, except that linens, uniforms and aprons used in the establishment may be laundered on the premises separate from food preparation and service areas.

(7) Clean cloths and napkins shall be stored in a clean place and protected from contamination until used. Nonabsorbent containers or washable laundry bags shall be provided and damp or soiled linens and cloths shall be kept in them until removed for laundering.

(8) Maintenance and cleaning materials and equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linen storage.

(9) Live animals, including birds and turtles, shall be excluded from all food service establishments and from areas adjacent to serving areas that are under the control of the permit holder. The exclusion does not apply to edible crustacea, shellfish, or fish, nor to fish in aquariums. Escorted police patrol dogs or guide dogs accompanying blind or other persons with physical limitations shall be permitted in dining areas.

Section 33. Mobile Food Units or Pushcarts. (1) Mobile units or pushcarts shall comply with the requirements of this regulation, except as otherwise provided in this subsection and in subsection (2) of this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the establishment as a mobile or pushcart operation, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation relating to physical facilities, except those requirements of subsections (4) and (5) of this section and Sections 34 and 35 of this regulation.

(2) A mobile unit or pushcart that serves only food that was prepared, packaged in individual servings, transported, and stored under conditions meeting the requirements of this regulation or beverages that are not potentially hazardous and are dispensed from protected equipment need not comply with requirements of this regulation pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary; however, frankfurters may be prepared and served from these units or pushcarts.

(3) Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

(4) A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitization, and hand-washing, pursuant to the requirements of this regulation. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be provided with a

transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed according to the State Plumbing Code.

(5) If liquid waste results from operation of a mobile food unit it shall be stored in permanently installed retention tanks that are at least 100 percent larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the food unit. The waste connection shall be located below the water connection to preclude contamination of the potable water system.

Section 34. Commissary. (1) Mobile food units or pushcarts shall operate from a commissary or other fixed food service establishment that is constructed and operated in compliance with this regulation; mobile food units equipped with a potable water supply system under pressure, liquid waste system retention tanks, sinks, lavatories, etc., shall not be required to operate from a commissary or other fixed food service establishment.

(2) Mobile retail food stores that sell only prepackaged, commercially prepared, sealed, and protected ready-to-eat foods, shall not be required to operate from a fixed retail food establishment.

Section 35. Mobile Food Unit or Pushcart Servicing Area and Operations. (1) Potable water servicing equipment shall be stored and handled in a way that protects the water and equipment from contamination.

(2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. The flushing and draining area for liquid wastes shall be separate from the area used for loading and unloading of food and related supplies. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated pursuant to the requirements of the Cabinet for Natural Resources and Environmental Protection and the cabinet; if a public sewerage system becomes available, connection shall be made thereto and the establishment sewerage system shall be disconnected.

Section 36. Temporary Food Service Establishment. (1) A temporary food service establishment shall comply with the requirements of this regulation, except as otherwise provided in this section. The cabinet may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this regulation, except those requirements of subsections (2) to (10) of this section.

(2) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters, which require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish is prohibited. This prohibition does not apply, however, to any potentially hazardous food that is obtained in individual servings, is stored at a temperature of forty-five (45) degrees Fahrenheit or below, or at a temperature of 140 degrees Fahrenheit or above, and is served directly in the unopened container in which it was packaged.

(3) Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this regulation. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use food grade plastic or wet- strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until used, and when used, it shall be dispensed in a way that protects it from contamination.

(4) Equipment shall be located and installed in a way that facilitates cleaning the establishment and that prevents food contamination. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

(5) Enough potable water shall be available in the establishment for cleaning and sanitizing utensils and equipment and for hand-washing. Enough hot water for these purposes shall be provided.

(6) The storage of packaged food in contact with water or undrained ice is prohibited, except that cans or bottles of nonpotentially hazardous beverages may be so stored when the water contains at least fifty (50) parts per million of available chlorine and is changed often enough to keep both the water and containers clean.

(7) Liquid waste shall be disposed of in such a manner as not to create a public health hazard or nuisance.

(8) A facility shall be provided for employee hand-washing. Where water under pressure is unavailable, such facility shall consist of a pan, warm water, hand cleanser, and individual paper towels.

(9) Floors shall be made of concrete, tight wood, asphalt, or other similar cleanable material, except that dirt or gravel floors may be used if graded to preclude the accumulation of liquids and covered with removable, cleanable platforms or duckboards.

(10) Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Screening material used for walls shall be at least sixteen (16) mesh to the inch. Counter service openings shall not be larger than is necessary for the particular operation conducted. When flies are prevalent, counter-service openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Doors and windows, if any, shall be kept closed, except when food is being served.

Section 37. Plan Review of Future Construction. When a retail establishment is hereafter constructed or extensively remodeled, or plumbing relocated, or additional plumbing added, or when an existing structure is converted for use as a retail establishment, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, size, location and type of facilities and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 38. Procedure When Infection is Suspected. When the cabinet has reasonable cause to suspect possibility of disease transmission from any food service establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from all food service establishments;

(2) The immediate closing of the food service establishment concerned until, in the opinion of the cabinet, no further danger of disease outbreak exists;

(3) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

(4) Adequate medical and laboratory examinations of the employee, of other employees, and of the body discharges of such employees.

Section 39. Food Caterers Must Display Permit Number. Each catering kitchen or similar food service establishment shall have posted in letters at least three (3) inches high the establishment's permit number clearly visible on vehicle(s) used in transporting foods. A copy of the establishment's permit to operate shall also be carried in each vehicle at all times. The permit number shall be declared in all forms of advertisements or promotional materials used by food service catering establishments.

Section 40. [~~39.~~] Enforcement Provisions. (1) Whenever the cabinet has substantial reason to believe that an imminent public health hazard exists, or whenever the permit holder or an authorized agent thereof has interfered with the cabinet in the performance of its duties, after its agents have duly and officially identified themselves, or if an inspection of an establishment reveals a rating score of less than sixty (60), the permit shall be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing on form DFS-217. A hearing shall be granted as soon as practical, or in any event not to exceed seven (7) days.

(2) In all other instances of violation of the provisions of this regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violations and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the cabinet may suspend the permit. The permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. Where there is a combination food service and retail food store, permit suspension shall apply only to the operation in violation of requirements.

(3) Any person whose permit has been suspended may, at any time, make application on form DFS-215 for a reinspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the reinspection reveals that the conditions causing suspension of the permit have been corrected, the permit shall be reinstated.

(4) For serious or repeated violations of any of the requirements of this regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Notices provided for under this regulation shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

(6) The hearings provided for in this regulation shall be conducted by the cabinet at a time and place designated by it. Based upon the record of such hearing, the cabinet shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

(7) At least once every six (6) months, the cabinet shall inspect each establishment and shall make as many additional inspections and reinspections as are necessary for the enforcement of this regulation. Retail food stores offering only prepackaged foods for sale shall be inspected at least once each twelve (12) months, with as many additional inspections and reinspections as necessary.

(8) Whenever an inspection is made of an establishment, the findings shall be recorded on inspection report form DFS-208, provided for that purpose, and shall constitute a written notice to the permit holder. The original of the inspection report shall be furnished to the permit holder or person in charge. The inspection report form shall summarize the requirements of this regulation and shall set forth a weighted point value for each requirement. The rating score of the establishment shall be the total of the weighted point value for all violations, subtracted from 100.

(9) The inspection report form shall specify a specific and reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, pursuant to the following provisions:

(a) When the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

(b) When the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, but in any event, within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet but in any event, not to exceed ten (10) days.

(d) When the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit. The permit shall be suspended within ten (10) days after receipt of such notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

(e) In the case of temporary food service establishments, all violations shall be corrected within a specified period of time not to exceed twenty-four (24) hours. If violations are not so corrected, the permit shall be immediately suspended. In such event the permit holder may request a hearing which shall be granted as soon as practical.

(f) The report of inspection shall state that failure to comply with any time limits for corrections may result in suspension of permit and that an opportunity for appeal from any notice or inspection findings will be provided if a written request for hearing is filed within ten (10) days. If a request for hearing is received, a hearing shall be held at a time and place designated by the cabinet.

(g) Whenever a food service establishment is required under the provisions of this regulation to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time, but in no event to exceed seven (7) days.

Section 41. [~~40.~~] Examination and Detention of Foods. The cabinet may examine and collect samples of foods as often as necessary for the enforcement of this regulation. The cabinet shall, upon written notice to the permit holder or authorized agent specifying the reason therefor, place under quarantine any food which it has probable cause to believe is adulterated or misbranded within the meaning of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992.

Section 42. [41.] The provisions of this regulation shall apply to both food service establishments and retail food stores, unless otherwise specified.

C. HERNANDEZ, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: February 5, 1992
FILED WITH LRC: February 28, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 16, 1992 of their desire to appear and testify at the hearing: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Corum
(1) Type and number of entities affected: Food caterers -500 approximately.
(a) Direct and indirect costs or savings to those affected:
1. First year: No additional costs except for printing and lettering.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. The statute requires uniform enforcement.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250
STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with 42 USC 602 and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.
(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.
(3) "Case manager" means the Department for Social Insurance (DSI) individual who:
(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;
(b) Aids the JOBS participant by brokering services for the participant;
(c) Identifies and resolves barriers to the extent possible; and
(d) Delivers JOBS related services to the participant.
(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.
(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.
(6) "Target population" means that group composed of each individual who:
(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(c) Is a custodial parent under the age of twenty-four (24) who:
1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or
2. Had little or no work experience in the preceding year; or
(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Residence and Citizenship. (1) Residence. A resident is anyone who:
(a) Is living in the state;
(b) Entered the state with a job commitment or seeking employment; and
(c) Is not receiving AFDC benefits from another state.
(2) Citizenship. AFDC shall be provided only to:
(a) Citizens;
(b) Aliens lawfully admitted for permanent residence; or
(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall be deprived of parental support of a natural or adoptive parent or care due to:
(a) Death;
(b) Continued absence from the home;
(c) Physical or mental incapacity; or
(d) Effective October 1, 1990, unemployment.
(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.
(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:
(a) Dead;
(b) Incapacitated;

(c) Unemployed; or

(d) Continually absent from the home.

(4) Continued absence from the home.

(a) To be eligible for AFDC, a needy child shall be physically separated from the parent and:

1. The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(b) Absence may be voluntary or involuntary.

1. Voluntary absence includes:

a. Divorce;

b. Legal separation;

c. Marriage annulment;

d. Desertion of thirty (30) days or more;

e. Forced separation of seven (7) days or more; or

f. Birth out-of-wedlock.

2. Involuntary absence includes:

a. Commitment to a penal institution for thirty (30) days or more;

b. Long-term hospitalization;

c. Deportation; or

d. Single parent adoption.

(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(5) Incapacity.

(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations and the criteria set forth in this subsection.

(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.

(c) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child.

1. Incapacity exists in each case when the following criteria are met:

a. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:

(i) Present at the time of application; and

(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include a period in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

b. It is determined by nonmedical evaluation that such defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

2. Factors to be considered in making the medical determination shall include:

a. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

b. Competent medical testimony relevant to:

(i) Whether a physical or mental defect, illness or impairment exists;

(ii) Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

(iii) Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is pertinent to causal relationship and substantiality.

3. Factors to be considered in making the nonmedical evaluation shall include:

a. The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

b. The extent and accessibility of employment opportunities available in the claimant's area of residence.

4. In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

a. Available printed materials that provide information regarding available employment opportunities shall be researched;

b. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

c. The claimant shall be referred, if necessary, for further appraisal of his abilities.

5. A written report shall be made of the determination under this subsection.

6. Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in CWEP or WIN prior to October 1, 1990, and in JOBS after October 1, 1990, shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;

6. Has not applied for unemployment benefits, if potentially eligible;

7. Is not:

a. Registered for work under Section 8 of this regulation; or

b. Subject to JOBS, under Section 9 of this regulation; or

8. Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC- UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

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

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

(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records,

3 Immigration records;

4. Naturalization records;

5. Church documents, such as baptismal certificates;

6. Passport;

7. Military records;

8. U.S. Census records; or

9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Rebuttal of paternity.

1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

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

(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;

(b) Attendance at boarding school;

(c) College or vocational school;

(d) Emergency foster care; or

(e) Short visits with friends or relatives.

Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).

(2) A child may be eligible to age nineteen (19) if:

(a) A full-time student in a secondary school; or

(b) The equivalent level of vocational or technical training; and

(c) Expected to complete the program prior to or during the month of their 19th birthday.

(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

Section 6. One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

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

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of

expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.

(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered or is participating in JOBS.

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:

(a) Is a child who:

1. Is under age sixteen (16); or

2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);

(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(k) Is the parent or other relative personally providing care for a child under six (6) years of age unless the state IV-agency assures that child care will be guaranteed.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which JOBS funds are used to develop and subsidize jobs for AFDC recipients. A participant's AFDC grant shall be reduced and that portion paid to the employer instead of to the participant to subsidize the individual's wages.

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

9. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs occurs;

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept employment; or

4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services;

a. For the first failure to comply, until the failure to comply ceases;

b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and

c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall

not take into account the needs of the sanctioned individual and the second parent, unless the second parent is participating in JOBS.

3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 10. Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.

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

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

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

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

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

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

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

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

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.

Section 11. Potential Entitlement for other Programs. (1) All applicants or recipients shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 12. Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.

Section 13. Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 14. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 15. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: March 2, 1992

FILED WITH LRC: March 11, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the Vital Statistics Conference Room, 1st Floor, CHR Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 16, 1992, five days prior to 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. The 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: Masten Childers II, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: This amendment could increase the number of AFDC applications approved which in turn could cause an increase in caseloads. By adding first cousins once removed and great-great-great grandparents there is the possibility for increase.

(a) Direct and indirect costs or savings to those affected:

1. First year: The department has no means of predicting how many individuals meeting the additional designation for specified relative will apply. We believe the change will not cause a significant increase.

2. Continuing costs or savings: Same as above.

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: As stated under entities and direct and indirect cost or savings to those affected under first year, it is not possible to determine cost or savings to the administration either, for the same reason.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings: Same as above.

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. This is a federally mandated change.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Eligibility conditions for AFDC

must be applied on a consistent and equitable basis in accordance with Federal Regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.90

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. Add first cousin once removed and great-great-great grandparent as designation for a specified relative.

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. None

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

905 KAR 6:060. CSBG audit specifications.

RELATES TO: KRS 273.410 to 273.453 [468]
STATUTORY AUTHORITY: KRS 194.050, 273.448
NECESSITY AND FUNCTION: 42 USC 9901-9912 [PL 97-35, Subtitle B] - "Community Services Block Grant Program" (CSBG), enacted August 13, 1981, authorizes block grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt [such rules and] regulations [as are] necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and [as are necessary] to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to establish the criteria and methodology that shall [will] be used to measure compliance with applicable state and federal laws and regulations. [This regulation includes the substance of 905 KAR 6:030; therefore, 905 KAR 6:030 is no longer necessary.]

Section 1. CSBG Audit Guide. (1) The Cabinet for Human Resources hereby adopts, by reference, the Community Services Block Grant Audit Specifications, dated August 6, 1991 [July 1, 1988], as the document to be used in auditing state agency expenditures of federal CSBG funds and [as well as] CSBG funds expended through contract services. The guide makes provision for the performance of an audit in three (3) basic areas of interest:

(a) Compliance audit;

(b) Federal financial participation audit; and

(c) Statement of compliance and fraud, abuse or illegal acts.

(2) The CSBG audit specifications shall be available for review during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: February 3, 1992
FILED WITH LRC: February 28, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on April 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by April 16, 1992: Masten Childers, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Young

(1) Type and number of entities affected: 23 federally funded community action agencies will be affected by the proposed amended regulation. The regulations will affect the community action agencies throughout the state as they receive federal community services block grant funds from the Department for Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the community action agencies as the proposed amendment only adds detail and clarifies issues that were required or recommended by the federal monitors during program site reviews. Failure to make the requested changes may result in the reduction or loss of federal funding for these programs.

1. First year: There will not be any direct or indirect costs or savings during the first year for the community action agencies because the amended regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be continuing costs or savings for the community action agencies because the amended regulations only add detail and clarify issues in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the community action agencies because the amended regulations only add detail and clarify issues in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be a change in the community action agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulation. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during the review process. If deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be an increase because the amended regulations only add detail and clarify issues in order to improve the existing regulations.

(2) Effects on the promulgating administrative body: There will not be a cost or savings to the Department for Social Services as the amended regulation only adds detail and clarifies issues in the current regulation. The amended regulation will improve the language of the regulation but does not effect the way in which the department administers the community action agencies.

(a) Direct and indirect costs or savings: There will not be any direct and indirect costs or savings to the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

1. First year: There will not be any direct and indirect costs or savings during the first year for the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

3. Additional factors increasing or decreasing costs: There will not be any continuing costs or savings for the Department for Social Services because the amended regulations only add detail and clarify

issues in order to improve the existing regulation.

(b) Reporting and paperwork requirements: There will not be a change in the Department for Social Services reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulation. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during the review process. If deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues as the amended regulation only adds detail and clarifies issues in order to improve the existing regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap or duplicate the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap or duplicate the amended regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap or duplicate the amended regulation.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. Tiering was not applied as existing community action agencies are the only entities in the state that are eligible to receive community services block grant funds funded by the U.S. Department of Health and Human Services made available by PL 97-35 and its successors.

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

905 KAR 6:070. Program state plan for CSBG.

RELATES TO: KRS 273.410 to 273.453, 42 USC 9901-9912

STATUTORY AUTHORITY: KRS 194.050, 273.453, 42 USC 9901-9912

NECESSITY AND FUNCTION: 42 USC 9901-9912 - "Community Services Block Grant Program," enacted August 13, 1981, authorizes grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the Kentucky Community Services Block Grant Program which shall comply with applicable state and federal laws and regulations. ~~[This regulation includes the substance of 905 KAR 6:050; therefore, 905 KAR 6:050 is no longer necessary.]~~

Section 1. (1) The "Community Services Block Grant Program Plan for the Commonwealth of Kentucky" for fiscal year 1992 ~~[1991]~~, is hereby adopted by reference as the plan for utilization of CSBG funds. The plan includes:

(a) Assurances as required by federal law and regulations;

(b) Provisions for use of funds by community action agencies;

(c) Programmatic considerations such as geographic areas to be served;

(d) Client eligibility, and complaint procedures; and

(e) Fiscal considerations such as administration, required match, and allocation formula.

(2) The "Community Services Block Grant Program Plan" may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: February 3, 1992

FILED WITH LRC: February 28, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on April 21, 1992, at 9 a.m. in the Vital Statistics Conference Room, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by April 16, 1992: Masten Childers, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Young

(1) Type and number of entities affected: 23 federally funded community action agencies will be affected by the proposed amended regulation. The regulations will affect the community action agencies throughout the state as they receive federal community services block grant funds from the Department for Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the community action agencies as the proposed amendment only adds detail and clarifies issues that were required or recommended by the federal monitors during program site reviews. Failure to make the requested changes may result in the reduction or loss of federal funding for these programs.

1. First year: There will not be any direct or indirect costs or savings during the first year for the community action agencies because the amended regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be continuing costs or savings for the community action agencies because the amended regulations only add detail and clarify issues in order to improve the existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the community action agencies because the amended regulations only add detail and clarify issues in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be a change in the community action agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulation. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during the review process. If deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be an increase because the amended regulations only add detail and clarify issues in order to improve the existing regulations.

(2) Effects on the promulgating administrative body: There will not be a cost or savings to the Department for Social Services as the amended regulation only adds detail and clarifies issues in the current

regulation. The amended regulation will improve the language of the regulation but does not effect the way in which the department administers the community action agencies.

(a) Direct and indirect costs or savings: There will not be any direct and indirect costs or savings to the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

1. First year: There will not be any direct and indirect costs or savings during the first year for the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

3. Additional factors increasing or decreasing costs: There will not be any continuing costs or savings for the Department for Social Services because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

(b) Reporting and paperwork requirements: There will not be a change in the Department for Social Services reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulation. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during the review process. If deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues as the amended regulation only adds detail and clarifies issues in order to improve the existing regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the amended regulations only add detail and clarify issues in order to improve the existing regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap or duplicate the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap or duplicate the amended regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation or governmental policy which may be in conflict with, overlap or duplicate the amended regulation.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. Tiering was not applied as existing community action agencies are the only entities in the state that are eligible to receive community services block grant funds funded by the U.S. Department of Health and Human Services made available by PL 97-35 and its successors.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, MARCH 13, 1992

BOARD OF CLAIMS

108 KAR 1:040. Payment of awards, proof of payment required.

RELATES TO: KRS 44.120, 44.130, 44.140, 44.150
STATUTORY AUTHORITY: KRS Chapter 13A, 44.080
NECESSITY AND FUNCTION: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this regulation is to require proof of payment of an award so that the board can monitor compliance with its orders and properly close completed cases.

Section 1. Within thirty (30) days after an order of the Board of Claims making an award has become final, the agency making payment of such award shall furnish to the Board of Claims a copy of any check reflecting such payment.

JACK D. RAZOR, Chairman
APPROVED BY AGENCY: January 30, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this proposed regulation will be held on April 21, 1992 at the hour of 10 a.m. at the offices of the Kentucky Board of Claims, 115 Myrtle Avenue, Frankfort, Kentucky 40601. Any person interested in commenting on this regulation at that hearing should contact Ms. Sandra Godbey, Kentucky Board of Claims, 115 Myrtle Avenue, Frankfort, Kentucky 40601 in writing by April 16, 1992.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Godbey
(1) Type and number of entities affected: All claimants.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: Minimal
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: 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: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? None because all claimants are treated alike no tiering is necessary.

FINANCE AND ADMINISTRATION CABINET
Kentucky Agricultural Finance Corporation

200 KAR 18:020. Guidelines for operating loan program.

RELATES TO: KRS 247.940 through 247.994
STATUTORY AUTHORITY: KRS Chapter 13A, 247.946(1)
NECESSITY AND FUNCTION: KRS 247.946(1) authorizes the Kentucky Agricultural Finance Corporation to promulgate administrative regulations governing financing of agricultural loans through the Kentucky Agricultural Finance Corporation established by KRS Chapter 247. This administrative regulation establishes the operating loan program.

Section 1. Definitions. Except as provided herein, the terms used in this administrative regulation are defined in KRS 247.942.
(1) "Corporation staff" means the staff of the Office of Financial Management and Economic Analysis.
(2) "Program" means the corporation's operating loan program.

Section 2. Eligible Lending Institution. The lender shall be in good standing with state and federal regulatory authorities and shall not be subject to any federal or state supervisory action.

Section 3. Eligible Applicant. (1) An applicant shall:
(a) Not have defaulted on any corporation loan or loans under other state or federal loan programs.
(b) Sign and return the application certification, "Kentucky Agricultural Finance Corporation Operating Loan Program Certification of Applicant."
(c) Be at least eighteen (18) years of age at the time the loan applica- tion is submitted to the lender.
(2) "Kentucky Agricultural Finance Corporation Operating Loan Program Certification of Applicant, (January, 1992)" is incorporated by reference. A copy of this form may be inspected, obtained or copied at the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Room 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday between 8:30 a.m. and 4:30 p.m.

Section 4. Loan Requirements. (1) The lending institution shall certify that the loan is a new agricultural loan and is not tied to any existing loan.
(2) The loan shall be for a term of one (1) to three (3) years and may be a fixed or variable interest rate.
(3) The loan shall be 100 percent collateralized, which may include purchases for the loan.
(4) The interest rate on the loan shall not exceed the prime rate published in the Wall Street Journal on the first business day of the month.

Section 5. Bank Requirements. (1) An eligible lender may hold up to $100,000 from the corporation for qualified loans. The lending institution shall remit to the corporation interest on the unloaned balance in an amount approved by the corporation's board.
(2) The lending institution shall assist the eligible applicant in completing the certification of applicant required by the corporation and referred to in Section 3(2) of this administrative regulation.
(3) By the fifth business day of each month, the lending institution

shall report to the corporation all application requests, whether approved or denied.

Section 6. Loan Closing. (1) The lending institution shall:

(a) Completely disburse the qualified loan; and

(b) Notify the corporation immediately if delay is anticipated.

(2)(a) The lending institution shall forward photocopies of any and all documentation pertaining to the loan closing including a completed copy of "Kentucky Agricultural Finance Corporation Operating Loan Program Representations of Lender."

(b) "Kentucky Agricultural Finance Corporation Operating Loan Program Representations of Lender, (January, 1992)" is incorporated by reference. A copy of this form may be inspected, obtained or copied at the Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Room 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday between 8:30 a.m. and 4:30 p.m.

Section 7. Servicing. (1) The lending institution shall:

(a) Hold the qualified loan instruments;

(b) Collect all payments of principal and interest from the applicant; and

(c) Apply a standard of loan servicing employed by prudent lenders and shall do so strictly in accordance with the corpora- tion's operating loan program requirements.

(2) The lending institution shall forward to the corporation monthly photocopies of program loan status reports.

(3) The following procedures apply to qualified loan pay- ments received in the month due:

(a) Each qualified loan payment remittance by the lender of the pro rata share due to the corporation on the participation shall be sent to the corporation within ten (10) days of receipt of the manner required by the loan.

(b) The statement of account shall reflect:

1. The total amount received from the applicant under the note;
2. The interest rate paid to date;
3. The principle paid to date;
4. The date on which such payment was received;
5. The pro rata share of interest due to the corporation;
6. The pro rata share of principal due to the corporation;
7. The total amount to be remitted to the corporation; and
8. The remaining outstanding principal balance of the loan.

(4)(a) Prepayments or late payments shall be remitted within ten (10) days of receipt by the lending institution.

(b) Prepayment shall include payment during the month of prepayment.

Section 8. Delinquencies. (1) In accordance with the lender's agreement, a lending institution shall collect or cause to be collected delinquent loan payments under the program with the same diligence exercised with respect to other loans in its portfolio.

(2) If the qualified loan is more than thirty (30) days past due, the lending institution shall set up a meeting to include the applicant, corporation, and the lending institution to determine:

(a) The reason for the default;

(b) Whether the reason is a temporary or permanent condition;

(c) The applicant's cooperation in correcting the delinquency; and

(d) Actions to be taken by the lending institution and corporation.

(3) The lending institution shall promptly advise the corpora- tion in writing of its recommendations for curing the default.

(4) The lending institution shall:

(a) Provide the corporation with copies of repayment agreements.

(b) Notify the corporation, in writing, when it has determined that an applicant is not able to fulfill a repayment agreement.

Section 9. 200 KAR 18:010, Guidelines for FmHA loan program, is hereby repealed.

CHARLES BENNETT, Chairman

APPROVED BY AGENCY: February 28, 1992

FILED WITH LRC: March 6, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 29, 1992, at 1:30 p.m., (EDT), in Room 408, Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 24, 1992, 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 of a transcript is made at cost to the requesting party. If you do not wish to attend the public hearing, you may submit written comments on the proposed adminis- tra- tive regulation. Send written notification to attend the public hearing or written comments on the proposed administrative regulation to: Todd Manuel, Office of Financial Management and Economic Analysis, Room 261, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Manuel

(1) Type and number of entities affected: The Agricultural Finance Corporation as defined in KRS 247.940 through 247.994.

(a) Direct and indirect costs or savings to those affected: The funds loaned to Kentucky farmers will allow for the corpora- tion to receive 3 percent of the interest earnings made from the loaned funds. The funds would otherwise earn the average overnight rate from the general fund, resulting in a cost to the corporation which would be equal to the difference between overnight rates and 3 percent.

1. First year: Cannot be determined since we do not know what the demand for loans will be.

2. Continuing costs or savings: Cannot be determined.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This regulation will not increase paperwork and reporting requirements.

(2) Effects on the promulgating administrative body: The Finance and Administration Cabinet will continually monitor the financial standings of the financial institutions with whom the funds are placed to initiate the loans as well as monitor the individual loan standings.

(a) Direct and indirect costs or savings: There would be no additional costs or savings to the Finance and Administration Cabinet in overseeing this program.

1. First year: There would be no additional costs or savings to the Finance and Administration Cabinet in overseeing this program.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation will not increase the reporting and paperwork requirements by the Finance and Administration Cabinet to the Legislative Branch.

(3) Assessment of anticipated effect on state and local revenues: It is anticipated that this regulation will have no direct effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for establish- ing the loan requirements for the Operating Loan Program were considered, since the Kentucky Agricultural Finance Corporation is mandated by KRS 247.940 to establish these requirements by administrative regulation.

(5) Identify any statute, administrative regulation or govern- ment

policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government- al policies which may be in conflict or overlapping with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

Was tiering applied? Yes. This regulation was narrowly tailored to apply only to those financial institutions which would loan the corporations funds and to those farmers who are eligible under the guidelines established under this regulation.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:001. Repeal of 201 KAR 1:005; 201 KAR 1:010; 201 KAR 1:025; 201 KAR 1:030; 201 KAR 1:035; 201 KAR 1:055; 201 KAR 1:070; and 201 KAR 1:075.

RELATES TO: KRS 325.230, 325.240, 325.250, 325.261, 325.265, 325.270, 325.280, 325.300, 342.320, 325.330, 325.340

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: Pursuant to KRS 13A.346 and 13A.347, the State Board of Accountancy was required to review all regulations and identify any deficiencies listed in KRS 13A.030(2)(a). This regulation is needed to repeal regulations found to be deficient and no longer necessary.

Section 1. 201 KAR 1:005, General repeal, is hereby repealed.

Section 2. 201 KAR 1:010, Board, is hereby repealed.

Section 3. 201 KAR 1:025, Quorum, is hereby repealed.

Section 4. 201 KAR 1:030, Employees, is hereby repealed.

Section 5. 201 KAR 1:035, Examination application procedure, is hereby repealed.

Section 6. 201 KAR 1:055, Certificate by waiver of examination, is hereby repealed.

Section 7. 201 KAR 1:070, Reinstatement After failure to renew, is hereby repealed.

Section 8. 201 KAR 1:075, Registration of partnerships or corporations, is hereby repealed.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 4,309 certified public accountants.

(a) Direct and indirect costs or savings to those affected: No costs or savings identified.

1. First year:

2. Continuing costs 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: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation repeals several administrative regulations which were found to be deficient as regards KRS Chapter 13A. The specific problems were regulations repeating statutes or complying with current regulatory drafting standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Since this regulation repeals regulations which repeated statutes or other regulations, it is not imposing new requirements on any certified public accountants.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:130. Examination application procedure.

RELATES TO: KRS 325.261, 325.270

STATUTORY AUTHORITY: KRS 325.240, 325.270

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to apply for admission to the Uniform Certified Public Accountant Examination.

Section 1. First Time Examination Applicants. The applicant shall submit:

(1) A completed "Application for Admission to the CPA Examination" that has been signed and acknowledged before a notary public. The application is incorporated by reference and may be inspected or obtained at the board office, 332 W. Broadway, Suite 310, Louisville, KY 40202, between 8:30 a.m. and 4:30 p.m., Monday through Friday;

(2) Two (2) photographs taken within ninety (90) days preceding the filing of the application, which bear the applicant's signature on the back;

(3)(a) An official transcript which evidences completion of the

educational requirements specified in KRS 325.261 and 201 KAR 1:062;

(b) The official transcript shall be a document issued by an institution of higher education and stamped with the institution's certifying seal or stamp; and

(4) A fee of $125 dollars, in the form of a check or money order made payable to the "Kentucky State Board of Accountancy".

Section 2. An application for the May examination shall be filed with the board or postmarked no later than March 1st. Applications for the November examination shall be filed with the board or postmarked no later than September 1st.

Section 3. Provisional Examination Applicants. A person who expects to satisfy the educational requirements of KRS 325.261 and 201 KAR 1:062 within ninety (90) days following an administration of the examination shall be eligible to submit an application for the examination if he:

(1) Satisfies the requirements of Sections 1(1), (2), (4) and 2 of this administrative regulation;

(2) Submits a transcript of college courses completed;

(3)(a) Submits an official statement from his college or university stating that the applicant will complete the course of study required by KRS 325.261 and 201 KAR 1:062 within ninety days following the examination;

(b) The statement shall include a list of all course titles and credit hours in which the applicant is currently enrolled; and

(c) Submits a final official transcript showing completion of all educational requirements within ninety (90) days following the administration of the examination.

(d) If a provisional examination candidate fails to submit the information specified in this section, the results of his examination shall not be released.

Section 4. Upon approval by the board of the application, the applicant shall be considered an examination candidate.

Section 5. Letter of Intent to Attend the Examination. (1) The board shall mail a letter of intent with information about the dates, times and location of the next scheduled examination to candidates. The letter of intent shall be mailed to the most recent address provided by the candidate.

(2)(a) The candidate shall return the letter of intent to the board stating whether or not he will sit for the next scheduled examination.

(b) The letter of intent shall be postmarked or filed with the board no later than:

1. April 1, for the May examination; and
2. October 1, for the November examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the candidate shall return the letter of intent with the examination fee.

(b) A candidate who is taking the examination for the first time shall submit the examination fee with his application.

(c) Except as provided in paragraph (d) of this subsection, the examination fee shall be twenty-five (25) dollars per subject.

(d) The fee for accounting practice shall be fifty (50) dollars.

(e) The examination fee shall be paid by check or money order made payable to the Kentucky State Board of Accountancy.

(4)(a) A conditional examination candidate who fails to file a letter of intent with regard to the examination shall:

1. Remain a conditional examination candidate;
2. Not be permitted to sit for the examination; and
3. Forfeit deferred examination fees.

(b) The examination, for which the conditional examination candidate fails to file a letter of intent, shall count as one (1) of the six (6) additional sittings.

(5)(a) A nonconditional candidate who fails to comply with the deadlines specified in this administrative regulation shall:

1. Not be permitted to sit for the examination;
2. Forfeit fees paid; and
3. Have his application cancelled.

(b) If an application has been cancelled under the provisions of this section, a subsequent application shall be filed as a first-time application under Section 1 of this administrative regulation.

Section 6. (1) Except as provided by subsections (2) and (3) of this section, an examination fee shall be deferred to the next scheduled examination if:

(a) The candidate has filed a:

1. Letter of intent within the period specified in Section 5 of this administrative regulation; and
2. Written request to defer the fee; and

(b) No later than five (5) days following the examination, the request specified in paragraph (a)(2) of this section has been:

1. Received by the board; or
2. Postmarked.

(2) A candidate shall be granted one (1) deferral.

(3) A candidate shall not be entitled to the refund of a deferred fee, if he fails to attend the next scheduled examination after deferral.

Section 7. (1) A person, who is registered with another state to sit for the Uniform CPA Examination, may request to sit for the examination in Kentucky if:

(a) A seat is available; and

(b) He has submitted the items specified in subsection (2) of this section on or before:

1. March 15, for the May examination; or
2. September 15, for the November examination.

(2) Items required by subsection (1) of this section are:

(a) A written request from the State Board of Accountancy of the state in which he intends to be licensed;

(b) One (1) photograph taken within ninety (90) days prior to the filing of his written request to the board;

(c) A check or money order:

1. In the amount of $100;
2. Payable to the Kentucky State Board of Accountancy; and

(d) The letter of intent required by Section 5 of this administrative regulation.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 1,100 Kentucky CPA examination candidates and 90 out-of-state candidates proctored by the Kentucky board.

(a) Direct and indirect costs or savings to those affected:

1. First year: Those Kentucky candidates who do not notify the board of their intention to sit for the examination or who fail to attend the examination within one (1) year of applying will be required to again pay the examination fees. Out-of-state candidates wishing to take the examination in Kentucky will pay the fee to cover the examination administrative costs.

2. Continuing costs or savings: The costs per individual would be the same each year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors.

(b) Reporting and paperwork requirements: This will require candidates to notify the board of address changes.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will greatly reduce the personnel cost of maintaining candidate records and reduce exam administration costs by having accurate numbers of examinees five (5) weeks prior to the examination. For out-of-state candidates, it will insure that costs for accommodating candidates, at the exam site and communicating with the candidates home state licensure board are covered.

2. Continuing costs or savings: The same costs or savings will be realized each year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: All administrative costs related to administering the examination.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not used because no subgroup exists within the regulated entity.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:140. Procedures for the reinstatement of a certificate and permit to practice public accounting.

RELATES TO: KRS 325.330(6)

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: Procedures for reinstating certificate and permit to practice.

Section 1. A certificate holder who has allowed his permit to practice to expire shall be allowed to reinstate the permit within one (1) month of the permit renewal deadline by submitting all renewal documents and renewal fees contained in 201 KAR 1:065 and paying a late fee of twenty-five (25) dollars. When the board has notified the licensee in writing of his failure to renew, the late fee shall increase to $100. If the certificate holder fails to renew the permit to practice within one (1) year of the renewal date, he shall comply with the requirements of Section 2 of this administrative regulation.

Section 2. If a certificate and permit to practice have been revoked, or were voluntarily surrendered, for failure to satisfy the continuing professional education requirements, they may be reinstated if the applicant for reinstatement submits:

(1) Documentation of successful completion of:

(a) Forty (40) hours of the continuing professional education requirements for the first year after revocation or voluntary surrender, of which one-half (1/2) are accounting and auditing courses; or

(b) Documentation of successful completion of eighty (80) hours of the continuing professional education for a revocation period longer than one (1) year, of which one-half (1/2) are accounting and auditing courses; and

(2) A money order or check for a total of:

(a) A new certificate fee of fifty (50) dollars;

(b) A permit to practice fee in accordance with 201 KAR 1:065, Section 1; and

(c) A reinstatement fee of $100.00.

Section 3. (1) If a certificate and permit to practice have been revoked for reasons other than failure to satisfy the continuing professional education requirements, they may be reinstated if the applicant for reinstatement submits to the board fifteen (15) days prior to the next scheduled meeting:

(a) A letter:

1. Requesting reinstatement;

2. Specifying the manner in which the applicant for reinstatement has complied with the terms of a disciplinary order of board; and

3. A statement of the reasons the board should reinstate him.

(2)(a) Except as provided in paragraph (b) of this subsection, the board:

1. Shall review the request for reinstatement; the findings of fact, conclusions of law, and board order; and

2. May affirm or deny the request; or

3. State in writing the corrective or remedial education, training or review required before reinstatement shall be granted.

(b) The board may decline to consider a request for reinstatement submitted to the board prior to the date for resubmission that is specified in the disciplinary order of the board.

(3)(a) If an applicant for reinstatement disagrees with the board's determination under this section, he may file a written request for a hearing before the board.

(b) A hearing held pursuant to the provisions of this subsection shall be conducted in accordance with KRS 325.360 and KAR.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway,

Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 4,309 certified public accountants.

(a) Direct and indirect costs or savings to those affected:

1. First year: Increased costs only to those CPAs who allow their certificates to be revoked for failure to renew the permit to practice (20 per year) and those CPAs who fail to renew the permit in accordance with deadlines.

2. Continuing costs or savings: These costs per CPA would be the same each year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Regulation should decrease costs by encouraging CPAs to renew the permit to practice in a timely fashion by reducing expenses for hearing notices, attorney fees, and repeated mailings. The first year late penalty fees will slightly increase revenues.

2. Continuing costs or savings: The savings should increase each year as the licensees become more aware of the costs.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation should significantly reduce costs of attempting to have CPAs comply with the permit renewal deadline and will clarify the standards for reinstatement.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: In reviewing licensure board reinstatement methodologies, this contains administrative costs, while encouraging individual compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation applies to all CPAs who fail to renew the permit or have the certificate revoked.

GENERAL GOVERNMENT CABINET
State Board of Accountancy

201 KAR 1:150. To set forth practice and procedures for hearings held before the Kentucky State Board of Accountancy.

RELATES TO: KRS 325.360

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: To set forth practices and procedures for hearings held before the Kentucky State Board of Accountancy.

Section 1. If the board determines to issue a formal complaint against any licensee or firm, the board shall advise the executive director to obtain a hearing officer and proceed with issuing a complaint and notice of hearing. The hearing officer shall have authority to act on the board's behalf regarding procedural issues.

Section 2. Motions and Requests for Withdrawal of Complaints or Dismissal. (1) All motions shall be in writing and filed with the board's hearing officer. Motions to dismiss or other motions regarding a substantive issue shall be considered by a quorum of the board members following a recommendation from the hearing officer. Procedural issues including motions for continuance or discovery may be ruled upon by the hearing officer.

(2) Motions for a continuance of a hearing shall only be granted for good cause. A scheduling conflict of a party, a witness or an attorney for a party shall not be good cause for a continuance unless a written request for the continuance is received by the hearing officer within ten (10) working days of receipt of the notice of hearing.

Section 3. Discovery. (1) In all hearings before the board, discovery of witnesses and exhibits to be used at the hearing through written or oral depositions, interrogatories, or requests for admission shall be permitted if:

(a) The time, place and method of discovery imposes no undue burden upon the witness and other parties;

(b) The discovery will be completed and transcribed prior to the hearing date; and

(c) Copies of all discovery documents and depositions are filed with the board at the cost of the party requesting discovery.

(2) The hearing officer appointed in the case shall have the right to deny, limit, or mandate discovery.

(3) All notices of discovery shall be served on the board's hearing officer and counsel. The board's counsel shall have the right to attend and participate in all depositions or other discovery proceedings pertaining to a case before the board.

Section 4. Prehearing Conferences and Settlement Agreements. (1) Any party may request by motion served upon the board's hearing officer, executive director and counsel a prehearing conference. The hearing officer shall preside at the conference.

(2) The purpose of a prehearing conference shall be to explore the possibility of settlement, prepare stipulations, clarify issues, address procedural motions and other matters which shall promote the orderly conduct of the hearing.

(3) An agreed order may be negotiated between the counsel for the board, and the licensee or firm. All agreed orders shall provide that the licensee or firm understands that he is waiving his right to an administrative hearing and that the settlement agreement, shall be submitted to the board for approval.

(4) After reviewing a proposed agreed order, the board may accept or reject said proposal. No alterations to an agreed order may become a final order without the consent of the licensee or firm and the board.

Section 5. Hearings. (1) During hearings the hearing officer shall make recommendations to the board on all motions and objections.

(2) The rules of evidence or civil procedure shall not apply in hearings. However, irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted.

(3) All hearings before the board shall proceed as follows:

(a) Opening statement:

1. By counsel for the board;

2. By respondent or his attorney;

(b) Witnesses and evidence in support of the complaint;

(c) Witnesses and evidence on behalf of respondent;

(d) Recross and redirect exam as authorized by hearing officer;

(e) Closing statement as follows:

1. By the licensee or his attorney;

2. By counsel for the board.

(4) Testimony taken by deposition may be considered by the board upon a finding by the hearing officer that the witness is

unavailable to testify or it would cause undue hardship on the witness to testify at the hearing.

Section 6. Posthearing Proceedings. (1) At the conclusion of the hearing, the board may move to enter into executive session to deliberate. Alternatively, the board may choose to await deliberation until they have had the opportunity to review the transcript of the hearing. The board may require the hearing officer to be present during their deliberations.

(2) At the conclusion of the board's deliberations, the board may announce its decision based upon the evidence presented and direct the hearing officer to prepare findings of fact, conclusions of law and final order consistent with the board's decision. A copy of the findings of fact, conclusions of law and order shall be reviewed by the board president, signed and sent to all parties.

(3) Alternatively, the board may direct the hearing officer to propose findings of fact, conclusions of law and a final order. In this situation, a copy of the proposed decision and the date of the next scheduled board meeting will be sent to the licensee or applicant, to all members of the board, and the board's counsel. The licensee or applicant shall have until ten (10) days prior to the next scheduled board meeting to prepare and submit any written arguments or exceptions to any portion of the proposed decision.

(4) The board, at the next regularly scheduled meeting, shall review the proposed decision, and any written arguments or exceptions, and shall make a final determination as follows:

(a) Adopt the decision as submitted; or

(b) Modify the proposed decision as deemed necessary.

(5) The board shall not reconsider any final order.

(6) Following the board's adoption of a final order which concludes a disciplinary action, the name of the licensee and summary of the findings shall be published in the next edition of the board's newsletter.

JOHN A. THOMPSON, President

APPROVED BY AGENCY: March 12, 1992

FILED WITH LRC: March 13, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992, at 9 a.m. at the administrative offices of the board located at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 1992, five days prior to the meeting, 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: Susan G. Stopher, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan G. Stopher

(1) Type and number of entities affected: 4,309 certified public accountants in affected class; impacts 10 CPAs per year.

(a) Direct and indirect costs or savings to those affected: This regulation delineates the procedures for disciplinary hearings mandated by KRS 325.360. This regulation codifies the due process procedures which have always been used by the board.

1. First year: CPAs scheduled for hearing may face increased legal fees for filing continuances or discovery. The CPA may save legal fees because the procedure is codified.

2. Continuing costs or savings: The same costs or savings as the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: There is no negligible effect on the board since these are the due process procedures which have been followed for many years and are indicated by court decisions.

(a) Direct and indirect costs or savings:

1. First year: Small savings on legal research may be realized.

2. Continuing costs or savings: The same costs or savings will be realized in subsequent years as the first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: See (2).

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: These procedures are required to insure the respondent's rights to due process of law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. A subgroup does not exist to whom this would apply.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:167. Facsimile prescription orders.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is authorized by KRS 315.191(1) to adopt rules and regulations relating to the control of drugs sold by prescription and by KRS 315.191(5) to adopt regulations necessary to control the dispensing of prescriptions by pharmacies licensed by it. This regulation accommodates technological advances in electronic transmission and sets forth acceptable criteria for its utilization.

Section 1. Prescription orders for drugs other than Schedule II controlled substances may be transmitted using a facsimile ("FAX") machine provided:

(1) The transmittal document or title page contains the date, time, telephone number, location of the transmitting machine, the signature of its operator, and the name of the pharmacy intended to receive the transmission; and

(2) The electronically transmitted prescription or a photocopy shall become the pharmacy's primary distribution record.

TOM M. HOUCHENS, President

APPROVED BY AGENCY: February 15, 1992

FILED WITH LRC: February 28, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 23, 1992, at 10 a.m. (Frankfort prevailing time) at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 18,

1992, of their intent to attend. If no notification of intent to attend the hearing is received by this 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 amendments to the administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed amendments to the administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs or savings from use of telephone now utilized or use of fax machine in place of the telephone order of the prescription medication.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Same as 1a1 above.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is use of telephone. Fax transmissions are more advanced and documentation superior.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not used because parties and pharmacists faxing and receiving prescriptions must be treated in the same manner; subject to the same requirements and procedures.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:200. Nuclear pharmacy services.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191(1)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is responsible to impose minimum standards in all settings where drug products are dispensed and to ensure the safety of all drug products provided to the citizens of the Commonwealth.

Section 1. Definitions. (1) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

(2) "Radiopharmaceutical services" means those acts, services, operations and transactions necessary in the conduct, operation, management and control of a nuclear pharmacy, including, for example:

(a) The compounding, dispensing, labeling and delivery of radiopharmaceuticals;

(b) The participation in radiopharmaceutical utilization reviews; and

(c) The proper and safe storage and distribution of radiopharmaceuticals.

(3) "Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any of those drugs intended to be made radioactive. This includes nonradioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance, but does not include drugs which are carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

(4) "Radiopharmaceutical quality assurance" means the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, and it shall include, for example, internal test assessment, authentication of product history and the keeping of proper records.

(5) "Internal test assessment" means conducting those tests necessary to insure the integrity of the test.

(6) "Authentication of product history" means identifying the purchase source, the ultimate use or disposition and any intermediate handling of any components of a radiopharmaceutical.

(7) "Authorized practitioner" means a practitioner duly authorized by applicable federal and state law to possess, use and administer radiopharmaceuticals.

(8) "Designated agent" means an individual who is under the direct supervision of an authorized practitioner and who is authorized to communicate that practitioner's instructions to a nuclear pharmacy.

(9) "Nuclear pharmacist" means a pharmacist licensed to practice in the Commonwealth of Kentucky and who meets minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the United States Nuclear Regulatory Commission.

(10) "Direct supervision" means that the supervising nuclear pharmacist shall be physically present in the general area or location where the supportive personnel are performing supportive duties and shall conduct in process and final checks.

Section 2. General Requirements for Pharmacies Providing Radiopharmaceutical Services. (1) A license to operate a pharmacy providing radiopharmaceutical services shall only be issued to a nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of a nuclear pharmacist. A nuclear pharmacist shall be responsible for all operations of the licensed area and in personal attendance at all times that the pharmacy is open for business.

(2) Nuclear pharmacies may be exempted from the general space requirements for pharmacies, but shall:

(a) Have adequate space, commensurate with the scope of services required and provided, meeting minimal United States Nuclear Regulatory Commission requirements established for all pharmacies in the Commonwealth;

(b) Be separate from the pharmacy areas for nonradioactive drugs;

(c) Be inaccessible to all unauthorized personnel; and

(d) Have a radioactive storage and decay area.

(3) The process used for handling radioactive materials by any

license holder must involve appropriate procedures for the purchase, receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials. In order to ensure the public health and safety in this respect, a nuclear pharmacy shall first meet the following general environmental requirements where the handling of radiopharmaceutical materials takes place:

(a) Proper ventilation so that radioactive materials cannot be airborne from that environment to other nonoccupationally unrestricted areas;

(b) Proper location so that the receipt and dispersal of radioactive materials do not result in inadvertent and undesired contamination of other nonoccupationally labeled areas; and

(c) Proper design to allow radioactive materials to be contained in given areas to ensure adequate safety and protection to personnel working in or near them and to ensure proper operation of the corresponding assay equipment.

(4) Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with rules and regulations of the United States Nuclear Regulatory Commission.

(5) The immediate outer container of a radioactive drug to be dispensed shall be labeled with the:

(a) Standard radiation symbol;

(b) Words, "Caution-Radioactive Material";

(c) Radionuclide;

(d) Chemical form;

(e) Amount of radioactive material contained in millicuries or microcuries;

(f) Volume in cubic centimeters, if a liquid;

(g) Requested calibration time for the radioactivity contained;

(h) Name, address, and telephone number of the nuclear pharmacy;

(i) Prescription number;

(j) Date; and

(k) Space for patient's name.

(6) The immediate container shall be labeled with the:

(a) Standard radiation symbol;

(b) Words, "Caution-Radioactive Material";

(c) Name of the nuclear pharmacy;

(d) Prescription number; and

(e) Name of the radiopharmaceutical.

(7) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

(8) A nuclear pharmacist may transfer to authorized persons and United States Nuclear Regulatory Commission licensed medical practitioners radioactive materials not intended for drug use, in accordance with regulations of the United States Nuclear Regulatory Commission. A nuclear pharmacy may furnish radiopharmaceuticals to these practitioners for individual patient use.

(9) Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies including those laws and regulations governing nonradioactive drugs. For nuclear pharmacies handling radiopharmaceuticals exclusively, the Kentucky Board of Pharmacy may waive regulations pertaining to pharmacy licenses for nonradiopharmaceuticals which requirements do not pertain to the practice of nuclear pharmacy.

(10) Radioactive drugs are to be dispensed only upon a nonrefillable prescription order from a United States Nuclear Regulatory Commission licensed medical practitioner (or the designated agent) authorized to possess, use and administer radiopharmaceuticals.

(11) Prescription orders for delivery of radioactive drugs for use in the medical practice of a United States Nuclear Regulatory Commission licensed medical practitioner may be placed on a telephone answering and recording device, only if the practitioner (or the designated agent) is identified in such a manner that is clearly recognized by the nuclear pharmacist dispensing the radioactive drug.

(12) A nuclear pharmacist in charge of a nuclear pharmacy shall have the authority to delegate to any qualified and properly trained person or persons, acting under his direct supervision, any nuclear pharmacy act which a reasonable and prudent nuclear pharmacist would find is within the scope of sound pharmaceutical judgment to delegate. The delegation shall only occur if, in the professional opinion of the delegating nuclear pharmacist-in-charge, the act may be properly and safely performed by the person to whom the act is delegated. The delegated shall only be performed in its customary manner and not in violation of other statutes. Persons to whom nuclear pharmacy acts are delegated shall not hold themselves out to the public as being authorized to practice pharmacy.

Section 3. Minimum Requirements for Space, Equipment, Supplies, and Library. (1) Each nuclear pharmacy must meet the following requirements for space:

(a) The area for the storage, compounding, and dispensing of radioactive drugs shall be completely separate from pharmacy areas for nonradioactive drugs;

(b) Hot lab and storage area shall be minimum of 120 square feet; and

(c) The compounding and dispensing area shall be a minimum of 300 square feet.

(2) Each nuclear pharmacy shall be equipped with at least the following items of equipment:

(a) Dose calibrator;

(b) Refrigerator;

(c) Drawing station;

(d) Well scintillation counter;

(e) Microscope;

(f) Chromatagraphic apparatus or comparable means of effectively assuring tagging efficiency;

(g) Portable radiation survey meter capable of detecting 0.005 microcuries of activity of any radionuclides utilized; and

(h) Other equipment deemed necessary for radiopharmaceutical quality assurance for products compounded or dispensed as shall be determined by the United States Nuclear Regulatory Commission and the Kentucky Board of Pharmacy.

(3) Each nuclear pharmacy shall have on the premises current editions or revisions of the following reference materials:

(a) United States Pharmacopedia-National Formulary with supplements;

(b) State statutes and regulations relating to pharmacy;

(c) State and federal regulations governing the use of applicable radioactive materials; and

(d) Text relating to the practice of nuclear pharmacy and radiation safety.

Section 4. Radiopharmaceutical Quality Assurance. The holder of a nuclear pharmacy license shall be responsible for the radiopharmaceutical quality assurance of all radiopharmaceuticals, including biologicals, dispensed or manufactured.

TOM M. HOUCHENS, President

APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 23, 1992, at 10 a.m. (Frankfort prevailing time), at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 18, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by this 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: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: Only those who are qualified to dispense radiopharmaceuticals.

(a) Direct and indirect costs or savings to those affected: No additional direct or indirect costs would be involved.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): As in (1)(a), no increasing costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional direct or indirect costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Allows for specific uniform requirements for all nuclear pharmacies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A

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

401 KAR 30:031. Environmental performance standards.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99, 16 USC 1531 et. seq., 33 USC 1251 et. seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the treatment, storage, recycling and disposal of wastes. KRS 224.40-305 requires that persons engaging in the treatment, storage, recycling and disposal of waste obtain a permit. This chapter establishes the general administrative procedures that are applicable to 401 KAR Chapters 31 to 49. This regulation sets forth the minimum environmental performance standards with which all waste sites or facilities shall comply.

Section 1. Purpose. Scope and Applicability. The standards in this regulation are for use under the waste management provisions of KRS Chapter 224 in determining which waste sites or facilities pose a reasonable probability of adverse effects on human health or the environment. Waste sites or facilities failing to satisfy the requirements of this regulation shall be considered open dumps, which are prohibited by KRS 224.40-100. No owner or operator shall cause, suffer, or allow a waste site or facility or any unit of a waste site or facility to violate any provision of this regulation.

Section 2. Floodplains. No waste site or facility shall restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or be placed in a manner likely to result in washout of waste, so as to pose a hazard to human health, wildlife, or land or water resources.

Section 3. Endangered Species. No waste site or facility shall:

(1) Cause or contribute to the taking of any endangered or threatened species or candidate species listed pursuant to 16 U. S. C. 1531 et seq. (the Endangered Species Act of 1983 as amended); or

(2) Result in the destruction or adverse modification of the critical habitat of an endangered or threatened species or candidate species listed pursuant to 16 USC 1531 et seq. (the Endangered Species Act of 1983 as amended).

Section 4. Surface Waters. No waste site or facility shall:

(1) Cause a discharge of pollutants into waters of the Commonwealth, including wetlands, that violate any requirements of KRS Chapter 224, or 401 KAR Chapter 5 or 8; or

(2) Cause a discharge of dredged material or fill material to waters of the Commonwealth that is in violation of the requirements under 33 USC 1251 et. seq. (Section 404 of the Clean Water Act of 1977 as amended).

Section 5. Groundwater. (1) No waste site or facility shall contaminate an underground drinking water source beyond the point of compliance in excess of the maximum contaminant levels contained in 401 KAR 8:200 to 401 KAR 8:600 or the following:

Chemical	Maximum Contaminant Level (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon Tetrachloride	0.005
Chromium (Hexavalent)	0.05
2,4-Dichlorophenoxy Acetic Acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4.0
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	0.02
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy Acetic Acid	0.01
Vinyl Chloride	0.002

(2) Analytical methods approved by the cabinet shall be used in evaluating compliance with subsection (1) of this section.

Section 6. Application to Land Use for the Production of Food Chain Crops. No waste site or facility shall exist or occur that applies waste within three (3) feet of the surface of land used for the production of food chain crops unless in compliance with all the requirements of subsection (1) or (2) of this section:

(1)(a) The pH of the waste and soil mixture is six and five-tenths (6.5) or greater at the time of each waste application, except for waste containing cadmium at concentrations of two (2) mg/kg (dry weight) or less;

(b) The annual application of cadmium from waste does not exceed 0.44 pounds per acre on land used for production of tobacco or food chain crops. The annual cadmium application rate does not exceed 0.44 pounds per acre; and

(c) The maximum cumulative application of cadmium from the waste does not exceed the levels in Table 1 of this paragraph.

Table 1
Maximum cumulative application

Soil Cation Exchange Capacity (meq/100g)	Background Soil pH	Pounds/per/Acre
<5	≥6.5	4.46
5-15	≥6.5	8.92
>15	≥6.5	17.84
>15	<6.5*	4.46

*For soils with a background pH of less than six and five-tenths (6.5), the maximum cumulative cadmium applications rate for soils with a background pH equal to or greater than six and five-tenths (6.5) may be used if the pH of the sludge-soil mixture is adjusted to and maintained at six and five-tenths (6.5) or greater whenever food chain crops are grown.

(2) If animal feed is the only food chain crop produced, there is no limit to the cadmium application rate, as long as the pH of sludge and soil mixture is six and five-tenths (6.5) or greater at the time of sludge application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown. A plan shall also be developed that demonstrates how the animal feed shall be distributed to preclude human ingestion, and the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses. Future property owners shall also be notified by a stipulation in the land record or property deed that states that the property received sludge at high cadmium application rates and that food chain crops, except for animal feed, shall not be grown due to possible health hazards.

Section 7. Polychlorinated Biphenyls. No waste site or facility shall exist or occur that places waste containing concentrations of polychlorinated biphenyls (PCBs) equal to or greater than one (1) mg/kg (dry weight) on the land. However, residual landfills may dispose of PCBs in accordance with their permit, and special waste and contained landfills may dispose of wastes containing PCBs equal to forty-nine (49) mg/kg (dry weight) or less.

Section 8. Disease. (1) Disease vectors. No waste site or facility shall exist or occur unless the on-site population of disease vectors is prevented or controlled through the periodic application of cover material or other techniques as appropriate to protect human health and the environment.

(2) Sewage sludge and septic tank pumpings. No waste site or facility shall exist or occur that applies sewage sludge or septic tank pumpings within three (3) feet of the surface of the land unless a process to significantly reduce pathogens has been utilized.

Section 9. Air. (1) No waste site or facility shall engage in open burning of wastes. This requirement does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, diseased trees, debris from emergency cleanup operations, or ordinance.

(2) No waste site or facility shall violate applicable air pollution requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 to 63.

Section 10. Safety. (1) Explosive gases. No waste site or facility shall allow the concentration of explosive gases generated by the facility to exceed:

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

(b) The lower explosive limit for the gases at the facility property boundary.

(2) Fires. No waste site or facility shall pose a hazard to the safety of persons or property from fires. This may be accomplished through compliance with Section 9 of this regulation and this section, through the periodic application of cover material or other techniques as appropriate.

(3) Access. No waste site or facility shall allow uncontrolled public access, unauthorized vehicular traffic, or illegal dumping of wastes. This requirement to ensure protection of human health and the environment may be met by using artificial barriers, natural barriers, or other methods as appropriate.

Section 11. Public Nuisance. No waste site or facility shall result in a public nuisance because of blowing litter, debris, or other waste or material.

Section 12. Wetlands. No new or expanded waste site or facility shall be located in wetlands.

Section 13. Karst. No waste site or facility shall allow pollution to enter karst terrain.

Section 14. Compliance. No waste site or facility shall violate any requirement of KRS Chapter 224 or regulations promulgated pursuant thereto.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road,

Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: This regulation establishes minimum standards for the protection of human health and the environment. The standards apply to all waste sites and facilities in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: The standards of this regulation are already in place for contained landfills and certain other facilities. For those facilities not already subject to these standards, additional costs may be incurred to assure that contamination of air, groundwater, and surface water does not occur. The actual facility costs will vary, based on such factors as waste characteristics, facility design and implementation, and ecological/physiographic characteristics of the site.

2. Continuing costs or savings: Maintaining compliance with this regulation is ongoing. The costs and savings are realized on an ongoing basis.

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: There is no affect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of this regulation. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes or policies that conflict with, overlap, or duplicate the proposed regulation. This regulation does duplicate that of 401 KAR 47:030; however, once the proposed regulation becomes effective, it is the intent of the Cabinet to repeal 401 KAR 47:030.

(a) Necessity of proposed regulation if in conflict: 401 KAR 47:030 provides environmental performance standards for "solid" waste sites or facilities. With the enactment of legislation creating "special" waste as a new and distinct type of waste, it is necessary to promulgate environmental performance standards that apply to all waste sites or facilities.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? No. The proposed regulation establishes environmental performance standards with which all waste sites or facilities are required to comply. To tier any of the provisions would have a detrimental impact on the protection of human health and the environment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The Resource Conservation and Recovery Act, the Endangered Species Act, the Clean Air Act, and the Clean Water Act mandate that Kentucky adopt standards protective of human health and the environment.

2. State compliance standards: KRS 224.10-100 establishes the powers and duties of the Cabinet to protect the public and the environment. This regulation complies with mandates of state and federal law.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? The requirements of this regulation are equivalent to the federal mandate.

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 Environmental Protection
Division of Waste Management

401 KAR 45:010. Definitions.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.01-010, 224.10-100, 224.40-100, 224.40-305, 224.40-605, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation defines essential terms used in connection with the management of special wastes.

Section 1. Definitions. Unless otherwise clearly indicated by their context, the terms in KRS Chapter 224 and this chapter shall have the meanings given in KRS 224.01-100 and this regulation.

(1) "Beneficial reuse" means the use or reuse of a special waste in a process or product in a manner that is consistent with the environmental performance standards of 401 KAR 30:031. Special waste used in a manner constituting disposal, or used to produce a product that is applied to the land, shall not meet the definition of beneficial reuse.

(2) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of an approved training course and examination. The following are categories of certified operators:

(a) "Landfarming operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a landfarming facility who is reasonably available to the site;

(b) "Landfill operator" means a certified operator who is the individual with primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is reasonably available to the site during operations; and

(c) "Composting operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a composting facility who is reasonably available to the site.

(3) "Closure" shall have the meaning specified in KRS 224.01-010.

(4) "Coal combustion by-products" means special waste including fly ash, bottom ash, and scrubber sludge residues produced by

coal-fired electrical generating units. This waste does not include residues of refuse derived fuels such as municipal waste, tires, and solvents.

(5) "Composting" means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner:

(a) "Composting" may include a process that creates an anaerobic zone within the composting material;

(b) "Composting" does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.

(6) "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(7) "Construction/operation permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(8) "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of this chapter.

(9) "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the approved permit application.

(10) "Interim operator" means a person who assumes the position of landfarming operator in the absence of a designated certified operator. An interim operator may be a person who has not completed training as specified in subsection (2) of this section.

(11) "Landfarming facility" means a facility for land application of sludges or other special waste by any method for purposes of disposal. It can be on any piece or pieces of land, subject to approval, 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.

(12) "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(13) "Special waste" shall have the meaning specified in KRS 224.50-760.

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.

Table 1. Acronyms and Abbreviations

CFR - Code of Federal Regulations.
EPA - Environmental Protection Agency
FDIC - Federal Deposit Insurance Corporation
FSLIC - Federal Savings and Loan Insurance Corporation
KAR - Kentucky Administrative Regulations
KPDES - Kentucky Pollutant and Discharge Elimination System
KRS - Kentucky Revised Statutes
NCUA - National Credit Union Administration
NPDES - National Pollutant and Discharge Elimination System
PCB - Polychlorinated biphenyl
POTW - Publically Owned Treatment Works
USC - United States Code
USDA - United States Department of Agriculture
USGS - United States Geological Survey

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: KRS Chapter 224 was amended by the 1991 special legislative session to remove "special waste" from the definition of "solid waste" making three distinct categories of waste - solid, special and hazardous. The proposed regulations of 401 KAR Chapter 45 are being promulgated to provide technical standards as special waste. Persons who previously managed such waste under the solid waste requirements of 401 KAR Chapters 47 and 48 will instead be subject to the special waste requirements of 401 KAR Chapter 45, including this regulation. Note that most of the requirements of 401 KAR Chapter 45, and this regulation, were previously established under the solid waste program. In this regard, this regulation affects all persons who manage, compost, landfarm or landfill special waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation sets forth definitions for this chapter, and therefore has no direct or indirect costs or savings to those affected.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note 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: The same reporting and paperwork requirements will exist under Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or

duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to all waste disposal sites, which would include special waste disposal sites. Kentucky has adopted these mandated standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS 224.40-305 and 224.50-760 mandate that the cabinet develop a regulatory program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and all special waste sites or facilities to comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the environmental performance standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, additional or different responsibilities or requirements than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 is required pursuant to KRS 224.40-305 and is a mechanism to ensure that special waste sites and facilities are constructed and operated in accordance with the federally mandated environmental performance standards.

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

401 KAR 45:020. Types of special waste permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the classification of special waste sites or facilities for permitting purposes.

Section 1. Overview. This regulation sets forth the type of permit a person is required to obtain prior to engaging in the disposal or management of special waste. The transition period for complying with requirements of this chapter is contained in Section 4 of this regulation.

Section 2. Permit Types. This section establishes the following types of special waste site or facility permits:

(1) Formal permit. A formal permitting process is established that includes the submittal of a complete application, review of the application, and permit issuance or denial by the cabinet. A formal permit shall be obtained by persons engaged in the following activities:

(a) Special waste landfill. This is a category of waste site or facility designed and operated to accept for disposal a limited number of special wastes that are characterizable. The administrative and technical requirements for a special waste landfill are found in 401 KAR 45:030 and 401 KAR 45:110.

(b) Landfarming and composting. This is a category of special waste site or facility that landfarms or composts special waste.

1. A special waste landfarming or composting site or facility that manages municipal wastewater treatment sludge is classified as a Type A or Type B facility according to the metal concentrations of the sludge and volume of sludge accepted at the site as specified in Section 2 of 401 KAR 45:100. A Type B facility may be exempt from some of the requirements of a formal permit as specified in Section 2 of 401 KAR 45:100.

2. Other special waste landfarming or composting is the category of site or facility that manages special waste, other than municipal wastewater treatment sludge, which is classified using parameters set forth in this regulation and additional parameters based upon the source, chemical and physical characteristics of the waste, volume of waste, and its potential for adverse impact on human health or the environment. Other special waste landfarming or composting facilities shall be classified as either a Type A or Type B facility in accordance with Section 2 of 401 KAR 45:100.

(2) Permit-by-rule. This is a category of waste site or facility permit for certain special waste management practices listed in 401 KAR 45:060 that are deemed to have a permit without the owner or operator having made application or registration with the cabinet.

(3) Registered permit-by-rule. This is a category of waste site or facility permit for certain special waste management practices listed in 401 KAR 45:070 that are deemed to have a permit without further action by the cabinet upon acknowledgement by the cabinet of a complete registration by the owner or operator.

(4) Emergency permit. This is a category of special waste site or facility permit for the short-term storage or disposal of special waste generated during certain emergency situations, issued in accordance with 401 KAR 45:135.

(5) Research, development, and demonstration permit. This is a category of special waste or facility permit to demonstrate unproven technology, issued in accordance with 401 KAR 45:135.

Section 3. Special Waste Formal Permit Phases. The application process to obtain a formal permit shall consist of two (2) phases as follows:

(1) Upon approval of a permit application, the cabinet shall issue a construction permit that authorizes the owner or operator to commence construction of a site or facility in accordance with the terms and conditions of the construction permit; and

(2) Upon completion of the construction phase the owner or operator shall notify the cabinet, in accordance with Section 1(11) of 401 KAR 45:140, that construction of the site or facility is complete.

The cabinet shall inspect the site or facility to ensure compliance with all construction permit requirements, and, upon execution of financial assurance and the submission of a fee specified in Section 2(1)(d) of 401 KAR 45:250, the cabinet shall issue a construction/operation permit.

Section 4. Transition from Solid Waste Site or Facility Permits to Special Waste Site or Facility Permits. (1) Within six (6) months of the effective date of this regulation, any person that possesses a solid waste landfill or landfarming permit that disposes of special waste as defined in KRS 224.50-760 issued before the effective date of this regulation shall file a notice with the cabinet that states the operator's intent to meet the requirements of this chapter by July 1, 1993.

(2) After July 1, 1993, no person shall operate a special waste landfill or special waste landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:

(a) The facility owner or operator possesses a permit issued or continued under 401 KAR Chapters 47 and 48;

(b) The facility owner or operator possesses a permit issued or modified to meet the technical standards of this chapter;

(c) An application for a permit modification for closure or conversion to a different classification under this chapter has been filed with the cabinet within twelve (12) months of the effective date of this regulation, and the cabinet has not yet rendered a decision with respect to the complete application; or

(3) An owner or operator of a site or facility that was previously regulated as a solid waste registered permit-by-rule, but is now regulated as a special waste registered permit-by-rule under 401 KAR 45:070, shall be deemed to have a special waste registered permit-by-rule without having to resubmit a registration.

(4) An owner or operator of a site or facility that was previously regulated as a solid waste permit-by-rule, but is now regulated as a special waste registered permit-by-rule, shall register with the cabinet in accordance with 401 KAR 45:070 by December 31, 1992.

Section 5. Solid Waste Facility Applications Pending on the Effective Date of this Regulation. Applications pending on the effective date of this regulation shall be revised to meet all requirements of this chapter prior to being determined technically complete.

Section 6. Closure Criteria for Sites or Facilities Not Applying for a Special Waste Permit. Any person disposing of special waste under a solid waste landfill or landfarming permit issued before the effective date of this regulation, who elects to cease operation at the facility by July 1, 1993, shall comply with the closure requirements of the solid waste permit and 401 KAR Chapters 47 and 48.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: KRS Chapter 224 was amended by the 1991 special legislative session to remove "special waste" from the definition of "solid waste" making three distinct categories of waste - solid, special and hazardous. The proposed regulations of 401 KAR Chapter 45 are being promulgated to provide technical standards as special waste. Persons who previously managed such waste under the solid waste requirements of 401 KAR Chapters 47 and 48 will instead be subject to the special waste requirements of 401 KAR Chapter 45, including this regulation. Note that most of the requirements of 401 KAR Chapter 45, and this regulation, were previously established under the solid waste program. In this regard, this regulation affects all persons who manage, compost, landfarm or landfill special waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation sets forth the types of special waste permits. These permit types previously applied to special waste being handled under the solid waste program. This regulation will have no direct or indirect costs or savings to those affected.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: Special waste landfarming, composting and all special waste landfill facilities are required to first obtain a formal permit. The proposed regulation requires persons who landfarm, compost or operate a landfill receiving waste that has been redesignated as special waste to notify the Cabinet of their intent to comply with 401 KAR Chapter 45.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no impact on direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed under KAR Chapters 47 and 48 for solid waste prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenues. Revenues to the state will be the same under KAR Chapter 45 since the same general permit application fee schedule is adopted for special waste facilities.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200 to 146.990, 224.01, 224.10, 224.40, 224.50, 224.70, 224.99, 16 USC 661 et seq., 1273 et seq., 1531 et seq., 50 CFR Part 402

STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760, 16 USC 661 et seq., 1273 et seq., 1531 et seq., 50 CFR Part 402

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the operating standards applicable to all special waste sites or facilities. This regulation establishes the procedures for obtaining a permit for a special waste site or facility.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit. All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information specified in this regulation. The applicant shall submit the application on a form approved by the cabinet and signed in accordance with Section 10 of this regulation. Engineering drawings, specifications and studies shall be certified by a professional engineer registered in Kentucky. The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements. (1) Except as otherwise provided in this section, any person managing special waste shall maintain a special waste site or facility permit as specified in Section 2 of 401 KAR 45:020.

(2) Specific exclusions.

(a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.

(b) Persons managing special waste during emergency situations such as:

1. A spill of a special waste;

2. An imminent and substantial threat of a spill of special waste; or

3. A spill of a material which, when spilled, becomes a special waste.

(3) Specific inclusions.

(a) Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site or facility permit. (b) Any person who initiates or continues special waste containment or disposal activities after emergency situations are taken shall be subject to all applicable requirements of this chapter for those activities.

(4) Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include but are not limited to:

(1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);

(2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);

(3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;

(4) KRS 146.200 to 146.360 and 401 KAR Chapters 4 and 5 (the Wild Rivers System); and

(5) KRS 146.410 to 146.990 and KAR Title 400 (the Nature Preserves System).

Section 4. Limitations of a Permit. (1) A permit may be modified or revoked during its term for cause as set forth in 401 KAR 45:040 and in 401 KAR Chapter 40.

(2) The issuance of a permit shall not convey any property rights or any exclusive privilege.

(3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. No person shall deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

(1) Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before the effective date of this regulation;

(2) Qualified for a permit-by-rule in accordance with 401 KAR 45:060;

(3) Qualified for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100;

(4) Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or

(5) Obtained a special waste formal permit in accordance with this chapter.

Section 6. Permit Required. (1) No person shall engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as specified in this chapter.

(2) No person shall engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 47 and 48.

(3) No person shall engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as specified in 401 KAR Chapters 31 to 39.

(4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and 401 KAR 45:110.

Section 7. New Special Waste Sites or Facilities. (1) No person shall begin physical construction of a new special waste site or facility without having received a special or solid waste permit.

(2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information specified in Section 8 of this regulation.

(3) The site shall be designed in accordance with the applicable requirements of this chapter.

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

(5) The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.

(6) If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.

Section 8. Application for a Special Waste Formal Permit. (1) Any person who is required to have a special waste site or facility permit under this chapter shall sign and submit a complete application to the cabinet. The application forms are:

(a) Persons applying for a special waste landfill permit shall use form DEP 7094A entitled "Application For A Special Waste Landfill Permit" (March 1992). The requirements contained in the special waste landfill permit application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of this chapter. The permit application form may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, KY 40601, (502)564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(b) Persons applying for a special waste landfarming facility permit shall use form DEP 7021A entitled "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" (March 1991), and form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" (March 1992). The requirements contained in forms DEP 7021A and DEP 7021B are incorporated in this regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday; and

(c) Persons applying for a special waste composting facility permit shall use form DEP 7021A entitled "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" (March 1992), and form DEP 7094D entitled "Application for a Special Waste Composting Facility Permit" (March 1992). The requirements contained in forms DEP 7021A and DEP 7094D are incorporated in this regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Ky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020 that the alternative information results in information equal to or better than that in this regulation to determine that the site and design comply with 401 KAR 30:031 and this chapter.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, form DEP 7094J entitled "Past Performance Information" (March 1992). The requirements contained in form DEP 7094J are incorporated in this regulation by reference. The past performance information is collected in accordance with the requirements of KRS 224.40-330(1) and (3). The information form may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this regulation, 401 KAR 45:100 or 401 KAR 45:110, and 401 KAR 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant in writing when the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under Section 4 of 401 KAR 45:050.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions taken under the appropriate statutory regulatory provisions.

(7) If the cabinet determines that a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require such additional information as it deems necessary in order to make a final determination to issue a permit or deny the permit application.

Section 9. Formal Permit Issuance. (1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements specified in this chapter and KRS Chapter 224.

(2) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be subject to the public information process as specified in 401 KAR 45:050. If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing the following information:

(a) The proposed design and specifications; and

(b) Any conditions in accordance with Section 2 of 401 KAR 45:140.

(4) The draft construction permit shall be based on the administrative record outlined in Section 3 of 401 KAR 45:050.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under Section 1 of 401 KAR 45:040, shall be subject to the public information process as specified in 401 KAR 45:050.

(6) After the close of the public comment period, the cabinet shall issue a final permit decision to issue or deny the construction permit.

(7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.

(8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.

(9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application and the requirements of this chapter and KRS Chapter 224.

(10) The applicant shall maintain a construction permit in full force and effect until the construction/operation permit is issued by the cabinet.

(11) A construction/operation permit shall be issued by the cabinet when:

(a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed; and

(b) A representative of the cabinet has inspected the site and verified in writing, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;

(c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and

(d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.

(12) The cabinet may issue a permit subject to specific conditions which include, but are not limited to, types of wastes which may be accepted or disposed, special operating conditions, schedules for compliance for corrective action, and the issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports. (1) Applications. All permit applications and modifications shall be signed as follows:

(a) For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million; or

3. A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

(c) For a limited partnership, by a general partner; or

(d) For a municipality or state, federal, or other public agency, by a principal executive officer. For purposes of this paragraph, a principal executive officer includes:

1. The ranking elected official;

2. The chief executive officer of the agency;

3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

4. A person authorized, in writing, to sign on behalf of a person described in subparagraphs 1, 2, and 3 of this paragraph. The written authorization shall specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position.

(2) Reports. All reports required by permits, and other information requested by the cabinet, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative must thus be either a named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past

performance of the owner, operator, and key personnel, as defined in KRS 224.01-010(44), of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits. (1) Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet. Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or this chapter.

(2) Special waste site or facility construction permits shall be effective for a fixed term not to exceed five (5) years.

(3) Special waste landfill construction/operating permits shall be issued for the anticipated life of the facility. A shorter period may be specified by the cabinet.

(4) Special waste landfarming facility construction/operation permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary.

(5) For permits issued under this regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of the permit any time prior to the expiration date of the permit. Issued permits may be reevaluated in accordance with the requirements of this chapter and KRS Chapter 224, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 1 of 401 KAR 45:040.

(6) Modification of term of permit. Except as provided in Section 14 of this regulation, the term of a permit shall not be extended by modification beyond the maximum duration specified in subsections (2) to (4) of this section.

(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) to (4) of this section.

Section 13. Renewal of Formal Permits. (1) Any application to renew a construction or construction/operation permit shall be submitted to the cabinet at least 180 days before the expiration date of the permit. Persons applying for the renewal of a permit shall use form DEP 7095 entitled "Application for Renewal of a Formal Permit" (March 1992). The requirements contained in the renewal application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) Applications to renew a construction or construction/operation permit shall be subject to a review in accordance with the requirements of this chapter.

(3) The cabinet, in issuing a renewal, shall consider whether all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions when deemed appropriate.

Section 14. Continuation of Expiring Permits. (1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted a timely application for renewal of a permit under Section 13 of this regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons.

(2) Effect. Permits continued under this section shall remain in full force and effect.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this regulation.

Section 16. Confidentiality of Information. (1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any such claim shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If no claim is made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects those persons who are required to obtain a permit to manage, process, landfarm, compost or landfill special waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation sets forth the requirements for obtaining, maintaining, and renewing special waste permits. The regulation refers to other regulations in 401 KAR Chapter 45 for specific information. Costs will be incurred in applying for, modifying, and renewing permits.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: The proposed regulation sets forth requirements for obtaining, maintaining, and renewing special waste permits and refers those affected to other regulations in 401 KAR Chapter 45 for specific information. Persons owning and operating certain special waste facilities will need to prepare applications and any necessary modifications.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special wastes.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulation or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities for requirements. The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the requirements for modification, transfer and revocation of special waste permits.

Section 1. Modification of Permits. A special waste site or facility permit may be modified during its term in accordance with this regulation. If a permit is modified, only the conditions subject to modification shall be reopened. A permit modification may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application. An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(1) Modification of formal permits. Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet. The permittee shall use form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2 of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.

(2) Modification of a registered permit-by-rule. Modifications requested by the registrant shall submit a new registration form in accordance with Section 4 of 401 KAR 45:070.

(3) Causes for modification. The following are causes for modification of formal permits by the cabinet:

(a) Material and substantial alterations or additions to the permitted special waste site or facility are being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(d) Modification of a closure plan is required under this chapter;

(e) The cabinet receives notification of expected closure and finds that any of the permit conditions are no longer warranted;

(f) The cabinet adjusts the level of financial responsibility required;

(g) The corrective action program specified in the permit has not brought the waste site or facility into compliance with the groundwater

protection standards within a reasonable period of time;

(h) To include a monitoring program meeting the requirements of 401 KAR 45:160;

(i) To approve a corrective action plan required by 401 KAR 45:160;

(j) To include conditions applicable in new or amended statutes and regulations;

(k) Modification is necessary to protect human health or the environment;

(l) To include conditions applicable as a result of a hearing or enforcement action as specified in 401 KAR Chapter 40;

(m) Ownership of the special waste site or facility changes;

(n) To expand the capacity of a special waste site or facility; or

(o) To add a new waste that contains different chemical characteristics than the waste source previously permitted.

Section 2. Procedures for Permit Modification. (1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.

(2) If the permittee requests the modification, the cabinet decides whether the request is justified in accordance with Section 1 of this regulation or for other good cause shown. If the cabinet determines not to modify the permit, it shall notify the permittee in writing and give a reason for the decision.

(3) If the cabinet makes a preliminary decision to modify a permit under this regulation, the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification is subject to public notice requirements, the permittee shall publish a notice in accordance with Section 4 of 401 KAR 45:050.

(4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.

(5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.

(6) The owners or operators of a special waste site or facility may request a hearing pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.

(7) All terms of an existing permit remain in effect during the permit modification request.

(8) A permit modification requesting a horizontal expansion shall be subject to the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared under Section 8 of 401 KAR 45:030, and shall be based on the administrative record required by Section 3 of 401 KAR 45:050.

Section 3. Transfer of Permits. (1) A permit is not transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application is required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(2) A person requesting to transfer a formal permit for an existing special waste site or facility shall use form DEP 7094C entitled "Application To Transfer Special Waste Permit" (March 1992). The requirements contained in the transfer application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer application form may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(3) The cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.

(4) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Periods of deficiency shall not be counted against the review time frame specified in subsection (3) of this section. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the notice of deficiency is grounds for disapproval of the transfer application.

(5) If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with Section 4 of 401 KAR 45:050.

(6) After the public notice has been published by the applicant, the cabinet shall provide a public comment period in accordance with Sections 5 to 8 of 401 KAR 45:050.

(7) After the close of the public comment period, the cabinet shall make a final decision on the transfer application.

(8) A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with Section 2 of 401 KAR 45:070.

Section 4. Modification, Suspension and Revocation of a Permit. The cabinet may modify, suspend or revoke a permit issued under this chapter for:

(1) Violation of any requirement of KRS Chapter 224, this chapter, or 401 KAR 30:031.

(2) Aiding, abetting or permitting the violation of KRS Chapter 224, this chapter, or 401 KAR 30:031.

(3) Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment.

(4) Violations of a condition or a variance of the special waste site or facility permit.

(5) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet.

(6) Failure to comply with an order issued by the cabinet.

(7) The facility is transferred to another person without prior approval of the cabinet.

(8) The cabinet shall follow the applicable procedures in this regulation and 401 KAR Chapter 40 in revoking any permit under this section.

(9) If a permit is revoked, the owner or operator may reapply.

(10) Owners or operators of special waste sites or facilities may file a request for a hearing pursuant to KRS 224.10-420 upon revocation of the permit.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects persons who have a permit who desire to transfer the permit to another person, persons who have a permit who desire to modify their permit or expand their special waste sites or facilities, and provides procedures to revoke permits.

(a) Direct and indirect costs or savings to those affected:

1. First year: The only direct and indirect costs associated with the proposed regulation are the amounts of fees required when those affected submit an application to transfer, modify or expand a permit. The fees are established in proposed 401 KAR 45:250.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: The proposed regulation sets forth the appropriate application forms to be submitted to transfer or modify a permit.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenues. Revenues to the state will be the same under KAR Chapter 45 that were required prior to the reclassification of certain wastes as special waste.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060 , and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:050. Public information procedures for special waste site or facility permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.90

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth public information procedures.

Section 1. Applicability. (1) Public information procedures shall apply to each person seeking:

(a) A new special waste landfill permit;

(b) A horizontal expansion of a special waste landfill;

(c) A Type A special waste landfarming or composting site or facility permit;

(d) A research, development, and demonstration permit;

(e) A transfer of ownership of a site facility with a formal special waste permit; and

(f) Approval of a new waste that contains different chemical characteristics than the waste source previously permitted.

(2) The cabinet may require public information procedures for other permit actions or modifications if it determines that a significant degree of public interest exists with respect to an application or modification.

Section 2. Fact Sheet. (1) A fact sheet shall be prepared by the cabinet for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in processing the permit application. The cabinet shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include:

(a) A brief description of the type of facility or activity that is the subject of the draft permit;

(b) The type and quantity of wastes that are proposed to be or are being stored, treated, or disposed;

(c) A brief summary of the basis for the proposed permit conditions, including reference to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 3 of this regulation;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this regulation and the address where comments shall be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures including public participation in the final decision; and

(f) Name and telephone number of a cabinet representative to contact for additional information.

Section 3. Administrative Record for Proposed Permits. (1) The provisions of a draft permit prepared by the cabinet under Section 9 of 401 KAR 45:030 shall be based on the administrative record.

(2) The administrative record shall consist of:

(a) The application and any supporting data furnished by the applicant;

(b) The draft permit or notice of intent to deny the application;

(c) The fact sheet prepared in accordance with Section 2 of this regulation;

(d) All documents cited in the fact sheet; and

(e) Other documents contained in the supporting file for the proposed permit.

(3) Material readily available at the cabinet's office need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet. This includes published material that is generally available, and that is included in the administrative record.

Section 4. Public Notice. (1) Upon notification by the cabinet that the application is complete, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located. Verification of publication shall be provided to the cabinet within thirty (30) calendar days of the publication date. The notice shall contain the following:

(a) Name and address of the cabinet's office processing the permit action for which notice is being given;

(b) Name and address of the permit applicant and, if different, of the facility or site regulated by the permit;

(c) A brief description of the business conducted or activity described in the permit application;

(d) A description of the proposed location of the special waste site or facility, including a description of the primary access roads;

(e) Name, address, and telephone number of a person from whom interested persons may obtain further information;

(f) The following statement: "Within thirty (30) days of the publication of this notice, any person who wishes to comment on the application may submit written comments and, if desired, request from the cabinet, a public meeting"; and

(g) Any additional information required by the cabinet.

(2) The cabinet may schedule a public meeting if a significant degree of public interest exists as a result of a public notice published under this section.

(3) Upon notification by the cabinet that a draft permit has been prepared, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located. Verification of publication shall be provided to the cabinet within thirty (30) days of the publication date. The notice shall contain the following:

(a) The information required by subsection (1)(a) to (e) of this section;

(b) The location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet, and application;

(c) The time and place of any hearing already scheduled and procedures by which the public may participate in the public comment period and public hearing;

(d) The location of the administrative record required by Section 3 of this regulation, including a local repository in the county in which the site or facility is proposed, the times at which the record is open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;

(e) The following statement: "Any person who wishes to comment on the draft permit decision for this special waste site or facility may file comments with the cabinet and, if desired, request a public hearing within thirty (30) days of the publication of this notice pursuant to Section 6 of 401 KAR 45:050."; and

(f) Any additional information required by the cabinet.

(4) Public notices may describe more than one (1) permit or permit action.

(5) Public notices shall be of a size to include not less than two (2) columns widths for advertising and shall be in a display format.

(6) The cabinet shall distribute the public notice specified in subsection (1) of this section to the following:

(a) The Kentucky Department of Fish and Wildlife Resources, the U.S. Fish and Wildlife Agency, the Advisory Council on Historic Preservation, the State Historic Preservation Officer, and other appropriate government authorities, including any other affected states;

(b) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(c) Each state agency, division, or department having any authority under state law with respect to the construction or operation of the proposed site or facility.

(7) The cabinet shall use any other public notice method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(8) In addition to the published public notices required in this section, an applicant shall deliver a notice that has been prepared by the cabinet to the following individuals:

(a) Landowners of all adjacent and abutting properties surrounding the proposed special waste site or facility; and

(b) Occupants of all buildings or units within a building on adjacent and abutting properties surrounding the proposed special waste site or facility.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or permit decision, and may request a public hearing if a hearing has not already been scheduled. The comment period shall commence on the date of publication of the public notice.

Section 6. Public Hearings. (1) The cabinet may hold a public hearing on the basis of written request or when a significant degree of public interest exists concerning a special waste site or facility

permit decision. The cabinet may hold a public hearing to clarify one (1) or more issues involved in the permit decision.

(2) Whenever a public hearing is held, a presiding officer shall be designated by the cabinet for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required.

(4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 7. Reopening of the Public Comment Period. (1) If any data, information, or arguments submitted during the public comment period, including information or arguments that any condition of the proposed permit or permit denial is inappropriate, appear to raise substantial new questions concerning a permit, the cabinet may:

(a) Prepare a new draft permit; or

(b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described in subsection (1) of this section, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

Section 8. Response to Comments. (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

(2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county which the site or facility is proposed.

Section 9. Adjudicatory Hearing. An aggrieved person's right to an adjudicatory hearing pursuant to KRS 224.10-420 commences upon the completion of the public comment and hearing period as provided in Sections 5, 6, and 7 of this regulation and upon the cabinet's rendering of a final permit decision in accordance with Section 9 of 401 KAR 45:030.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities: The proposed regulation affects all persons who apply for a special waste landfill permit and others whose permit applications raise important public issues.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes the cost of publishing a notice prepared by the Cabinet in a newspaper of general circulation in the county in which a proposed special waste site or facility is to be located.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: Consistent with current procedure, verification of publication of the advertisement must be provided to the cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special wastes.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:060. Special waste permit-by-rule.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the requirements for a special waste permit-by-rule.

Section 1. Permit-by-Rule. Notwithstanding any other provision of this chapter, the following special waste sites or facilities shall be deemed to have a permit without the owner or operator having made application or registration with the cabinet, provided the operation is a practice common to the industry, is not in violation of 401 KAR 30:031, and does not present a threat or potential threat to human health or the environment:

(1) Oil production brine pits and gas and oil drilling mud pits, during the active life of the pit, if the owner or operator:

(a) Has a KPDES or NPDES permit; and

(b) Complies with the conditions of the KPDES or NPDES permit;

(2) Temporary storage of special waste in piles;

(3) Injection wells used for disposal of special waste in compliance with an underground injection control permit issued by the U.S. EPA;

(4) Surface mining impoundments and other special waste surface impoundments in substantial compliance with KPDES permits;

(5) Surface impoundments that treat domestic sewage and that do not contain any industrial wastewater, or are publicly owned treatment works for the treatment of domestic sewage, if the facility is in compliance with the KPDES or NPDES permit;

(6) Disposal of fly ash, bottom ash, and scrubber sludge in an active mining operation, if the owner or operator of the mining operation:

(a) Has a mining permit issued under KRS Chapter 350 that includes the disposal of special waste; and

(b) Complies with the conditions of the mining permit; and

(7) Beneficial reuse of coal combustion by-products as an ingredient or substitute ingredient in the manufacturing of products, including but not limited to, cement, concrete, paint, and plastics; anti-skid material; highway base course; structural fill; blasting grit; roofing granules; and mine stabilization and reclamation material; provided that:

(a) The utilization of coal combustion by-products does not result in the creation of a nuisance condition;

(b) Erosion and sediment control measures consistent with sound engineering practices are undertaken;

(c) The use is not within 100 feet of existing streams, 300 feet of existing drinking water wells, or floodplains or wetlands, unless permission has been obtained from the appropriate regulatory agency;

(d) The generator characterizes the nonhazardous nature of the coal combustion by-products; and

(e) The generator submits to the cabinet an annual report that identifies the type and amount of waste released for reuse; the name and address of each recipient of waste; and the specific use, if known, each recipient made of the waste.

Section 2. Noncompliances. (1) The cabinet may take any appropriate enforcement actions, including corrective action or revocation, if a special waste permit-by-rule site or facility is not operating in substantial compliance with Section 1 of this regulation.

(2) The cabinet may, at its discretion, require the owner or operator of a special waste permit-by-rule site or facility to upgrade the permit to a registered permit-by-rule to ensure that the requirements of this chapter and the environmental performance standards of 401 KAR 30:031 are met.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects those entities that manage pumpings, oil production brine pits, gas and oil drilling, mud pits, waste piles, impoundments with a KPDES permit, beneficial reuse of special wastes, and codisposal of utility waste in a mining operation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings associated with the proposed regulation.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs (note any

effects upon competition): None.

(b) Reporting and paperwork requirements: None.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings associated with the proposed regulation.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with the proposed regulation.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local or state revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 47:030.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:070. Special waste registered permit-by-rule.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This chapter establishes requirements for a special waste registered permit-by-rule.

Section 1. Registered Permit-by-rule. (1) Persons engaged in the following activities shall be required to register with the cabinet:

(a) Sludge giveaway in accordance with Section 8 of 401 KAR 45:100;

(b) Beneficial reuse of special waste not specified in Section 1(7) of 401 KAR 45:060; and

(c) Facilities that treat and store processed special waste for distribution under Section 10 of 401 KAR 45:100.

(2) Special waste registered permit-by-rule sites or facilities shall not store, treat, reuse, or dispose of special waste without first submitting a registration to the cabinet and receiving acknowledgement, in writing, by the cabinet of acceptance of the registration in accordance with Section 2 of this regulation.

Section 2. Registration Procedure for Registered Permit-by-rule. (1) Persons required to obtain a registered permit-by-rule shall complete, sign, and submit form DEP 7059D entitled "Registered Permit-by-rule for Sludge Giveaway" (March 1992), form DEP 7059F entitled "Registered Permit-by-rule for Beneficial Reuse" (March 1992), or form DEP 7059G entitled "Registered Permit-by-rule for Storage and Treatment of Processed Special Waste" (March 1992). The requirements contained in forms DEP 7059D, DEP 7059F, and form DEP 7059G are incorporated in this regulation by reference. The cabinet may require that additional information be included in a registration. These registration forms may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) After submission of the appropriate registration form, the cabinet shall review the registration form. If the cabinet determines

upon examination of the registration that it fails to include all of the required information, the cabinet shall notify the owner or operator that the registration is deficient and that the owner or operator shall submit the requested information.

(3) Owners or operators of a registered permit-by-rule site or facility may begin operation of the site or facility when the cabinet acknowledges in writing receipt of a complete registration form.

Section 3. Operation During a Registered Permit-by-rule. (1) A site or facility operating under a registered permit-by-rule, except as provided in Section 4 of this regulation, shall not:

(a) Store, treat, reuse, or dispose of special waste not specified in the registration form; or

(b) Exceed the design capacities specified in the registration form.

(2) The owner or operator of a registered permit-by-rule site or facility shall comply at all times with 401 KAR 30:031, this regulation, and other requirements imposed by the cabinet.

(3) The owner or operator of a registered permit-by-rule site or facility shall comply with the applicable provisions of 401 KAR 45:100.

Section 4. Changes To a Registered Permit-by-rule. (1) The owner or operator of a registered permit-by-rule shall submit a revised registration identifying new types of special waste to be stored, treated, reused, or disposed at a site or facility if the special waste type was not previously identified in the registration.

(2) The owner or operator shall submit a revised registration prior to increases in the design capacity of processes used at a facility.

(3) The owner or operator shall submit a revised registration prior to changes in the processes for the storage, treatment, reuse, or disposal of special waste or use of additional processes.

(4) The owner or operator shall submit a revised registration prior to changes in owners or operators of the site or facility.

(5) Changes listed in subsections (1) to (4) of this section shall not be implemented until the cabinet acknowledges in writing receipt of the revised registration.

Section 5. Noncompliances. The cabinet may take any appropriate enforcement actions, including corrective action or revocation, if a special waste registered permit-by-rule site or facility is not operating in compliance with this regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact person: James Hale

(1) Type and number of entities affected: The proposed regulation affects those persons who participate in a sludge giveaway program, beneficially reuse special waste, or store and treat processed special waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings associated with the proposed regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed regulation requires persons who wish to give away sludge, beneficially reuse special waste, or store and treat processed special waste to file a registration with the cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative reasons why alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills,

landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

Agency contact person: James Hale

1.Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the environmental performance standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated environmental performance standards are met.

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

401 KAR 45:080. Financial requirements and bonds for special waste facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the managing, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the financial requirements for closure and postclosure of special waste sites or facilities.

Section 1. Applicability. The financial assurance criteria and bond requirements apply to the owner or operator of special waste landfills, Type A landfarming and composting sites or facilities, and research, development and demonstration sites or facilities, and other sites or facilities if required by the cabinet.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110.

(1) The estimate shall equal the cost of closing the special waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator shall base the cost estimate on the following elements:

(a) Design;
(b) Site grading and drainage;
(c) Hauling and placing of each element of the approved cap;
(d) Final grading and drainage of the cap;
(e) Revegetation of the cap; and
(f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance provided under Section 5 of this regulation if changes to the closure plan or special waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance provided under Section 5 of this regulation if he can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the special waste disposal site or facility until the owner or operator has been notified by the cabinet that he has been released from closure financial assurance requirements under Section 5 of this regulation.

Section 3. Postclosure Cost Estimate. (1) The owner or operator shall have a current, detailed written estimate, in dollars, of the cost of hiring a third party to conduct each phase of post-closure monitoring and maintenance of the special waste site or facility in accordance with the post-closure plan developed to satisfy the postclosure requirements of Section 4 of 401 KAR 45:100 and Section 5 of 401 KAR 45:110. The postclosure cost estimate for each phase of postclosure used to demonstrate financial assurance in Section 6 of this regulation shall be calculated by multiplying the annual cost estimate for each phase of postclosure by the number of years of postclosure care required.

(2) The cost estimate for each phase of postclosure shall be based on the most expensive costs of postclosure during that phase.

(3) The owner or operator shall increase the amount of the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this regulation if changes in the postclosure plan or facility conditions increase the maximum costs of postclosure.

(4) The owner or operator may request a reduction in the postclosure cost estimate and the amount of financial assurance provided under Section 6 of this regulation if he can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of postclosure remaining over the postclosure period.

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until he has been notified by the cabinet that he has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this regulation.

Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial mechanisms specified in Section 7 or 10 of this regulation, which satisfies the following criteria:

(1) The financial assurance mechanism shall ensure that the amount of funds is sufficient to cover the costs of closure and postclosure care;

(2) The financial assurance mechanisms shall ensure that funds shall be available in a timely fashion; and

(3) The financial assurance mechanisms shall guarantee the availability of the required amount of coverage prior to the initial receipt of special waste.

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility subject to this regulation shall establish, in accordance with Section 4 of this regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility subject to the regulation shall establish, in accordance with Section 4 of this regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to Section 4 of 401 KAR 45:100 or Section 5 of 401 KAR 45:110.

Section 7. Performance Bond. (1) Before the cabinet shall issue a construction/operation permit, the owner or operator of a special waste site or facility that is required to post financial assurance pursuant to this regulation shall complete a performance bond on Form DEP 7094E entitled "Performance Bond" (March 1992). The requirements contained in the performance bond are incorporated in this regulation by reference. The performance bond may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Ky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(2) To satisfy the financial requirement, the owner or operator shall submit a performance bond and one (1) of the following:

(a) A surety bond which is executed by filling in the required information on the performance bond submitted in accordance with subsection (1) of this section and by submitting a copy of the surety bond agreement to the cabinet;

(b) A letter of credit as set forth on Form DEP 7094F entitled "Irrevocable Letter of Credit" (March 1992). The requirements contained in the irrevocable letter of credit are incorporated in this regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(c) An escrow agreement as set forth on Form DEP 7094G entitled "Escrow Agreement" (March 1992). The requirements contained in the escrow agreement are incorporated in this regulation by reference. The escrow agreement may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564- 6716, between the hours of 8:00 a.m. to 4:30 p.m., Eastern Time, Monday through Friday;

(4) Other financial assurance as specified in Section 10 of this regulation.

Section 8. Release of Financial Assurance. (1) Financial assurance posted to assure proper closure of a special waste landfarming or composting facility shall be released in accordance with Section 4 of 401 KAR 45:100.

(2) Financial assurance posted to assure proper closure of a special waste landfill shall be released in accordance with Section 5 of 401 KAR 45:110.

Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure, and postclosure care of the facility. The budget shall be revised and submitted annually. When elements of the facility's permitting, construction, operation, closure, or postclosure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility which is exclusively owned and operated by a special waste generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact person: James Hale

(1) Type and number of entities affected: The proposed regulation affects those persons who landfarm or compost certain types of special waste and owners and operators of special waste landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation requires those persons holding special waste formal permits to execute a financial assurance document to assure that closure and post-closure care of special waste sites and facilities are financially provided for.

2. Continuing costs or savings: The costs of financial assurance continue until the cabinet has released the bonds upon satisfactory completion of closure and postclosure of special waste sites and facilities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting requirements associated with the proposed regulation. Paperwork requirements consist of completing the financial mechanisms specified in the proposed regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local or state revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions? Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the environmental performance standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated environmental performance standards are met.

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

401 KAR 45:090. Special waste operator certification.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.40-605, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation establishes the program for education, testing, and certification of operators of special landfarming sites or facilities in accordance with KRS 224.40-605.

Section 1. Applicability. (1) The requirements of this regulation apply to all special waste landfills, landfarms, and composting facilities operating under formal permits, as identified in 401 KAR 45:020, Section 2(1)(a) and (b).

(2) The owner or operator shall ensure that all technical operations at the special waste site or facility are conducted by or under

the direction of an individual with a valid certification under this regulation. The landfill, landfarming, or composting operator shall be reasonably available at the site or facility during operation.

(3) The certified operator shall ensure that all operations are conducted in compliance with this chapter.

(4) A special waste site or facility permit may be revoked or subject to other enforcement actions upon violation of the requirements of this regulation.

Section 2. Transition of Certification. (1) Persons holding a valid certification for landfill manager, landfill operator, and landfarming operator under 401 KAR 47:070 shall be deemed to hold a valid certification under this chapter until the certification expires. At the time a certification expires, the certificate holder shall obtain special waste certification under this regulation.

(2) Persons operating a special waste landfill who were not previously certified to operate a residual landfill under 401 KAR Chapter 47 shall obtain certification under this chapter within one (1) year of the effective date of this regulation.

(3) Persons operating a special waste composting or landfarming site or facility shall obtain certification within one (1) year of the effective date of this regulation.

Section 3. General Provisions for Landfills. (1) Each special waste landfill shall have a landfill operator certified in accordance with this regulation.

(2) No special waste landfill shall operate in the absence of a certified operator without the appointment of an interim operator in accordance with Section 11 of this regulation.

Section 4. General Provisions for Landfarming and Composting Facilities. (1) Each landfarming or composting facility shall have an operator certified in accordance with this regulation.

(2) No landfarming or composting facility shall operate in the absence of a certified operator without the appointment of an interim operator in accordance with Section 11 of this regulation.

Section 5. Application for Certification. (1) Persons desiring to be certified shall submit an application at least thirty (30) days prior to the scheduled training class. Applicants for training and examination shall use form DEP 6031 entitled "Application for Certification" (March 1992). The requirements contained in the application for certification are incorporated in this regulation by reference. The application may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(2) The cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination, and notify the applicant of the determination.

(3) No person shall be eligible for examination for certification unless that person completes the appropriate training course provided by the cabinet, unless an alternative training program is accepted by the cabinet in accordance with Section 6 of this regulation.

Section 6. Training Course Requirements. (1) The cabinet shall provide training courses for individuals desiring to become certified. All applicants for certification shall be required to attend a training course provided by the cabinet, unless alternate training is accepted under subsection (3) of this section.

(2) The training course shall address the technical and legal aspects of the facility type for which operator certification is sought.

(a) The training course for landfill operators shall include:

1. Permit application requirements for special waste landfills, including technical and administrative requirements;
2. Waste characterization;
3. Chemical and biologic reactions associated with the waste;
4. Hydrogeologic and engineering factors associated with the facility;
5. Operational requirements and achieving compliance with 401 KAR 30:031;
6. Duties and responsibilities associated with landfill management;
7. Requirements of this chapter as they apply to facility operation, including environmental monitoring, operations requirements, and maintaining compliance with 401 KAR 30:031;
8. Evaluating site suitability to receive wastes;
9. Environmental considerations in preventing violations of this chapter;
10. Maintaining equipment; and
11. Facility safety.

(b) The training course for landfarm and composting operators shall include:

1. Requirements of this chapter as they apply to facility operation and management;
2. Wastewater treatment processes;
3. Waste characterization;
4. Chemical and biological reactions associated with the waste;
5. Landfarming design and management;
6. Permit application requirements for special waste landfarms;
7. Environmental considerations in preventing violations of this chapter;
8. Achieving and maintaining compliance with 401 KAR 30:031;
9. Evaluating site suitability to receive waste;
10. Maintaining equipment;
11. Facility safety; and
12. Duties and responsibilities associated with operating a landfarm.

(3) The cabinet may accept alternate training courses, provided they result in a level of competence equivalent to that of participation in the cabinet's training course. It shall be the applicant's responsibility to submit documentation as the cabinet requires for an equivalency judgement of the alternate training course. This information shall contain at a minimum the following specifics: the course name; sponsoring agency; the date, location, and 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 a copy of the certificate received.

Section 7. Training and Examinations. (1) After training is complete, time shall be set aside for the purpose of examinations to determine the knowledge and ability of the applicant.

(2) Separate examinations shall be prepared to cover basic differences in the duties and responsibilities for the operation of each category of special waste site or facility.

(3) Applicants who fail to pass an examination may reapply for the examination at a regularly scheduled examination or by appointment with the cabinet. The cabinet shall require the applicant to attend the training session again if the applicant fails to pass the examination in three (3) attempts.

Section 8. Education and Equivalencies. (1) All applicants shall be evaluated by the cabinet as to education and experience as related to the appropriate category of special waste site or facility.

(2)(a) Applicants for landfill operator shall have completed high school, by graduation or by obtaining an equivalency certificate, and shall have a minimum of one (1) year of experience at a landfill facility.

(b) If an applicant for landfill operator does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the number of years of experience in operating a landfill or experience in a related field such as heavy equipment operator, road construction, surface mining.

(3)(a) Applicants for landfarming or composting operator shall have completed high school, by graduation or by obtaining an equivalency certificate, and shall have a minimum of one (1) year of experience at a landfarming facility.

(b) If an applicant for landfarming or composting operator does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the number of years of experience in operating a landfarming facility or experience in a related field such as wastewater treatment or water treatment in determining eligibility for examination on a year-for-year basis.

Section 9. Issuance of a Certificate. (1) Certification may be issued to individuals upon meeting the minimum education requirements, work experience, and the course work requirements of this regulation and passing the examination in accordance with Section 5 of this regulation.

(2) Certification shall not be valid if obtained through fraud, deceit, or the submission of inaccurate data.

Section 10. Issuance of Certificate. (1) A certification shall be issued for a period of five (5) years, at the end of which the certification shall expire, unless renewed. Renewal procedures and requirements shall be the same as those for a new certification.

(2) The certification of an operator whose employment at a special waste site or facility terminates shall remain valid until expiration or revocation of certification.

(3) Certificates shall be carried on the person of the certified operator during working hours at the facility, or shall be prominently displayed at the facility office.

(4)(a) The cabinet may revoke the certification of an operator if the operator:

1. Has practiced fraud or deception;

2. Has failed to perform his duties under this chapter;

3. Has failed to use reasonable care and judgement in performance of his duties under this chapter; or

4. Has knowingly or willfully violated the requirements of this chapter.

(b) Individuals who have had their certification revoked shall be ineligible for future recertification.

Section 11. Interim Operators. (1) The permittee shall be responsible for actions of an interim operator. The permittee shall notify the cabinet in writing if the special waste site or facility will not have a certified operator for more than fourteen (14) consecutive operating days.

(2) Consecutive operating days, as used in subsection (1) of this section, shall be determined as any days:

(a) When the special waste site or facility accepts waste, operates equipment, or otherwise performs the business of special waste management; and

(b) That occur in sequence, regardless of whether nonoperating days such as weekends or holidays fall in between.

(3) The notification required by subsection (1) of this section shall be provided at least ten (10) days prior to an anticipated absence, and immediately upon discovery of an unanticipated absence. The notification shall contain:

(a) The name, address, and qualifications of the interim operator;

(b) The length of time for which the permittee seeks to have an interim operator rather than a certified operator; and

(c) Reasons for replacement of the certified operator with an interim operator.

(4) The cabinet shall evaluate the qualifications of the designated interim operator and shall notify the permittee of the cabinet's determination in writing within thirty (30) days of receipt of the permittee's notice. The determination shall:

(a) Approve, conditionally approve, or deny the permittee's request for designation of the interim operator;

(b) Identify the length of time an interim operator may operate the special waste site or facility; and

(c) Specify conditions as appropriate to the site and the interim operator's qualifications.

(5) An interim operator shall obtain certification under this regulation within fifteen (15) months of becoming an interim operator.

(6) The cabinet may revoke the appointment of an interim operator in accordance with Section 10(4)(a) of this regulation. Revocation shall render the person ineligible for operator certification under Section 10(4)(b) of this regulation.

Section 12. Fees. (1) Fees for application for certification shall be:

(a) $125 for application for certification as a landfill operator;

(b) $125 for certification as a landfarming operator;

(c) Fifty (50) dollars for certification by reciprocity for all categories of operator; and

(d) $100 dollars for attendance at the certification training without taking the examination.

(2) Fees shall accompany applications and shall not be returned to those who do not qualify for a certificate.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11. 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992, at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify James Hale in writing at the address noted below by April 25, 1992, of their intent to attend. If no notification of intent

to attend the hearing is receive by that date, the hearing may be cancelled. Persons testifying at the hearing are requested to provide the division with a written copy of their testimony. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992.

CONTACT PERSON: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects all persons who are required to obtain certification to operate a special waste site or facility.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation sets forth fees for training and examination costs.

2. Continuing costs or savings: The proposed regulation requires that managers and operators attend training on an annual basis. There will be costs of training on a continuing basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed regulation requires that persons desiring to attend training complete an application.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed under KAR Chapters 47 and 48 for solid waste prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenues. Revenues to the state will be the same under KAR Chapter 45 since the same application fee schedule is adopted for special waste facilities.

(4) Assessment of alternative methods; reasons why alternative methods were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effect made to harmonize the proposed regulation with conflicting provisions? Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:050, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the of the stricter standard, or additional or different responsibilities or requirements: as prescribed in 401 KAR Chapter 45 ensure that federally mandated environmental performance standards are met.

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

401 KAR 45:100. Landfarming and composting of special waste.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50, 7 USC 136 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.50-760, 7 USC 136 et seq.

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste

site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth requirements for special waste landfarming sites or facilities and special waste composting sites or facilities.

Section 1. Applicability. The requirements in this regulation apply to any person disposing of or treating special waste by landfarming or composting.

Section 2. Classifications of Special Waste Landfarming and Composting Sites or Facilities. A special waste landfarming or composting site or facility is classified as a Type A or Type B facility after the cabinet reviews the Notice of Intent filed pursuant to Section 3 of this regulation. The classification is based on the type and quantity of sludge or other special waste to be accepted at the landfarm or composting site or facility. The following classifications are established:

(1) A Type A landfarm or composting facility is a site or facility that accepts Type A wastewater treatment sludge or other special waste. Type A wastewater treatment sludge is sludge with the following parameters:

Cadmium	Greater than 10 mg/kg;
Copper	Greater than 450 mg/kg;
Lead	Greater than 250 mg/kg;
Nickel	Greater than 50 mg/kg;
Zinc	Greater than 900 mg/kg.

(2) A Type B landfarm or composting facility is a site or facility that accepts Type B wastewater treatment sludge or other special waste. Type B wastewater sludge is sludge with the following parameters:

Cadmium	Less than or equal to 10 mg/kg;
Copper	Less than or equal to 450 mg/kg;
Lead	Less than or equal to 250 mg/kg;
Nickel	Less than or equal to 50 mg/kg;
Zinc	Less than or equal to 900 mg/kg.

The maximum amount of wastewater treatment sludge that may be processed by a Type B landfarm or composting site or facility is 250,000 gallons or 250 tons (dewatered) per calendar year. If the owner or operator is processing Type B sludge and exceeds this volume limitation, then the site or facility shall be classified as a Type A landfarm or composting facility. Unless otherwise required by the cabinet, an applicant for a Type B landfarming or composting permit shall be exempt from the requirements of publishing a public notice, the posting of financial assurance, the monitoring of groundwater, and postclosure care.

(3) One (1) time only disposal. An applicant for one (1) time only disposal of special waste by landfarming or composting methods shall submit an application for a Type B landfarming or composting facility unless otherwise directed by the cabinet.

(4) Other special waste. An application to landfarm or compost special waste other than municipal wastewater treatment sludge shall be classified using the parameters set forth in subsections (1) and (2) of this section and additional parameters based upon the source, chemical and physical characteristics of the waste, the volume of waste, and the waste potential for adverse impact on human health or the environment. After review of the notice of intent filed pursuant to Section 3 of this regulation, the cabinet shall classify the site or facility as either a Type A or Type B landfarming or composting facility. The applicant shall comply with all requirements in this chapter for the designated type of landfarming or composting facility.

(5) A special waste composting facility that exceeds the metals limits for Type A wastewater sludge may, at the discretion of the cabinet, be classified as a Type B facility depending upon the volume of special waste received, methods of composting and siting considerations.

(6) A special waste landfarm or composting site or facilities classification under this section shall be reevaluated based upon the annual analyses submitted under Section 6(19) or 9(5) of this regulation. The cabinet may reassign a landfarming or composting site or facility classification based on this submittal and require the owner or operator of the landfarm or composting site or facility to modify the permit accordingly.

(7) Classification under this section shall be based on the average concentration of these metals in a minimum of two (2) consecutive samples taken no closer than thirty (30) days apart. Metal concentration values shall be determined on a dry weight basis. Analysis shall be accomplished by determining the heavy metal concentration of the undried sample (wet weight) and converting to dry weight using percent solids. The following formula shall be used: mg/L or mg/kg (wet weight) divided by (% solids/100) = mg/kg dry weight. A single metal parameter shall be sufficient to require a sludge to be classified as Type A.

Section 3. Application Procedure for a Special Waste Landfarming or Composting Permit. (1) Notice of intent to apply. An applicant for a special waste landfarming or composting permit shall submit a notice of intent to apply as required under Section 8(1)(b) or (c) of 401 KAR 45:030. Upon review of the notice of intent to apply, the cabinet shall notify the applicant of the waste classification determination and designate the landfarming or composting facility as either a Type A or Type B facility. An applicant may be exempt from submitting a notice of intent prior to submitting the permit application required in subsection (2) of this section if the applicant is classifying itself as a Type A facility. However, the applicant is required to submit a notice of intent form with the permit application specified in subsection (2) of this section.

(2) Contents of landfarming or composting permit application. Upon determination of a waste classification, a person shall submit the designated permit application for a special waste landfarming or a composting facility as specified in Section 8(1)(b) or (c) of 401 KAR 45:030 to the cabinet. A landfarming application may include parcels of land that are not located contiguously.

(3) An applicant for a landfarming or composting facility permit shall comply with applicable requirements for a formal permit as specified in 401 KAR 45:030. An applicant for a Type A landfarming or composting facility shall also comply with the public notice requirement in 401 KAR 45:050, the financial assurance requirements of 401 KAR 45:080, the surface and groundwater requirements of 401 KAR 45:160, and the postclosure requirements of Section 4 of this regulation.

(4) Upon examination of geological aspects and other relevant factors in the permit application by the cabinet, the applicant may be required to prepare a groundwater monitoring plan to include location

and specifications of wells, monitoring parameters and monitoring schedules in accordance with 401 KAR 45:160. This plan shall be required for Type A landfarms or composting facilities.

(5) The cabinet shall not allow landfarming or composting practices that may present a threat to human health or the environment. The cabinet shall base a decision as to the land application or composting suitability of a particular special waste upon the ability of the waste to biodegrade in the environment, the potential for the waste to be managed in a manner consistent with 401 KAR 30:031, the likelihood that waste constituents will contaminate surface water or groundwater, the potential for nuisances from odors or unsightly conditions, and the potential for the waste to harm human health or the environment.

Section 4. Closure and Postclosure of Landfarming and Composting Facilities. (1) An owner or operator permanently ceasing to accept waste at a Type A or Type B special waste landfarming or composting site or facility shall submit to the cabinet a closure report that includes:

(a) The results of final soil samples taken in accordance with the construction/operation permit within eighteen (18) months following the last application of waste;

(b)1. Landfarming sites or facilities shall submit a historical summary of all landfarming, by subplot, showing the allowable and actual rates of special waste application, heavy metals and nitrogen, incorporating the annual landfarming review as set forth in Section 6(19) of this regulation; or

2. Composting sites or facilities shall prepare a historical summary of composting activities at the site incorporating the annual composting review report as set forth in Section 9(5) of this regulation.

(c) A certification from the owner or operator that the site or facility is closed and is in compliance with 401 KAR 30:031; and

(d) Any additional information required by the cabinet in the original landfarming or composting permit.

(2) The cabinet shall review the closure report and determine whether any additional monitoring or information shall be required to assure compliance of the site or facility with 401 KAR 30:031. If the site is not in conformance with 401 KAR 30:031 or the requirements of this chapter, the cabinet may take appropriate enforcement actions for violations of this chapter or KRS Chapter 224.

(3) A two (2) year postclosure monitoring maintenance period commencing on the first day after the facility permanently ceases accepting waste is required for all Type A landfarming and composting facilities and for any other landfarming or composting facility required to conduct groundwater or surface water monitoring under 401 KAR 45:160. During the postclosure monitoring and maintenance period, the owner or operator shall conduct groundwater and surface monitoring as required by 401 KAR 45:160, the facility's approved groundwater and surface water monitoring plans, and the terms of the facility's special waste permit.

(4) At the conclusion of the two (2) year postclosure monitoring and maintenance period, the owner or operator shall submit a certification that postclosure is complete and that the site or facility is in compliance with 401 KAR 30:031 and the terms of this chapter. The cabinet shall review the postclosure certification and if no additional monitoring or information is required and the site or facility is not subject to any enforcement actions for violations of this chapter or KRS Chapter 224, then the cabinet shall accept the owner's or operator's certification of postclosure.

(5) Upon acceptance of certification of postclosure, the cabinet shall release the financial assurance bond.

(6) The two (2) year postclosure monitoring and maintenance period may be extended if groundwater contamination as specified in Section 5 of 401 KAR 45:160 is documented and the owner or operator is required to submit a groundwater assessment plan.

(7) Any necessary environmental remediation steps or corrective action for groundwater contamination required under 401 KAR 45:160 shall be performed before the special waste landfarm or composting site or facility postclosure is certified as complete and financial assurance is released.

Section 5. Siting Requirements for Landfarming. Special waste landfarming sites or facilities shall comply with the following siting requirements:

(1) Waste shall not be applied in the 100-year floodplain unless the waste is injected or incorporated;

(2) Land application units shall have a minimum of four (4) feet of soil between the soil surface and both the seasonal high water table and bedrock;

(3) Waste shall not be applied on soils with a permeability rate greater than six (6) inches per hour or less than two-tenths (0.2) inches per hour; and

(4) Land application units shall not be located on land with a slope greater than fifteen (15) percent.

(5) All landfarming facilities shall comply with 401 KAR 30:031 and shall maintain the following buffer zones:

Required Buffer Zones
Minimum Distance in Feed From the Boundary
of the Application Zone

Structure or Object	Subsurface Injection or Incorporation	Surface Application
Residences & Occupied Buildings	200	300
Water Well	200	300
Surface Water Body	200	300
Karst Feature	200	300
Perennial Stream	200	300
Intermittent Stream	30	50
Ephemeral Stream	30	50
Property Line	30	50
Public Road	30	50

Section 6. Operating Requirements for Special Waste Landfarming Facilities. Special waste landfarming sites or facilities shall comply with the following:

(1) Prior to applying sludges to the land, all sludges shall be processed to significantly reduce pathogens as specified in Section 12 of this regulation.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available at the landfarming site during special waste application. All sludge applications shall be accomplished under the direction of

a certified landfarming operator.

(3) When surface application is used in conjunction with soil incorporation methods, incorporation shall occur within forty-eight (48) hours of sludge application.

(4) Surface application without incorporation into the soil shall not be used on land without established vegetative cover or crop residue of at least seventy-five (75) percent.

(5) No hazardous wastes or mixtures of hazardous and solid waste shall be disposed at, discharged to, or placed in a landfarming site.

(6) No toxic wastes or mixtures of toxic and nontoxic wastes regulated under 7 USC 136 et seq. (the Toxic Substances Control Act) shall be disposed at, discharged to, or placed in a landfarming site.

(7) The following agricultural use restrictions shall apply:

(a) Land spreading shall not occur on land where leafy vegetables or root crops for human consumption will be harvested within twelve (12) months;

(b) Land spreading shall not occur on land where crops for direct human consumption will be harvested within two (2) months;

(c) Dairy grazing shall be prohibited for six (6) months after land spreading. Other livestock grazing shall be prohibited for three (3) months;

(d) If the annual application rate of cadmium exceeds 0.44 pound per acre, food chain crops shall not be utilized in the cropping season following land application; and

(e) Special waste shall not be land spread where tobacco is to be harvested within five (5) years of waste application, if the annual application rate of cadmium from the sludge exceeds 0.44 pound per acre at any time during the life of the site.

(8) The general public shall be restricted from the application zone for a period of twelve (12) months after each application, unless the waste has undergone a process to further reduce pathogens in accordance with Section 12 of this regulation.

(9) Waste shall not be land spread on frozen, snow-covered, ice-covered, or water-saturated soil, or during any precipitation event.

(10) No waste shall be applied in excess of schedules and rates of waste application approved by the cabinet.

(11) No raw or unstabilized waste shall be landfarmed. The permittee shall maintain compliance with the ambient air quality standard for odor, as set forth in 401 KAR 53:010.

(12) The amount of any single surface application shall not be greater than an average one-half (1/2) inch in thickness.

(13) High pressure spray irrigation of sludge which produces aerosols shall be prohibited.

(14) Subplots shall be staked or otherwise clearly marked in the field.

(15) The owner or operator shall have a sign located at the entrance to the landfarming facility. The sign shall indicate the source and type of waste and the type of operation, the name of operator, the permit number, the contact person and the emergency telephone number.

(16) Surface water or waste ponding within the application zone shall be prohibited.

(17) Surface run-off and run-on shall be controlled to minimize the possibility of applied waste contaminating nearby surface water or adjacent land areas.

(18) Records of all landfarming activities shall be maintained on forms provided by the cabinet throughout the operation of the site. The records shall at a minimum contain the schedules and rates of waste application and all laboratory analyses. Records shall be made available to the cabinet upon request.

(19) Each landfarming owner or operator shall submit an annual report of landfarming activities to the cabinet sixty (60) days prior to the anniversary date of the permit issuance. The report shall be submitted on form DEP 7048 entitled "Annual Landfarming Review" (March 1992). The requirements contained in the annual landfarming review are incorporated in this regulation by reference. The review may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(20) Operational monitoring shall be performed on the following schedule:

(a) Soil shall be sampled annually in accordance with the soil monitoring plan in the approved permit application; and

(b) Waste from municipal wastewater treatment, municipal water treatment facilities shall be sampled in accordance with the following table, or more frequently if required by the cabinet. Other waste shall be sampled in accordance with a schedule approved by the cabinet. Waste shall be analyzed for solids content, pH, ammonium nitrogen (NH_4-N), nitrate nitrogen (NO_3-N), total Kjeldahl nitrogen, total phosphorus, total potassium, PCBs, chromium, copper, zinc, nickel, lead, and cadmium. Laboratory analysis results shall be reported in milligrams per kilogram wet and dry weight.

Required Sampling Schedule

Design Treatment Capacity (gallons per day)	Samples Per Year
Less than 1,000,000	2
1,000,001 - 10,000,000	4
More than 10,000,000	12

(21) Soil pH shall be maintained at six and five-tenths (6.5) or greater during crop production, hay production, or grazing.

(22) Special waste containing concentrations of PCBs greater than one (1) milligram per kilogram shall not be landfarmed.

(23) The maximum amount of metals from special waste that may be applied during the life of the site shall be based upon the cation exchange capacity (CEC) of the soil and shall be as follows:

	Maximum Amount of Metals Cation Exchange Capacity (meq/100g)		
Parameter	0-5	5-15	15+
Lead	500 lbs/ac.	1000 lbs/ac.	2000 lbs/ac.
Cadmium	4.46 lbs/ac.	8.92 lbs/ac.	17.84 lbs/ac.
Copper	125 lbs/ac.	250 lbs/ac.	500 lbs/ac.
Nickel	50 lbs/ac.	100 lbs/ac.	200 lbs/ac.
Zinc	250 lbs/ac.	500 lbs/ac.	1000 lbs/ac.

The following equation shall be used to determine the maximum number of tons of waste per acre that may be land spread without

exceeding the above limitations:

$$\text{Tons waste/acre} = \frac{\text{(lbs per acre for each parameter Table 4)}}{\text{(dry mg/kg of metal in waste sample)} \times 0.002}$$

(24) The amount of nitrogen land spread shall not exceed the nitrogen utilization rate of the vegetative cover in the application zone.

(25) If the laboratory analyses and calculations to determine quantities of metals applied to the soil discloses that the cumulative concentration of a contaminant is above the maximum level permitted under subsection (23) of this section, a written notice shall be given to the cabinet within ten (10) days of receipt of the monitoring results. The owner or operator shall cease further landfarming and submit to the cabinet within forty-five (45) days a report describing proposed corrective actions to be taken by the owner or operator. A notice shall be recorded on the property deed within forty-five (45) days of receipt of the monitoring results stating that the property has received special waste at concentrations exceeding permitted levels, and that food chain crops shall not be grown due to possible health hazards.

(26) In addition to the operating requirements in this section, the owner or operator who is landfarming Type A sludge shall sample surface water quarterly. Parameters to be monitored shall include pH, ammonium nitrogen (NH_4-N), fecal coliform bacteria, chromium, biological oxygen demand, total organic carbon, and total dissolved solids. A minimum of one (1) upgradient and one (1) downgradient sampling point shall be required.

(27) Owners and operators of Type A landfarming or composting facilities and all other designated facilities shall conduct groundwater monitoring in accordance with 401 KAR 45:160.

(28) If heavy metal applications exceed the amounts listed in subsection (23) of this section, the owner or operator shall immediately commence closure of the facility and immediately submit a closure report containing the information required by Section 4(1) of this regulation. The report shall also include a copy of the notice in the deed advising all future landowners in perpetuity that heavy metal concentrations exceed those allowed by this regulation.

(29) Landfarming sites and facilities shall comply with all requirements set forth in 401 KAR 45:140.

Section 7. Application Rates for Landfarming Sites or Facilities. (1) The annual application rate shall be the lesser of the application rates as determined for cadmium and for nitrogen utilization.

(2) Determine the percent of available organic nitrogen in the special waste using the following calculation: Percent available organic N = (percent total N) - (percent NH_4-N) - (percent NO_3-N).

(3) Determine the amount of nitrogen that shall be available for plant uptake at the landfarming site using one (1) of the following calculations depending on the application method:

(a) Incorporation: Lbs available N/ton = (percent NH_4-N x 20) + (percent NH_3-N x 20) + (percent available organic N x 4).

(b) Surface application: Lbs available N/ton = (percent NH_4-N x 10) + (percent NO_3-N x 20) + (percent available organic N x 4).

$$\text{Tons/acre} = \frac{\text{Nitrogen Utilization Rate of the Vegetative Cover}}{\text{Lbs available organic N/ton}}$$

(4) The annual application rate of cadmium from special waste shall not exceed 0.44 pound per acre. The annual application rate shall be determined using the following calculation:

$$\text{Tons/acre} = \frac{\text{pounds of allowable cadmium per acre}}{\text{(mg per kg of cadmium in sample)} \times 0.002}$$

Section 8. Sludge Giveaway Program. A municipal water or wastewater treatment sludge generator may give away sludge equal to or less than the metal concentration limitation specified in Section 2(2) of this regulation to persons for subsequent use as a soil conditioner. This program shall be operated under a registered permit-by-rule in accordance with this regulation and 401 KAR 45:070. The maximum amount of sludge that may be distributed annually to any person is limited to 2000 pounds (dry weight).

(1) During operation of the giveaway program the generator shall:

(a) Maintain a list of names and addresses of all persons receiving the sludge;

(b) Submit annually to the cabinet the sludge analysis performed in accordance with the schedule contained in Section 6(20) of this regulation, and a copy of the distribution log;

(c) Provide to persons receiving waste, copies of the sludge analyses and a brochure, approved by the cabinet, explaining the proper procedures to be utilized in the landfarming of sludge; and

(d) Use a process to significantly reduce pathogens in accordance with Section 11 of this regulation.

(2) Unless the sludge has undergone a process to further reduce pathogens in accordance with Section 12 of this regulation, it shall not be used in a manner likely to allow direct human contact for a period of twelve (12) months from the date of application.

(3) The sludge generator shall maintain another approved means of sludge disposal.

Section 9. Operating Requirements for Composting Facilities. Composting facilities shall comply with the following:

(1) The owner or operator shall dispose in a permitted waste management facility any materials that do not meet standards for distribution within one (1) month of such a determination;

(2) After the compost has completed the curing process, at least seventy-five (75) percent of the compost shall be distributed within one (1) year;

(3) Use one (1) or more processes to further reduce pathogens in accordance with Section 12 of this regulation;

(4) Process and store compost on an impermeable pad, or provide information on soils at the facility and a groundwater quality assurance plan;

(5) Each composting owner or operator shall submit an annual report to the cabinet sixty (60) days prior to the anniversary date of the permit issuance. The report shall be submitted on form DEP 7048A entitled "Annual Composting Review" (March 1992). The requirements contained in the annual composting review are incorporated in this regulation by reference. The review may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601 (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday; and

(6) Composting sites or facilities shall comply with all requirements set forth in 401 KAR 45:140.

Section 10. Usage of Composted and Treated Special Waste. (1) Composted special waste and treated special waste that has undergone additional treatment to a level of a process to further

reduce pathogens, as described in Section 12 of this regulation, shall meet the following criteria in order to be distributed or marketed to the general public:

(a) The final product shall not exceed Type B metals concentration limits as specified in Section 2(1)(b) of this regulation.

(b) A brochure shall accompany all compost or treated special waste sold or given away. The brochure shall be subject to cabinet approval and shall contain, at a minimum, the following information:

1. The source or sources of the original material;

2. A recent analysis within six (6) months of the finished product; and

3. Suggested uses and application rates for the product; and

(c) The quantity distributed shall be limited to fifty (50) tons per person per year for composted special waste and fifteen (15) tons per person per year for treated special waste.

(2) A final product that exceeds metals concentration limits or exceeds the quantity limitation set forth in subsection (1) of this section shall be disposed or distributed in accordance with the facility's permit or otherwise directed by the cabinet.

Section 11. Processes to Significantly Reduce Pathogens. processes to significantly reduce pathogens shall include one (1) or more of the following:

(1) Aerobic digestion. The process shall be conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from sixty (60) days at fifteen degrees Celsius (15° C) to forty (40) days at twenty degrees Celsius (20° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(2) Air drying. Liquid sludge shall be allowed to drain or dry on under-drained sand beds, or paved or unpaved basins in which the sludge shall be at a depth of nine (9) inches. Air drying shall be conducted for a minimum of three (3) months, with two (2) months of temperatures which average on a daily basis above zero degrees Celsius (0° C).

(3) Anaerobic digestion. The process shall be conducted in the absence of air at residence times ranging from sixty (60) days at twenty degrees Celsius (20° C) to fifteen (15) days at thirty-five degrees Celsius (35° C) to fifty-five degrees Celsius (55° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(4) Composting. Using the within-vessel, static aerated pile or windrow composting methods, the special waste shall be maintained at minimum operating conditions of forty degrees Celsius (40° C) for five (5) days. For four (4) hours during this period, the temperature shall exceed fifty-five degrees Celsius (55° C).

(5) Lime stabilization. Sufficient lime shall be added to produce a pH of twelve (12) for two (2) hours of contact time.

(6) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

Section 12. Processes to Further Reduce Pathogens. Processes to further reduce pathogens shall include one (1) or more of the following:

(1)(a) Composting.

1. Using the within-vessel composting method, the waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

2. Using the static aerated pile composting method, the waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

3. Using the windrow composting method, the waste shall attain a temperature of fifty-five degrees Celsius (55° C) or greater for at least fifteen (15) days during the composting period. Also, during the high temperature period, there shall be a minimum of five (5) turnings of the windrow.

(b) Heat drying. Dewatered sludge cake shall be dried by contact with hot gases, and moisture content shall be reduced to ten (10) percent or lower. Sludge particles shall reach temperatures in excess of eighty degrees Celsius (80° C), or the wet bulb temperature of the gas stream in contact with the sludge at the point when it leaves the dryer shall be in excess of eighty degrees Celsius (80° C).

(c) Heat treatment. Liquid sludge shall be heated to 180 degrees Celsius (180°C) for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid sludge shall be agitated with air or oxygen to maintain aerobic conditions at residence times of ten (10) days at fifty-five to sixty degrees Celsius (55° - 60° C), with a volatile solids reduction of at least thirty-eight (38) percent.

(e) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the methods in paragraphs (a) to (d) of this subsection.

(2) Any of the processes described in paragraphs (a) to (d) of this subsection, if added to the processes described in Section 11 of this regulation, further reduce pathogens. Because the processes listed in paragraphs (a) to (d) of this subsection, on their own, do not reduce the attraction of disease vectors, they are only add-on in nature:

(a) Beta ray irradiation. Sludge shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C).

(b) Gamma ray irradiation. Sludge shall be irradiated with gamma rays from certain isotopes, such as Cobalt-60 and Cesium-137, at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C).

(c) Pasteurization. Sludge shall be maintained for at least thirty (30) minutes at a minimum temperature of seventy degrees Celsius (70° C).

(d) Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the methods described in paragraphs (a) to (c) of this subsection.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will

be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects persons who landfarm or compost special waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: The costs associated with the proposed regulation consist of laboratory analysis of the special waste being landfarmed or composted and meeting the requirements to significantly reduce pathogens in the special waste. These costs are offset due to the savings of not paying to landfill these wastes.

2. Continuing costs or savings: The costs and savings are ongoing.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: Formal permits are required for landfarming and composting. As with the current solid waste program, persons composting and landfarming are required to complete periodic laboratory analyses of the special waste, and to maintain accurate records of recipients of processed waste and land application of processed waste.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort to harmonize the proposed conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:110. Technical and operating requirements for special waste landfills.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets

forth the technical and operating requirements for special waste landfills.

Section 1. Design Requirements. The engineering design for a special waste landfill shall demonstrate compliance with 401 KAR 30:031 and the siting standards of 401 KAR 45:130 considering the following:

(1) The physical and chemical characteristics of the waste, including compatibility of the waste with the liner, if required; cover materials, if required; and water that may come in contact with the waste;

(2) Volume of waste;

(3) The climatic conditions in the area;

(4) The permeability of the liner material, if required. The liner shall assure containment of the waste on site and compliance with 401 KAR 30:031;

(5) The properties of the soil underlying the facility;

(6) Hydrogeologic characteristics of the site including quality, quantity, current use, and direction of groundwater flow;

(7) The design of the facility leachate control system, run-off control system, and gas migration control, if required, as it relates to the physical and chemical characteristics of the waste, the climatic conditions of the specific location, the volume of leachate and contaminated run-off collected at the facility;

(8) The proximity of the facility to surface water and groundwater;

(9) The potential for gas emissions and odors; and

(10) Any additional requirements specified by the cabinet.

Section 2. Construction Quality Control Plan. (1) An applicant for a special waste landfill permit shall submit a construction quality control plan conforming to Section 4 of this regulation containing the following elements:

(a) The persons responsible for each part of the quality control plan;

(b) Frequencies and specifications for inspections and tests;

(c) Forms to be used;

(d) Survey control system of plan views and cross-sections for such inspections and tests; and

(e) A statement to be used for certifying that the quality control plan was followed by the owner or operator.

(2)(a) The construction quality control plan shall provide assurance that the layers of the homogeneous low permeability soil liners, if required, are compacted using nonvibratory compactors with full depth penetrating feet with a minimum of six (6) passes per soil layer. The compacter ballast shall be varied to prevent reaching the desired proctor density within less than six (6) passes. The foot length shall be one (1) inch longer than the loose soil layer thickness.

(b) Smooth rollers may be used at the end of each work period to seal the surface from rain infiltration.

Section 3. Operating Requirements. (1) The owner or operator of a special waste landfill shall operate the facility in accordance with the requirements of KRS Chapter 224, the requirements of this chapter, the conditions of the special waste landfill permit issued by the cabinet, and the operational plan filed with and approved by the cabinet.

(2) The owner or operator of a special waste landfill shall operate the facility in such a manner to ensure compliance with 401 KAR 30:031.

(3) The owner or operator of a special waste landfill shall inspect the site and operation at a sufficient frequency to ensure compliance with 401 KAR 30:031.

(4) The owner or operator of a special waste site or facility that is open to the public shall have a sign located at the entrance that indicates the landfill name, the names of the owner and the operator, the hours that the landfill is accepting wastes, the permit number, the contact person, and the emergency telephone number.

(5) One (1) copy of the permit application shall be returned to the permittee. The permit with all applicable conditions shall be conspicuously displayed at all special waste sites or facilities with a formal permit for the duration of the permit period. A copy of the approved application, including plans, shall be available at the site, or at a location approved by the cabinet.

(6) Records and reports shall be maintained and submitted in accordance with the requirements of Section 4 of this regulation and Section 1(8) of 401 KAR 45:140.

(7) The cabinet may place additional requirements on the owner or operator of a special waste landfill if necessary to ensure compliance with 401 KAR 30:031.

Section 4. Special Waste Landfill Recordkeeping and Reporting. An applicant for a special waste landfill permit shall submit plans for a recordkeeping and reporting system. The plan shall meet the following requirements:

(1) Surface water and groundwater samples shall be collected and analyzed according to 401 KAR 45:160 and the following criteria:

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The owner or operator shall retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the cabinet at any time. In addition, the owner or operator shall maintain records from all groundwater monitoring wells and associated groundwater surface evaluations, for the active life of the facility, and for the closure care period as well.

(c) Records of monitoring information shall include:

1. Date, exact place, and time of sampling or measurements;
2. Individual who performed the sampling or measurements;
3. Date analyses were performed;
4. Individual who performed the analyses;
5. Analytical techniques or methods used; and
6. Results of such analyses.

(2) A summary of the monitoring information shall be submitted to the cabinet semiannually.

(3) If the owner or operator is conducting surface water and groundwater monitoring that meets the requirements of this chapter as part of a permit other than the special waste permit, certified copies of records and reports may be submitted to the cabinet rather than conducting and maintaining duplicative monitoring requirements.

Section 5. Closure and Postclosure Requirements. (1) A special waste landfill shall be closed in a manner that complies with 401 KAR

30:031. The owner or operator of a special waste landfill shall submit a closure plan that includes a closure design as specified in subsection (2) of this section, a closure cost estimate in accordance with Section 2 of 401 KAR 45:080, a narrative discussing the closure plan's conformance with 401 KAR 30:031 and a schedule for implementation of the plan.

(2) A closure plan shall have a closure design prepared to specify the function and design of the final cover on the special waste landfill considering:

(a) The type and amount of waste in the facility;

(b) The mobility and expected rates of migration of the waste or leachate constituents;

(c) The site location, topography, surrounding land use, and final site use;

(d) The climatic conditions in the area;

(e) The characteristics of the cover material including its chemical and physical composition, erodibility, slope stability, final surface contours, thickness, porosity, permeability, slope, length of run of slope, and type of vegetation on the cover; and

(f) The geology and soil profiles and surface and subsurface hydrology of the site.

(3) A postclosure plan shall be submitted by the owner or operator of the special waste landfill that includes a monitoring and maintenance schedule for the landfill and a postclosure cost estimate in accordance with Section 3 of 401 KAR 45:080.

(4) Upon cessation of special waste disposal activities at the landfill, the owner or operator shall implement the approved closure plan in accordance with its terms and the requirements of this chapter. An owner or operator may be required to revise a closure plan prior to implementation.

(5) Upon completion of the implementation of an approved closure plan, a special waste landfill shall be maintained under its postclosure plan for a minimum of five (5) years in a manner that complies with 401 KAR 30:031.

(6) The cabinet may release a portion of the financial assurance executed in accordance with 401 KAR 45:080 in an amount that exceeds the funds necessary to maintain the final cover to correct vegetative growth and erosion, and the cost of postclosure environmental monitoring two (2) years into the five (5) year period established in subsection (5) of this section. These funds shall be released upon inspection of the permit records and the site to determine that it is in compliance with all regulatory requirements, the terms of its closure plan and it has at least a ninety (90) percent permanent vegetative cover or other cover as approved by the cabinet. The excess funds shall be released within 180 days of the cabinet's determination of the existence of excess financial assurance.

(7) The owner or operator of a special waste landfill shall record a notice that shall in perpetuity notify any potential purchaser of the property of the location and time of the operation of the facility, the nature of the waste placed in the site and a caution against future disturbance of the area. This notice shall be recorded in accordance with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to acceptance of certification of closure of the landfill.

(8) At the conclusion of the five (5) year pos-closure monitoring period, the owner or operator of the special waste landfill shall submit a certification that closure and postclosure of the site is complete in accordance with the approved closure and postclosure plans, and that the site is in conformance with the terms of this chapter and 401 KAR 30:031. The cabinet shall review the certification, conduct a site visit and review the permit records to determine if the site is closed in accordance with this chapter, 401 KAR 30:031, and KRS Chapter 224. If the certification of closure is accurate and there is no outstanding environmental violations at the site, the cabinet shall accept the certification of closure and, within 180 days of accepting the certification, release any remaining financial assurance executed under 401 KAR 45:080.

(9) Any necessary environmental remediation steps or corrective action for groundwater contamination required under 401 KAR 45:160 shall be performed before the special waste landfill postclosure is certified as complete and financial assurance is released.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner

APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects persons who own or operate special waste landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation sets forth minimum technical requirements for a special waste landfill. The only costs resulting from this regulation are those required to operate the facility in compliance with environmental performance standards. These costs are merely a normal "cost of doing business" in the operation of the facility.

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 or paperwork requirements associated with the proposed regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effects on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:130. Siting requirements for special waste landfills.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This regulation sets forth the siting requirements for new special waste landfills and for horizontal expansions to the permitted waste boundaries of special waste landfills permitted prior to the effective date of this regulation.

Section 1. Buffer Zones. Wastes shall not be placed:

(1) Within 250 feet of an intermittent or perennial stream unless a water quality certification has been issued pursuant to 401 KAR 5:029 to 401 KAR 5:031;

(2) Within the zone of collapse of deep-mine workings or within the critical angle of draw of such workings;

(3) Within 250 feet of a sinkhole, or other karst feature suggesting the rapid transmission of water to the water table; or

(4) Within 100 feet of the property line.

Section 2. Floodplains. Waste disposed in special waste landfills shall not be placed within the 100-year floodplain of the waters of the Commonwealth unless the applicant complies with 401 KAR 30:031 concerning base flow restriction, temporary water storage capacity reduction, and waste washout. If available, empirical data shall be used to determine the frequency of flood exposure. If data are not available, the frequency of flood exposure shall be established by the unit hydrograph technique.

Section 3. Site Suitability. (1) Special waste landfills shall not be sited in an area unless the applicant can demonstrate to the satisfaction of the cabinet that:

(a)The uppermost aquifer is capable of being monitored in a manner that detects the presence of any constituent listed in 401 KAR 45:160; and

(b) Corrective action of the uppermost aquifer is capable of being performed in accordance with 401 KAR 45:160.

(2) If the requirements of subsection (1) of this section cannot be achieved, the owner or operator may propose an equivalent statistical procedure that provides reasonable confidence that the migration of leachate from the site is capable of being detected.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects those persons who own or operate special waste landfills.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation will impose certain siting restrictions on special waste landfills. This will render some lands unsuitable for these landfills.

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 or paperwork requirements associated with the proposed regulation.

(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 associated with the proposed regulation.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with the proposed regulation.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:135. Requirements for emergency and research, development, and demonstration permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 24.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all special waste sites or facilities. This regulation sets forth the requirements for an emergency permit and a research, development, and demonstration permit.

Section 1. Emergency Permit. (1) The cabinet may issue an

emergency permit that allows for the disposal or temporary storage of special waste in response to a situation that poses an imminent and substantial threat to human health or the environment. However, an emergency permit shall only be issued when the circumstances preclude the processing of a permit of appropriate classification, and the permitted site would not create an endangerment to human health or the environment.

(2) An emergency permit:

(a) Shall be oral or written. If oral, it shall be followed in five (5) days by a written emergency permit request;

(b) Shall not exceed ninety (90) days in duration;

(c) Shall clearly specify the special wastes to be received, and the manner and location of treatment, storage, or disposal;

(d) May be unilaterally terminated by the cabinet at any time if the cabinet determines that termination is appropriate to protect human health or the environment;

(e) Shall incorporate to the extent possible, and not inconsistent with the emergency situation, all applicable requirements of this chapter and 401 KAR 30:031;

(f) Shall specify that all remaining special waste is to be removed at the end of the term of the emergency permit to a properly permitted special waste site or facility in order to be exempted from closure and financial requirements of this chapter; and

(g) Shall specify that failure to comply with the conditions of the emergency permit shall be grounds for the cabinet to take any appropriate enforcement action including an action to recover the cost of proper closure.

Section 2. Research, Development, and Demonstration Permits. (1) The cabinet may issue a research, development, and demonstration permit for any special waste treatment or disposal site or facility that proposes to utilize an innovative and experimental special waste technology or process for which permit standards for such experimental activity have not been promulgated under this chapter. The permit shall include terms and conditions that will assure protection of human health and the environment. In issuing research, development, and demonstration permits, the cabinet shall:

(a) Provide standards for the construction of the facility, and authorize operation of the facility for not longer than two (2) years, unless the permit is renewed as provided in subsection (4) of this section;

(b) Provide authorization for the receipt, storage, and disposal by the facility of only those types and quantities of special waste that the cabinet deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of the technology or process on human health and the environment; and

(c) Include requirements necessary to protect human health and the environment including, but not limited to: monitoring, operation, financial responsibility, closure, corrective action, testing, and reporting.

(2) The processing of a research, development, and demonstration permit shall be accomplished on a case-by-case basis. The cabinet may, consistent with the protection of human health and the environment, modify or waive permit issuance requirements in this chapter except there shall be no modification or waiver of the requirement to post financial assurance in accordance with 401 KAR 45:080 or the provisions of 401 KAR 45:050 regarding public notification.

(3) The cabinet may order an immediate termination of all operations at the site or facility at any time it is determined that termination is necessary to protect human health or the environment.

(4) Permits issued under this Section may be renewed one (1) time for a period not to exceed two (2) years.

(5) Persons applying for a new or renewal of a research, development, and demonstration permit shall use form DEP 7094B entitled "Application For A Research, Development, and Demonstration Permit" (March 1992). The requirements contained in the research, development, and demonstration permit application are incorporated in this regulation by reference. The cabinet may require that additional information be included in the application to ensure the protection of human health and the environment. The application may be obtained from the Division of Waste Management, 18 Reilly Road, Frankfort, KY 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

(6) The cabinet, in issuing a research, development and demonstration permit, shall prepare as a permit condition a list of statutes and regulations with which the owner or operator of the facility is required to comply. The cabinet shall determine the groundwater monitoring, closure, postclosure, financial assurance obligations, and reporting requirements of the owner or operator and shall list them as a permit condition.

(7) The owner or operator of a research, development, and demonstration site or facility shall submit a renewal application at least 180 days prior to the expiration of the initial permit.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact person: James Hale

(1) Type and number of entities affected: The proposed regulation affects those persons who desire to conduct research, development and demonstration of new special waste processing techniques. The proposed regulation also affects entities that experience an emergency and provides for the temporary or permanent disposal of special waste in response to the emergency.

(a) Direct and indirect costs or savings to those affected:

1. First year: The costs associated with the proposed regulation consist of fees to be paid to the cabinet at the time an application is submitted.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Persons requesting an emergency permit must submit a written permit request. Persons requesting a research, development and demonstration permit must submit an application.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The same reporting and paperwork requirements will exist under KAR Chapter 45 that existed prior to the reclassification of certain wastes as special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the environmental performance standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements:

The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:140. Conditions applicable to all special waste permits.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the conditions applicable to all special waste permits.

Section 1. Conditions Applicable to All Permits. The conditions applicable to a special waste site or facility shall be incorporated into the permit either expressly or by reference.

(1) Duty to comply. The owner or operator shall comply with all conditions of the permit and all approved plans in the permit application. Any permit noncompliance constitutes a violation of the appropriate Kentucky Revised Statute and is grounds for enforcement action that may result in revocation, modification, or denial of a permit application.

(2) Duty to reapply. If the owner or operator wishes to continue an activity regulated by the permit after the expiration date of the permit, if applicable, the owner or operator shall apply for and obtain a new permit.

(3) Duty to halt or reduce activity. It shall not be a defense for an owner or operator in an enforcement action to claim necessity to halt

or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The owner or operator shall comply with this chapter before commencing operations.

(4) Duty to mitigate. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health and the environment.

(5) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and process controls, including appropriate quality assurance procedures.

(6) Permit actions. The permit may be modified or revoked for cause. The filing of a request by the owner or operator for a permit modification, revocation, or termination, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights or any exclusive privilege.

(8) Duty to provide information. The owner or operator shall furnish the cabinet with any information that the cabinet reasonably requests to determine whether cause exists for modifying, revoking, or terminating the permit, or to determine compliance with the permit or any provision of KRS Chapter 224 or this chapter. The owner or operator shall also furnish to the cabinet upon request copies of records required to be kept by the permittee.

(9) Inspection and entry. The owner or operator shall allow the cabinet or its authorized representative to:

(a) Enter upon the owner's or operator's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of the permit;

(b) Have access to and copy at reasonable times any records that are kept under the conditions of the permit;

(c) Inspect any facility's equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor, for the purposes of assuring permit compliance or determining compliance with KRS Chapter 224 or this chapter, any substances or parameters at any location.

(10) Signatory requirement. All applications, reports, and information submitted to the cabinet shall be signed and certified in accordance with Section 10 of 401 KAR 45:030.

(11) Authorization to operate. For a new special waste site or facility, or a facility undergoing an expansion or modification as stated in 401 KAR 45:040, the owner or operator shall not commence storage, treatment, or disposal of special waste in the modified portion of the facility until:

(a) The owner or operator has submitted to the cabinet, by certified mail or hand delivery, a request for the issuance of a construction/operation permit signed by the owner or operator stating that the facility has been constructed or modified in compliance with the construction permit. The request shall be accompanied by a fee specified in Section 2(1)(d) of 401 KAR 45:250; and

(b) The cabinet has inspected the newly constructed or modified facility and issued a special waste construction/operation permit or modified construction/operation permit.

(12) Transfers. The permit shall not be transferable to any person without prior approval of the cabinet. Proposed new owners or operators shall submit a complete transfer permit application to the cabinet in accordance with Section 3 of 401 KAR 45:040.

(13) Monitoring reports. Monitoring results shall be reported at the intervals specified in the approved permit application.

(14) Compliance schedules. Reports of compliance with, or any progress reports on, requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each scheduled date.

(15) Reports. Periodic reports as required in this chapter or in the permit shall be submitted to the cabinet on a timely basis.

(16) Other information. If the owner or operator fails to submit any relevant facts in a permit application, or submits incorrect information in a permit application or in any report to the cabinet, he shall promptly submit the facts or correct information.

Section 2. Establishing Permit Conditions. In addition to conditions required for all permits in Section 1 of this regulation, the cabinet shall establish conditions on a case-by- case basis in permits. The cabinet may incorporate applicable requirements directly into the permit. Each special waste permit issued by the cabinet shall contain conditions as the cabinet determines necessary to protect human health and the environment.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency contact person: James Hale

(1) Type and number of entities affected: The proposed regulation affects all persons who hold a special waste permit.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings associated with the proposed regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any

effects upon competition): None

(b) Reporting and paperwork requirements: The proposed regulation requires permit holders to submit quarterly and annual reports of compliance and monitoring results.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet must process, review and respond to quarterly and annual reports submitted by permit holders.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: here are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the environmental performance standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated environmental performance standards are met.

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

401 KAR 45:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99, 40 CFR 302.4, Appendix A

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760, 40 CFR 302.4

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This regulation sets forth the standards for groundwater and surface water monitoring and corrective action at special waste sites or facilities.

Section 1. Applicability. The requirements of this regulation apply to owners and operators of special waste landfills, Type A special waste landfarming or composting sites or facilities, other special waste sites or facilities at which the cabinet determines groundwater and surface water monitoring shall be required, and special waste sites or facilities required to perform corrective action as a result of documented groundwater contamination. Landfarming and composting sites or facilities required to monitor surface water shall comply with Section 6(26) of 401 KAR 45:100. Landfarming and composting sites or facilities required to perform corrective action shall comply with Section 5 of this regulation. The owner or operator shall satisfy the requirements of this regulation for all wastes and waste constituents contained in the site or facility. The cabinet may waive baseline groundwater characterization and groundwater monitoring, subject to the provisions of 401 KAR 30:020.

Section 2. Design Requirements for Groundwater Monitoring Systems. The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize regional and local groundwater flow and flow systems. The monitoring system shall consist at a minimum, of the following:

(1) At least one (1) background well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the special waste site or facility. When the special waste site or facility occupies the most upgradient position in the flow system or the upgradient area is not representative, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow systems. Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area; and

(2) At least two (2) monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which special waste has been or will be disposed. The cabinet may allow springs for monitoring points if the springs are hydraulically downgradient from the area in which special waste has been or will be disposed, if the springs are developed and protected in a manner approved by the cabinet, and if the springs are capable of detecting any contamination from the disposal facility. Downgradient monitoring wells shall be located so that they will provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

(3) An alternative monitoring plan may be proposed in an application for a special waste site or facility in accordance with Section 3(2) of 401 KAR 45:110.

Section 3. Requirements for Monitoring Well Construction. (1) Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into the borehole. Only potable water shall be used in drilling monitoring wells, unless otherwise approved by the cabinet. Drilling muds shall not be used except with prior approval of the cabinet. Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. Where possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) In a manner to ensure the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches, unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand where necessary, to enable collection of samples at depths where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism, and also include protective barrier steel posts at the corners of the concrete pad;

(b) Be installed into firm rock, unless otherwise approved by the cabinet;

(c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position, unless otherwise approved by the cabinet;

(d) Be numbered and painted in a highly visible color;

(e) Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) Have a locking cap; and

(g) Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 4. Sampling and Analysis. (1) Parameters listing. Owners or operators of special waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters listed in Section 8 of this regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet on a form provided by the cabinet within sixty (60) days of sampling or fifteen (15) days after completion of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as indicated in Section 8 of this regulation.

(3) If analysis of the sample results indicates contamination, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 5. Groundwater Contamination Assessment and Corrective Action. (1) The owner or operator of a special waste site or facility shall prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more public or private water supplies or monitoring wells at the site or facility shows the presence of one (1) or more parameters listed in 40 CFR 302.4 Appendix A as of September 1991, above the maximum contaminant level (MCL) as specified in 401 KAR 30:031 or significant increase over established background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels, a significant increase over background shall be determined using a statistical test as specified in Section 6 of this regulation.

(2) Confirmation sampling. The owner or operator of a special waste site or facility shall not be required to submit a groundwater assessment plan if the following conditions are met:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling shows to the cabinet's satisfaction that groundwater contamination has not occurred.

(3) The owner or operator of a special waste site or facility shall be required to provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been

determined that the special waste site or facility is the probable source of contamination.

(4) The groundwater assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions described in subsection (1) of this section. The assessment plan shall specify the manner in which the owner or operator will determine the existence, quality, quantity, areal extent, and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a qualified professional in the field of hydrogeology and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum, the following information:

(a) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers, and other assessment structures or devices to be used;

(b) Sampling and analytical methods for the parameters to be evaluated;

(c) Analyses of all parameters listed in the approved monitoring plan in the permit application, and any other parameter required by the cabinet; and

(d) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate, and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies that may be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on the water supply.

(6) If the cabinet determines that the assessment plan is inadequate, the cabinet may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the owner or operator shall submit a groundwater assessment report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan.

(9) Within ninety (90) days of cabinet approval of the groundwater assessment report, but no later than one (1) year from the event specified in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include the following:

(a) The specific methods or techniques to be used to abate groundwater contamination from the facility;

(b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and

(c) A description of the means used to restore or replace public or private water supplies affected by contamination from the special waste facility.

(10) The owner or operator of a special waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(11) Corrective action measures under this regulation shall be initiated and completed within a period of time as specified by the cabinet considering the extent of degradation determined pursuant to subsection (1) of this section.

(12) Corrective action measures under this regulation may be terminated upon approval of the cabinet when the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 6. Statistical Methods for Groundwater Analysis. The owner or operator of a special waste site or facility shall use the following statistical procedure in determining whether background values or concentration limits have been significantly exceeded:

(1) If the level of a parameter is to be compared to the parameter's background value and that background value has a sample coefficient of variation less than one (1.00):

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

(b) With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The cabinet shall approve such a procedure in the permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility in a manner that is comparable to that of the statistical procedure described in paragraph (a) of this subsection.

(2) In all other situations, the owner or operator shall use a statistical procedure approved in the permit which provides reasonable confidence that the migration of contamination from a special waste site or facility into and through the groundwater will be indicated. The cabinet shall approve a statistical procedure in the permit that:

(a) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(b) Provides a reasonable balance between the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility.

Section 7. Baseline Groundwater Quality Characterization Parameters. For special waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed and the resulting data submitted in the permit application:

(1) For all landfarming or composting sites or facilities required to monitor groundwater, the characterization shall be based on the following dissolved metals and other parameters:

(a) Specific conductance
Chemical oxygen demand
Total organic carbon
Chloride
Iron
Manganese

Sodium
Total nitrogen
Nitrate nitrogen
Chromium
Cadmium
Coliform bacteria
pH
Calcium
Magnesium
Potassium
Sulfate
Bicarbonate
Carbonate

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(2) For special waste landfills, used solely for the disposal of coal combustion by-products, the characterization shall be based on the following dissolved metals and other parameters:

(a) Chloride
Chemical oxygen demand
Total dissolved solids
Total organic carbon
Specific conductance
pH
Copper
Nickel
Zinc
Iron
Sodium
Arsenic
Cadmium
Lead
Mercury
Selenium
Calcium
Magnesium
Potassium
Sulfate
Bicarbonate
Carbonate

(b) Groundwater elevations recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum.

(3) For special waste sites or facilities other than those specified in subsections (1) and (2) of this section, the characterization shall be for parameters determined by the cabinet based on a review of the chemical analysis of the waste provided in the application.

Section 8. Groundwater Monitoring Parameters. (1) Owners or operators of landfarming or composting sites or facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis:

(a) Chemical oxygen demand
Total organic carbon
Total nitrogen
Nitrate nitrogen
Lead
Chromium
Cadmium
Coliform bacteria

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; and

(c) Monitoring of additional parameters may be required by the cabinet based on the waste analysis.

(2) Owners or operators of special waste landfills shall monitor semiannually for the following:

(a) Chloride
Chemical oxygen demand
Total dissolved solids
Total organic carbon
Specific conductance
pH
Temperature

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum.

(c) Monitoring of additional parameters may be required by the cabinet based on a significant increase from the baseline characterization.

(d) If, after four (4) initial monitoring events, analysis for the parameters in paragraphs (a) to (c) of this subsection indicates no exceedances above levels specified in Section 5(1) of this regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those listed in paragraph (a) of this subsection.

(3) Owners or operators of special waste sites or facilities other than special waste landfills shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities effected: The proposed regulation affects persons operating special waste landfills, persons landfarming certain types of special wastes, and persons operating special waste sites and facilities required to accomplish corrective action as a result of documented groundwater contamination.

(a) Direct and indirect costs or savings to those affected:

1. First year: The costs associated with the proposed regulation consist of the drilling of test water wells, collection of water samples and laboratory analyses of water samples. The regulation also affects the cost to permit holders who must take corrective actions in response to groundwater contamination.

2. Continuing costs or savings: Sampling and analyses costs are ongoing.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Permit holders must submit quarterly reports to the cabinet with information on surface and groundwater monitoring.

(b) Reporting and paperwork requirements: Permit holders must submit quarterly reports to the Cabinet with information on surface and groundwater monitoring.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because there has been no change in policy with regard to permitting procedures, KAR Chapter 45 regulations have no direct or indirect costs or savings. The same administrative procedures will be used under this chapter that were used prior to the reclassification of certain wastes as special waste.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The Cabinet must process and respond to quarterly reports submitted by permit holders.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 is required pursuant to KRS 224.40-305 and is a mechanism to ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:210. Designation of waste as special waste.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes standards applicable to all special waste sites or facilities. This regulation sets forth the process for identifying special waste and for listing waste as special waste.

Section 1. Coverage. This regulation shall be used by the cabinet to determine those wastes that meet the criteria of special waste and to determine if a waste may be designated as special waste. Wastes not specifically listed as special waste in KRS 224.50-760 are regulated as either solid waste, as defined by KRS 224.01-010(31)(a), or hazardous waste, as defined by KRS 224.01-010(31)(b) and the criteria of 401 KAR Chapter 31, unless the cabinet has made a designation in accordance with the provisions of this regulation.

Section 2. Criteria for Designating Special Waste. The cabinet may list classes or types of waste as special waste if wastes within the class or type of waste meet the characteristics of special waste found in Section 3 of this regulation. The cabinet shall designate a waste as a special waste upon:

(1) Determining that the waste meets the criteria in Section 3 of this regulation; and

(2) Following the procedures in Section 4 of this regulation.

Section 3. Criteria for Identifying Special Waste. The cabinet shall identify and define a special waste only upon determining that:

(1) The waste exhibits the characteristic of high volume as determined by:

(a) Nonliquid wastes that are generated at an average annual rate of greater than 49,614 tons or 45,000 metric tons per year per Kentucky facility; or

(b) Liquid wastes that are generated at an average annual rate of more than 1,000,000 metric tons per year per Kentucky facility; and

(2) The waste exhibits the characteristic of low hazard if:

(a) There is low probability that the management, processing, or disposal of the waste would violate the provisions of 401 KAR 30:031;

(b) The waste is not a hazardous waste as defined in 401 KAR Chapter 31;

(c) The waste is not mixed with, codisposed or cotreated with solid waste or hazardous waste;

(d) The level of waste constituents does not exceed the maximum level of arsenic, barium, cadmium, chromium, lead, mercury, nitrate, selenium, and silver specified in Section 5 of 401 KAR 30:031; and

(e) For aqueous waste, the waste has a pH less than or equal to ten (10) and greater than or equal to four and five-tenths (4.5).

Section 4. Procedures for Designating Special Waste. (1) For each waste that a designation of special waste is proposed, the cabinet or applicant shall prepare a fact sheet containing the following information:

(a) The name and address of the applicant;

(b) The name and description of the waste proposed for designation as a special waste, the location of the disposal site, and the method of disposal;

(c) A brief abstract of the supporting documentation that demonstrates that the designation is appropriate, based on the criteria in Section 3 of this regulation; and

(d) A description of any physical or chemical treatment of the waste prior to disposal.

(2) Based upon information submitted by the applicant, and any other information available to the cabinet, the cabinet shall make a determination on the designation as a special waste.

(3) The cabinet shall publish a public notice concerning the proposed designation of a waste as a special waste. The notice shall allow for a thirty (30) day public comment period.

(4) Upon finding that the request for designation meets the criteria in Section 3 of this regulation, the cabinet shall notify the applicant in writing that the special waste is designated as a special waste.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992

FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: The proposed regulation affects all persons who manage, process and dispose of high volume, low hazard waste. This regulation identifies certain wastes as special waste, and sets forth criteria to designate other wastes as special waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings associated with the proposed regulation.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: The proposed regulation provides for the preparation of a fact sheet to be submitted to the cabinet by those persons desiring to have a waste designated as a special waste.

(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 associated with the proposed regulation.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The cabinet must process and respond to the submittal of a fact sheet and request that a waste be designated as a special waste.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The Cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR 257 establishes standards applicable to waste disposal, and Kentucky has adopted these standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS Chapter 224 mandates that the cabinet develop a regulation program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a permit and comply with the Environmental Performance Standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the Environmental Performance Standards to all types of waste disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the Environmental Performance Standards is accomplished.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 ensure that federally mandated Environmental Performance Standards are met.

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

401 KAR 45:250. Special waste permit fees.

RELATES TO: KRS 224.40

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY AND FUNCTION: KRS 224.10-100(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 special waste sites or facilities. This regulation establishes a fee schedule for the issuance and modification of special waste site or facility permits.

Section 1. Applicability. (1) The provisions of this regulation shall apply to the owner or operator of each special waste site or facility required to apply for a permit, permit renewal, permit modification, or permit transfer, except publicly-owned facilities.

(2) The provisions of this regulation shall apply to special waste site or facility permit applications submitted on or after the effective date of this regulation.

Section 2. Filing Fees. (1) Each permit application shall be accompanied by an appropriate filing fee determined as follows:

Application	Fee
(a) Notice of intent	$500
(b) Request for alternate specification to design criteria or variance from regulatory requirements	$500
(c) Formal application and modifications to expand the facility horizontally	$5,000
(d) Construction/operation permit	$500
(e) Renewal	$500
(f) Permit modifications other than horizontal expansions:	
1. Vertical expansions	$1,000
2. Modification to closure plan	$500
3. Receipt of waste from new source	$50
4. Change of ownership or transfer of an existing permitted facility	$500
5. Cabinet mandated increase in financial assurance	$-0-
6. Closure of a facility that is not under a current special waste facility permit	$1,000
7. Modifications not otherwise specified	$500
(g) Emergency permit	$500
(h) Research, development and demonstration permit	$2,500

(2) A filing fee shall be in the form of a check or money order and made payable to the Kentucky State Treasurer. Filing fees shall not be refundable.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: March 11, 1992
FILED WITH LRC: March 12, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 30, 1992 at 9 a.m. at the Capital Plaza Tower, Ground Floor Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 25, 1992, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. James Hale. Written comments must be received by Mr. Hale no later than 4:30 p.m. on April 30, 1992. Contact person: James Hale, Division of Waste Management, 18 Reilly Road,

Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Agency Contact: James Hale

(1) Type and number of entities affected: All private special waste sites and facilities that require a permit will be affected. KRS 224.10-100(20) prohibits the assessment of fees on public facilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct and indirect costs associated with the proposed regulation consist of application fees that are to be submitted at the time an application is filed with the cabinet.

2. Continuing costs or savings: Continuing costs consist of any modifications and renewals of existing permits.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements associated with the proposed regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The state will receive fees to help offset the cost of processing permit applications.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: There are no reporting or paperwork associated with the proposed regulations.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues, other than as specified above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A and the mandates of KRS Chapter 224, there were no alternatives to the promulgation of a regulation package on special waste. The cabinet believes that the requirements set forth in this regulation provide for adequate protection of the public and the environment, without being overly restrictive.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There are no statutes, administrative regulations or policies that conflict with, overlap or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? Yes. The proposed regulation was tiered to apply to individuals who manage, process or dispose of special waste. The regulations of 401 KAR Chapter 45 use multiple tiering systems. Permit-by-rule in 401 KAR 45:060, and registered permit-by-rule in 401 KAR 45:070 give certain practices a method of avoiding formal permits. Emergency permits and research, development and demonstration permits in 401 KAR 45:135 provide permitting mechanisms for certain atypical situations. Special waste landfills, landfarming, and composting provide for a tiering mechanism based on the type and quality of the waste received.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 401 CFR Part 257 establishes standards applicable to all waste disposal sites, which would include special waste disposal sites. Kentucky has adopted these mandated standards as the "Environmental Performance Standards" of 401 KAR 30:031.

2. State compliance standards: KRS 224.40-305 and 224.50-760 mandate that the cabinet develop a regulatory program for special waste. The regulations of 401 KAR Chapter 45 require certain classes of special waste sites or facilities to obtain a formal permit and all special waste sites or facilities to comply with the environmental performance standards.

3. Minimum or uniform standards contained in the federal mandate: The federal mandate applies the environmental performance standards to all types of waste disposal sites.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate: Federal regulations do not prescribe a permitting process. The regulations of 401 KAR Chapter 45 are intended to ensure the federal mandate of meeting the environmental performance standards is accomplished.

5. Justification for the imposition of the stricter standard, or addition or different responsibilities or requirements: The permitting process prescribed in 401 KAR Chapter 45 is required pursuant to KRS 224.40-305 and is a mechanism to ensure that special waste sites and facilities are constructed and operated in accordance with the federally mandated environmental performance standards.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

780 KAR 2:150. Kentucky Tech Regional Business and Industry Council.

RELATES TO: KRS 151B.030, 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education the authority to develop policies and regulations governing the state-operated vocational school system known as the Kentucky Tech System.

Section 1. There shall be a Kentucky Tech Regional Business and Industry Council in each Kentucky tech region. The council shall advise and assist those responsible for adult and vocational-technical education in the development and improvement of relevant programs within the delivery system.

Section 2. The council shall help advise on regional education and employment needs, help assess labor market changes, contribute to the establishment and maintenance of realistic and relevant programs, advocate community support, help establish long-range goals and implementation strategies and assist with the establishment of performance standards on which ongoing program evaluations shall be made and give attention to policy issues that affect the ability to deliver quality programs.

Section 3. (1) The Kentucky Tech Regional Business and Industry

Council shall consist of a minimum of twelve (12) members to serve for terms of three (3) years. One-third (1/3) of the members shall rotate off the council annually beginning July 1, 1993. The initial council shall be composed of no more than two-thirds (2/3) of the existing Vocational-Technical Regional Advisory Committee. An individual who has served as a member for three (3) years may be reappointed for one (1) more term. After serving two (2) consecutive terms, an individual member shall have a break in service for at least one (1) year before being reappointed to another term.

(2) The regional executive director shall forward recommendations including a resume to the Commissioner for the Department for Adult and Technical Education. The commissioner shall present the names of the persons recommended to the State Board for Adult and Technical Education for approval.

(3) Nominees shall represent business, industry, public sector employers, labor, education and agencies who have an interest in education training and workforce development.

Section 4. (1) The Kentucky Tech Regional Business and Industry Council shall select among its members a chairperson, vice chairperson, and other officers as necessary. The members shall develop rules of operation including a regular meeting schedule and location. Such rules shall provide for at least four (4) meetings annually.

(2) The office head for the Kentucky Tech System or designee and the regional executive director shall be designated as liaison persons to assist the council in carrying out its responsibilities.

(3) The office head for the Kentucky Tech System shall serve as a general consultant, providing resource personnel outside the region, statistical and descriptive information upon request and reasonable availability.

(4) The regional executive director shall serve as the local consultant and be responsible for securing resource persons within the region and providing descriptive and statistical data about programs and related services upon request and reasonable availability. The regional executive director shall assist the officers of the Kentucky Tech Regional Business and Industry Council in making meeting arrangements and in providing clerical assistance in preparing minutes, notices of meetings and necessary reports.

(5) Minutes of each meeting and other activities shall be kept by the duly appointed officer. Copies of the minutes shall be housed in the office of the regional executive director.

(6) Duly adopted council recommendations as set forth in the minutes shall be presented separately and in writing to the regional executive director and the office head of the Kentucky Tech System. The regional executive director shall present a response to the recommendations in writing within a reasonable time after receipt. The office head shall prepare a summary annual report of recommendations and actions of all Kentucky Tech Regional Business and Industry Councils. This report shall be presented to the Commissioner for Adult and Technical Education. The commissioner shall provide the report to the State Board for Adult and Technical Education.

(7) The Kentucky Tech Regional Business and Industry Council shall review and adopt written comments on their respective region's annual plan and forward them to the office head for the Kentucky Tech System or designee.

(8) At least once annually, each Kentucky Tech Regional Business and Industry Council chairman or designee shall make an oral presentation to the State Board for Adult and Technical Education.

(9) Recommendations that may have implications for implementation and administration of the federal vocational education act shall be forwarded to the State Board for Adult and Technical Education and the Governor's Council on Vocational Education.

(10) Council members shall serve without pay but may be provided a meal and refreshments accompanying a regularly scheduled meeting. In situations where council members are requested to travel outside the region on behalf of the council and the Kentucky Tech System administration, they may be reimbursed mileage, lodging and meals.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: February 20, 1992

FILED WITH LRC: March 13, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1992 at 10 a.m., EDT in Room 306, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 14 Kentucky Tech Vocational Technical regions.

(a) Direct and indirect costs or savings to those affected: Same costs.

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: Minor - Same as currently required with vocational advisory counsels which will be eliminated.

(2) Effects on the promulgating administrative body: Will provide an advisory group from business/industry for the Kentucky Tech System. Will not significantly add costs.

(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 anticipated. None

(b) Reporting and paperwork requirements: Minor

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This council focuses on Kentucky Tech and replaces the Vocational Advisory Committee.

TIERING: Was tiering applied? No. The committees shall all be standard for the Kentucky tech regions. Tiering is inappropriate for the intent of this regulation.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the March 2, 1992 Meeting

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 2, 1992 at 2 p.m. in Room 125 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the February 3, 1992 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce and James Yates.

Guests: Richard L. Ross, Board of Pharmacy; John L. Ackman, Jr., James Daniels, Kentucky Real Estate Commission; Jim Villines, Bruce Williams, James Cash, Iris Skidmore, Natural Resources and Environmental Protection Cabinet; Jack Damron, Tom Campbell, Lori Poole, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Dr. Angela Wilkins, David Thomas, H. M. Snodgrass, David Thurmond, Department of Education; Susan Mastin Scott, Rebecca Goodman, Claude G. Rhorer, Jr., Public Service Commission; Judith Walden, Department of Housing, Buildings, and Construction; Ked Fitzpatrick, Barbara Coleman, Anita Moore, Jim Corum, Robert Nelson, Mark Yancey, Doris Goldstein, Karen Main, Danise Newton, Jim Brockman, Cabinet for Human Resources; Bill Marcum, Shell Mining Co.; R. Michael Brock, Warner-Lambert Co.; Tony Novello, Sandoz Pharmaceuticals; Don Bohn, Johnson & Johnson; Steve Newberry, Ron Jackson, KADA; Harry Dickerson.

LRC Staff: Joe Hood, Greg Karambellas, Tom Troth, Patrice Carroll, Susan Wunderlich, Donna Pierce, Peggy Jones, Susan Eastman, Lee Huckleberry (Speaker Blandford's Office).

The Subcommittee determined that the following administrative regulation was not deficient:

General Government Cabinet: Kentucky Real Estate Commission

201 KAR 11:230 (Mandatory continuing education.) This administrative regulation had been found deficient at the November, 1991, meeting of the Subcommittee because the Subcommittee determined that KRS Chapter 324 did not grant authority to the Commission to require continuing education as a condition of licensure or as grounds for suspension or revocation of a license. In addition, questions had been raised over the failure to exempt realtors licensed prior to 1976 in conformity with legislative intent.

The amendment to this administrative regulation exempted those licensed prior to 1976. Agency personnel stated that this amendment would cure the deficiency. Various Subcommittee members questioned whether the agency had the authority to require continuing education of any licensee. Agency personnel stated that legislation had been introduced and was before the House that would permit continuing education requirements with the exception of those licensees exempted from the requirements.

In response to questions raised by members of the Subcommittee, Subcommittee staff stated that an administrative regulation could not be promulgated to take effect before the effective date of legislation authorizing this amendment. Subcommittee staff explained that an administrative regulation promulgated in contemplation of a statute was the method by which the amendment to this administrative regulation should be established, and that even with the expiration of this administrative regulation, the agency could promulgate an administrative regulation in contemplation of a statute, assuming the legislation as enacted.

In response to questions by Chairman Kerr, agency personnel stated that the continuing education requirements would not be required before 1993. Chairman Kerr stated that there appeared to be sufficient time to promulgate an administrative regulation in contemplation of a statute after the legislation referred to was enacted.

Representative Bruce moved that this administrative regulation, as amended, was no longer deficient. The Subcommittee approved the motion. This administrative regulation shall not expire upon adjournment of the current regular session of the General Assembly.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Pharmacy

201 KAR 2:105 (Licensing/drug distribution requirements for drug manufacturers and wholesalers.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222; to provide the correct citation of applicable federal regulations; to incorporate required forms; and to clarify exemptions from licensure requirements in order to insure compliance with federal law and regulations.

CORRECTIONS CABINET: Office of the Secretary

Appropriate KRS references were added to the policies incorporated by references in the following two regulations.

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:160 (Correctional Industries.)

Transportation Cabinet: Department of Vehicle Regulation: Administration

601 KAR 2:010 (General procedures.) Section 7 of this regulation was amended to delete the word "effective" and insert the word "revised" in lieu thereof, in regard to the date of the form that is incorporated by reference.

Education and Humanities Cabinet: Department of Education: Office of Chief State Officer

701 KAR 5:050 (Summary hearing procedures.) Section 2(2) was amended to add the word "working" after words "ten (10)", to specify the amount of time required to give notice of hearing of specific charges.

Cabinet for Human Resources: Board of Family Health Care Providers

902 KAR 22:030 (Midlevel health care practitioner.) This administrative regulation was amended to clarify when recertification is

required. NOTE: Some of the amendments offered at the Subcommittee meeting were redundant and unnecessary because they were already reflected in the "Amended After Hearing" version of the administrative regulation that had been filed, published, and before the Subcommittee. Therefore, only the amendment that was not reflected in the version of this administrative regulation before the Subcommittee is stated here.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: General Provisions

405 KAR 7:001 (Definitions for 405 KAR Chapter 7.)

405 KAR 7:021 (Repeal of 405 KAR 7:020.)

Permits

405 KAR 8:001 (Definitions for 405 KAR Chapter 8.)

405 KAR 8:010 (General provisions for permits.) At the February meeting of the Subcommittee, this regulation was amended to reflect the appropriate dates of (1) material incorporated by reference, and (2) federal law cited. Upon request by the Subcommittee, the agency agreed to defer the regulation, as amended at the February meeting, to the March 1992 meeting. At the March meeting, the regulation was approved.

Bond and Insurance Requirements

405 KAR 10:001 (Definitions for 405 KAR Chapter 10.)

Inspection and Enforcement

405 KAR 12:001 (Definitions for 405 KAR Chapter 12.)

Performance Standards for Surface Mining Activities

405 KAR 16:001 (Definitions for 405 KAR Chapter 16.)

Performance Standards for Underground Mining Activities

405 KAR 18:001 (Definitions for 405 KAR Chapter 18.)

Special Performance Standards

405 KAR 20:001 (Definitions for 405 KAR Chapter 20.)

Areas Unsuitable for Mining

405 KAR 24:001 (Definitions for 405 KAR Chapter 24.)

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:029 (Definitions relating to 601 KAR 1:030 through 601 KAR 1:145.)

601 KAR 1:030 (Hearings.)

601 KAR 1:031 (Procedure when no protest to notice of hearing is filed.)

601 KAR 1:045 (Application for certificate filing.)

Transportation Cabinet: Department of Vehicle Regulation: Transportation of Solid Waste

601 KAR 40:010 (Identification of Motor Vehicles transporting municipal solid waste.)

601 KAR 40:020 (Application for license to operate vehicles transporting municipal solid waste.)

Education and Humanities Cabinet: Department of Education: Planning

701 KAR 1:001 (Repeal of 702 KAR 1:060; 704 KAR 4:015; 705 KAR 3:020; 705 KAR 3:060; 705 KAR 4:205; 705 KAR 5:010.)

Office of District Support Services: School District Finance

702 KAR 3:201 (Management assistance program procedures.)

Office of Learning Programs Development: Student Services

704 KAR 7:060 (Missing Kentucky school children program.)

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Standards of Safety

815 KAR 10:045 (Public service station aboveground motor fuel tanks.) NFPA 30A-1990, Automotive and Marine Service Station Code, Section 1-2, which is incorporated by reference in this regulation, provides that aboveground motor fuels tanks intended for fixed installation shall comply with these standards. Pursuant to questions from the Chairman, agency personnel stated that this regulation applies only to aboveground motor fuel storage tanks to be installed at public service stations in the future. This regulation does not apply to any existing aboveground motor fuel storage tanks at public service stations.

Plumbing

KRS 13A.224 and 13A.2245 provide for the incorporation of uniform standards by reference. Throughout the following four regulations, the Department refers to American Society for Testing and Materials (ASTM) Standards, American Society of Sanitary Engineering (ASSE) Standards, National Sanitation Foundation (NSF) Standards, and federal specifications WW-P-325. Department personnel stated, in response to questions by the Subcommittee, that the above references are not standards, but are types or grades of pipes and materials used throughout the industry. Department personnel agreed to do a comprehensive revision of their regulations to delete the improper references to standards.

815 KAR 20:020 (Parts or materials list.)

815 KAR 20:060 (Quality of weight of materials.)

815 KAR 20:090 (Soil, waste and vent systems.)

815 KAR 20:130 (House sewers and storm water piping; methods of installation.)

Cabinet for Human Resources: Department of Health Services: Local Health Departments

902 KAR 8:030 (Merit system for local health departments.) (Found Deficient by IJC on Health and Welfare, 1/23/91)

Board of Family Health Care Providers: Protocols, Formulary, and Quality Assurance

902 KAR 22:010 (Kentucky Board of Family Health Care Providers.)

Department for Medicaid Services

907 KAR 1:040 (Payments for vision care services.)

907 KAR 1:376 (Incorporation by reference of the hospital services manual.)

907 KAR 1:410 (Incorporation by reference of the vision services manual.)

907 KAR 1:432 (Incorporation by reference of the home and community based waiver services manual.)

The following regulations were deferred upon agreement by the promulgating agency and the Subcommittee:

General Government Cabinet: Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:131 (Disciplinary and grievance hearing procedures.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:085 (Mussel shell harvesting.)

Game

301 KAR 2:047 (Specified areas; seasons, limits for upland game birds, furbearers and small game.)

301 KAR 2:250 (Seasons and limits for upland game birds, furbearers, and small game.)

The following regulations were withdrawn by the promulgating agency:

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:140 (U-Drive-It permit application procedures.)

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:066 (Water.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 2:15 p.m. until April 1, 1992 at 1 p.m. in Room 131 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

SENATE COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of February 19, 1992

The Senate Committee on Business Organizations and Professions met on Wednesday, February 19, 1992, and considered administrative regulations referred by LRC.

The committee approved as presented:

201 KAR 2:010 - Ky. Board of Pharmacy
810 KAR 1:001 - Ky. State Racing Commission.
810 KAR 1:003 - Ky. State Racing Commission
810 KAR 1:004 - Ky. State Racing Commission.
810 KAR 1:006 - Ky. State Racing Commission
810 KAR 1:007 - Ky. State Racing Commission.
810 KAR 1:008 - Ky. State Racing Commission.
810 KAR 1:009 - Ky. State Racing Commission.
810 KAR 1:010 - Ky. State Racing Commission.
810 KAR 1:011 - Ky. State Racing Commission.
810 KAR 1:012 - Ky. State Racing Commission.
810 KAR 1:013 - Ky. State Racing Commission.
810 KAR 1:014 - Ky. State Racing Commission.
810 KAR 1:015 - Ky. State Racing Commission.
810 KAR 1:016 - Ky. State Racing Commission.
810 KAR 1:017 - Ky. State Racing Commission.
810 KAR 1:018 - Ky. State Racing Commission.

810 KAR 1:021 - Ky. State Racing Commission
810 KAR 1:050 - Ky. State Racing Commission

The committee took no action on the following:

810 KAR 1:002 - Ky. State Racing Commission.
810 KAR 1:005 - Ky. State Racing Commission.
810 KAR 1:019 - Ky. State Racing Commission.
810 KAR 1:020 - Ky. State Racing Commission.

TOURISM DEVELOPMENT AND ENERGY TASK FORCE
Meeting of February 26, 1992

The House Tourism Development and Energy Committee and the Senate Economic Development, Tourism and Energy Committee met February 26, 1992, to review the following regulations, which jointly were referred by the LRC to the joint committees for review:

807 KAR 5:006 (Public Service Commission - General Rules)
904 KAR 2:116 & E (Cabinet for Human Resources - LIHEAP)

The committee did not take any formal action on these regulations.

HOUSE STATE GOVERNMENT COMMITTEE
Meeting of February 27, 1992

The House State Government Committee, this date, reviewed the following regulation, as amended by the Administrative Regulation Review Subcommittee February 3, 1992, and found that it complies with KRS Chapter 13A:

Board of Claims
108 KAR 1:030 (Filing of claims, original signature of claimant required.)

HOUSE COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of March 3, 1992

The House Committee on Business Organizations and Professions met on Tuesday, March 3, 1992, and considered administrative regulations referred by LRC.

The committee approved as presented:
201 KAR 2:061 - Kentucky Board of Pharmacy
810 KAR 1:011 - Kentucky State Racing

In addition, on 810 KAR 1:011 the committee recommended to the Racing Commission that they develop a penalty for a minor placing a wager at a track, and promulgate it as an amendment to the regulation at a later date.

The committee adjourned at 1:25 p.m.

SENATE EDUCATION COMMITTEE
Meeting of February 27, 1992

The Senate Education Committee met on February 27, 1992, and approved the following administrative regulations which are no longer deficient:

University of Louisville
740 KAR 1:010
740 KAR 1:020
740 KAR 1:030
740 KAR 1:040
740 KAR 1:050

740 KAR 1:060
740 KAR 1:080
740 KAR 1:090
740 KAR 1:100

HOUSE EDUCATION COMMITTEE
Meeting of March 4, 1992

The House Education Committee met on March 4, 1992, and approved the following administrative regulations which are no longer deficient:

University of Louisville
740 KAR 1:010
740 KAR 1:020
740 KAR 1:030
740 KAR 1:040
740 KAR 1:050
740 KAR 1:060
740 KAR 1:080
740 KAR 1:090
740 KAR 1:100

SENATE COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of March 4, 1992

The Senate Committee on Business Organizations and Professions met on Wednesday, March 4, 1992, and considered the administrative regulation referred by LRC.

The Committee approved as presented:

201 KAR 2:061 - Kentucky Board of Pharmacy

The committee adjourned at 11:15 a.m.

SENATE STATE GOVERNMENT COMMITTEE
Meeting of March 5, 1992

The Senate State Government Committee, on March 5, 1992, reviewed the following regulation, as amended by the Administrative Regulation Review Subcommittee February 3, 1992, and found that it complies with KRS Chapter 13A:

Board of Claims
108 KAR 1:030, Filing of claims, original signature of claimant required.

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CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates J2

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LOCATOR INDEX - EFFECTIVE DATES

NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.

VOLUME 17

Emergency Regulation	17 Ky.R Page No.	Effective Date
200 KAR 17:030E	3085	4-15-91
Replaced		8-22-91
200 KAR 17:040E	3088	4-15-91
Replaced		8-22-91
200 KAR 17:050E	3090	4-15-91
Replaced		8-22-91
415 KAR 1:010E	3356	4-25-91
Replaced		9-25-91
415 KAR 1:020E	3357	4-25-91
Replaced		9-25-91
415 KAR 1:030E	3358	4-25-91
Replaced		9-25-91
900 KAR 4:010E	3360	4-16-91
Replaced		10-6-91
902 KAR 20:290E	3363	5-7-91
Replaced	3538	8-21-91

Regulation	17 Ky.R Page No.	Effective Date
201 KAR 16:010		
Amended	3494	
Withdrawn		11-27-91
415 KAR 1:010	3592	(See 18 Ky.R.)
415 KAR 1:020	3594	(See 18 Ky.R.)
415 KAR 1:030	3597	(See 18 Ky.R.)

Regulation	17 Ky.R Page No.	Effective Date
601 KAR 1:190	3600	(See 18 Ky.R.)
704 KAR 3:035		
Amended	3254	(See 18 Ky.R.)
780 KAR 2:130		
Amended	3260	(See 18 Ky.R.)
805 KAR 4:085		
Amended	3270	(See 18 Ky.R.)
805 KAR 4:100		
Amended	3272	(See 18 Ky.R.)
805 KAR 4:110		
Amended	3274	(See 18 Ky.R.)
807 KAR 5:014	3072	
Withdrawn		9-13-91
900 KAR 4:010	3342	(See 18 Ky.R.)
902 KAR 10:030		
Amended	3048	(See 18 Ky.R.)
902 KAR 20:290		
Amended	3538	8-21-91
902 KAR 55:075	3606	(See 18 Ky.R.)
905 KAR 1:180		
Amended	3558	8-22-91
905 KAR 1:320	3608	(See 18 Ky.R.)
905 KAR 1:330	3612	8-22-91
905 KAR 5:060	3075	
Amended	3470	(See 18 Ky.R.)
905 KAR 5:070	3618	8-22-91

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Emergency Regulation	18 Ky.R Page No.	Effective Date
101 KAR 1:325E	256	6-21-91
Replaced	82	9-6-91
101 KAR 2:035E	4	6-14-91
Died		10-7-91
105 KAR 1:215E	979	8-21-91
Replaced	1326	11-8-91
109 KAR 13:010E	1288	10-4-91
Replaced	2199	1-10-92
200 KAR 5:330E	980	8-30-91
Replaced	1894	1-10-92
200 KAR 18:020E	2915	3-6-92
201 KAR 18:131E	2768	1-21-92
301 KAR 1:085E	2520	1-3-92
301 KAR 2:044E	619	8-9-91
Replaced	1329	10-22-91
301 KAR 2:220E	1288	10-15-91
Replaced	1381	12-17-91
405 KAR 7:001E	2108	11-27-91
405 KAR 7:021E	2112	11-27-91
405 KAR 8:001E	2112	11-27-91
405 KAR 8:010E	1798	11-1-91
405 KAR 10:001E	2119	11-27-91
405 KAR 12:001E	2122	11-27-91
405 KAR 16:001E	2124	11-27-91

Emergency Regulation	18 Ky.R Page No.	Effective Date
405 KAR 18:001E	2130	11-27-91
405 KAR 20:001E	2136	11-27-91
405 KAR 24:001E	2140	11-27-91
415 KAR 1:040E	7	6-13-91
Replaced	715	9-25-91
500 KAR 8:010E	9	5-31-91
Withdrawn		7-1-91
Resubmitted	257	7-1-91
Replaced	1333	11-8-91
500 KAR 8:020E	258	7-1-91
Replaced	1334	11-8-91
500 KAR 8:030E	259	7-1-91
Replaced	1132	11-8-91
501 KAR 6:020E	983	8-21-91
Replaced	795	11-8-91
Resubmitted	1813	11-13-91
Replaced	1927	2-7-92
501 KAR 6:150E	1814	10-16-91
601 KAR 1:190E	2770	2-11-92
601 KAR 12:060E	621	7-26-91
Replaced	1007	10-1-91
601 KAR 40:020E	2770	2-4-92
701 KAR 5:050E	2772	1-21-92

Emergency Regulation	18 Ky.R Page No.	Effective Date
701 KAR 5:090E	10	5-29-91
Replaced	217	9-6-91
702 KAR 1:001E	259	7-11-91
Replaced	569	10-6-91
702 KAR 3:220E	1293	9-18-91
Replaced	476	11-8-91
704 KAR 3:006E	260	7-11-91
Replaced	1340	11-8-91
704 KAR 20:580E	263	6-17-91
Replaced	75	8-2-91
806 KAR 17:066E	2144	12-6-91
Replaced	2787	3-7-92
900 KAR 2:050E	1816	10-16-91
Replaced	2823	3-7-92
900 KAR 2:060E	1818	10-16-91
Replaced	2824	3-7-92
902 KAR 20:006E	985	8-22-91
Replaced	1347	1-10-92
902 KAR 22:010E	2185	12-9-91
902 KAR 22:030E	2186	12-9-91
903 KAR 5:270E	265	6-17-91
Replaced	608	9-6-91
904 KAR 2:006E	622	7-19-91
Replaced	1047	10-6-91
904 KAR 2:015E	1294	9-24-91
Replaced	881	10-16-91
Resubmitted	2188	12-4-91
Replaced	2441	3-7-92
904 KAR 2:016E	1298	9-24-91
Replaced	1245	11-25-91
904 KAR 2:110E	1308	9-24-91
Replaced	1595	1-10-92
904 KAR 2:116E	2192	11-21-91
Replaced	2826	3-7-92
904 KAR 2:360E	1310	9-24-91
Replaced	1891	11-25-91
904 KAR 3:010E	1819	11-7-91
Replaced	2043	2-7-92
904 KAR 3:020E	11	6-5-91
Replaced	202	8-21-91
904 KAR 3:025E	15	6-5-91
Replaced	246	8-21-91
904 KAR 3:035E	1822	11-7-91
Replaced	2047	2-7-92
905 KAR 2:080E	1313	10-8-91
Replaced	1734	1-10-92
905 KAR 8:150E	628	7-23-91
Replaced	593	10-6-91
907 KAR 1:004E	629	7-23-91
Replaced	507	10-6-91
907 KAR 1:010E	265	7-1-91
Replaced	519	10-6-91
907 KAR 1:011E	640	7-23-91
Replaced	520	10-6-91
907 KAR 1:012E	645	7-24-91
Replaced	525	10-6-91
907 KAR 1:013E	646	7-24-91
Replaced	911	10-16-91
907 KAR 1:021E	267	7-1-91
Replaced	594	10-6-91
907 KAR 1:022E	650	7-19-91
Replaced	526	10-16-91
907 KAR 1:025E	654	7-19-91
Replaced	1142	10-16-91
907 KAR 1:027E	268	7-1-91
Replaced	538	10-6-91
907 KAR 1:040E	269	7-1-91
Replaced	541	10-6-91
907 KAR 1:044E	661	7-29-91
Replaced	915	10-16-91
907 KAR 1:045E	662	7-29-91
Replaced	916	10-16-91
907 KAR 1:140E	1826	11-7-91
Replaced	2583	3-7-92
907 KAR 1:150E	1828	11-7-91
Replaced	2584	3-7-92
907 KAR 1:340E	664	7-23-91
Replaced	547	10-6-91
907 KAR 1:480E	270	7-1-91
Replaced	595	10-6-91
907 KAR 1:485E	271	7-1-91
Replaced	596	10-6-91
907 KAR 1:490E	271	7-1-91
Replaced	598	10-6-91
907 KAR 1:495E	272	7-1-91
Replaced	599	10-6-91
907 KAR 1:505E	665	7-23-91
Replaced	600	10-6-91
907 KAR 1:510E	666	7-23-91
Replaced	601	10-6-91
907 KAR 1:515E	666	7-23-91
Replaced	1053	10-6-91
907 KAR 1:520E	667	7-23-91
Replaced	603	10-6-91
907 KAR 1:525E	668	7-23-91
Replaced	1054	10-6-91
907 KAR 1:530E	669	7-23-91
Replaced	606	10-6-91
907 KAR 1:535E	670	7-29-91
Replaced	966	10-16-91
907 KAR 1:540E	1318	9-24-91
Replaced	1970	1-10-92
908 KAR 1:300E	1830	10-16-91
Replaced	1782	1-10-92
908 KAR 1:310E	1831	10-22-91
Replaced	2586	3-7-92

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11 KAR 4:040		
Amended	320	
Amended	1056	11-8-91
11 KAR 8:030		
As Amended	274	7-8-91
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11 KAR 12:001	2069	2-7-92
30 KAR 1:040		
As Amended	276	8-2-91
30 KAR 1:050		
As Amended	276	8-2-91
31 KAR 4:070	555	
As Amended	1320	
45 KAR 1:020		
Repealed	2197	1-10-92
45 KAR 1:030	1692	
As Amended	2195	1-10-92
45 KAR 1:040	1693	
As Amended	2196	1-10-92
45 KAR 1:050	1695	
As Amended	2197	1-10-92
101 KAR 1:325		
Amended	82	9-6-91
101 KAR 2:035		
Amended	83	
Withdrawn		10-7-91
101 KAR 2:045		
Amended	1155	12-8-91
104 KAR 1:010		
Amended	2862	
104 KAR 1:020		
Amended	2863	
104 KAR 1:030		
Amended	2867	

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104 KAR 1:040		
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104 KAR 1:050		
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104 KAR 1:060		
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104 KAR 1:070		
Amended	2871	
105 KAR 1:070		
Amended	722	11-8-91
105 KAR 1:110		
Repealed	932	11-8-91
105 KAR 1:120	920	
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105 KAR 1:130	921	
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As Amended	1321	11-8-91
105 KAR 1:150	924	11-8-91
105 KAR 1:160	925	
As Amended	1322	11-8-91
105 KAR 1:170	927	
As Amended	1323	11-8-91
105 KAR 1:180	928	11-8-91
105 KAR 1:190	929	11-8-91
105 KAR 1:200	931	
As Amended	1324	11-8-91
105 KAR 1:210	932	11-8-91
105 KAR 1:215	934	
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105 KAR 1:220	936	11-8-91
105 KAR 1:230	939	11-8-91
105 KAR 1:240	940	11-8-91
106 KAR 1:080		
Amended	54	
Withdrawn		8-27-91
106 KAR 1:081	1697	
Amended	2310	1-27-92
106 KAR 1:090		
Amended	68	
Withdrawn		8-27-91
106 KAR 1:091	1712	
Amended	2325	
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106 KAR 1:100		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:101	1717	1-27-92
106 KAR 1:111	1719	1-27-92
106 KAR 1:120		
Amended	73	
Withdrawn		8-27-91
106 KAR 1:121	1720	
Amended	2329	1-27-92
106 KAR 1:131	1721	
Amended	2330	1-27-92
107 KAR 1:025		
Amended	1910	
Withdrawn		2-3-92
107 KAR 1:050		
Amended	1910	
Withdrawn		2-3-92
108 KAR 1:030	2070	
As Amended	2773	3-5-92
108 KAR 1:040	3065	
109 KAR 10:010		
Recodified from 200 KAR 4:005		7-8-91
Amended	723	
As Amended	1326	11-8-91
109 KAR 11:010		
Recodified from 200 KAR 8:010		7-8-91
Amended	725	12-8-91
109 KAR 11:020		
Recodified from 200 KAR 8:020		7-8-91
Amended	727	12-8-91
109 KAR 11:030		
Recodified from 200 KAR 8:030		7-8-91
Amended	728	12-8-91
109 KAR 12:010		
Recodified from 200 KAR 11:010		7-8-91
109 KAR 12:020		
Recodified from 200 KAR 11:020		7-8-91
Amended	729	
As Amended	1328	11-8-91
109 KAR 12:030		
Recodified from 200 KAR 11:030		7-8-91
Amended	730	
As Amended	1328	11-8-91
109 KAR 12:040		
Recodified from 200 KAR 11:040		7-8-91
Amended	731	
As Amended	1329	11-8-91
109 KAR 12:050		
Recodified from 200 KAR 11:050		7-8-91
Amended	732	11-8-91
109 KAR 13:010	1723	
As Amended	2199	1-10-92
200 KAR 3:010		
Amended	325	9-11-91
200 KAR 3:045		
Amended	1352	
As Amended	2199	1-10-92
200 KAR 4:005		
Recodified as 109 KAR 10:010		7-8-91
200 KAR 5:050		
Amended	1352	
As Amended	2200	1-10-92
200 KAR 5:075		
Repealed	1724	1-10-92
200 KAR 5:076	1724	1-10-92
200 KAR 5:301		
Amended	1354	1-10-92
200 KAR 5:300		
Repealed	1725	1-10-92
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Repealed	1725	1-10-92
200 KAR 5:304		
Amended	1355	1-10-92
200 KAR 5:305		
Amended	1356	1-10-92
200 KAR 5:306		
Amended	1357	
As Amended	2201	1-10-92
200 KAR 5:307		
Amended	1359	1-10-92
200 KAR 5:308		
Repealed	1725	1-10-92
200 KAR 5:309		
Amended	1362	1-10-92
200 KAR 5:310		
Amended	1363	1-10-92
200 KAR 5:311		
Amended	1364	1-10-92
200 KAR 5:312		
Amended	1365	1-10-92
200 KAR 5:313		
Amended	1366	1-10-92
200 KAR 5:314		
Repealed	1725	1-10-92
200 KAR 5:315		
Amended	1367	1-10-92
200 KAR 5:316		
Repealed	1725	1-10-92
200 KAR 5:317		
Amended	1369	1-10-92

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Amended	1894	1-10-92
200 KAR 6:010		
Repealed	1725	1-10-92
200 KAR 6:011	1725	1-10-92
200 KAR 6:015		
Amended	1370	1-10-92
200 KAR 6:040		
Amended	1371	1-10-92
200 KAR 7:010		
Amended	1375	1-10-92
200 KAR 8:010		
Recodified as 109 KAR 11:010		7-8-91
200 KAR 8:020		
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200 KAR 8:030		
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200 KAR 11:010		
Recodified as 109 KAR 12:010		7-8-91
200 KAR 11:020		
Recodified as 109 KAR 12:020		7-8-91
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Recodified as 109 KAR 12:030		7-8-91
200 KAR 11:040		
Recodified as 109 KAR 12:040		7-8-91
200 KAR 11:050		
Recodified as 109 KAR 12:050		7-8-91
200 KAR 12:020		
Amended	1378	1-10-92
200 KAR 13:010		
Repealed	1725	1-10-92
200 KAR 14:010		
As Amended	277	7-29-91
200 KAR 14:080		
As Amended	278	7-29-91
200 KAR 14:090		
As Amended	279	7-29-91
200 KAR 16:010		
Repealed	2069	2-7-92
200 KAR 16:020		
Repealed	2069	2-7-92
200 KAR 16:030		
Repealed	2069	2-7-92
200 KAR 16:040		
Repealed	2069	2-7-92
200 KAR 16:050		
Repealed	2069	2-7-92
200 KAR 16:070		
Repealed	2069	2-7-92
200 KAR 16:080		
Repealed	2069	2-7-92
200 KAR 16:090		
Repealed	2069	2-7-92
200 KAR 17:020		
As Amended	671	8-22-91
200 KAR 17:030		
As Amended	674	8-22-91
200 KAR 17:040		
As Amended	677	8-22-91
200 KAR 17:050		
As Amended	679	8-22-91
200 KAR 18:010		
Repealed	2915	3-6-92
200 KAR 18:020	3065	
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Amended	2972	
201 KAR 1:020		
Amended	2972	
201 KAR 1:040		
Amended	2973	
201 KAR 1:045		
Amended	2974	
201 KAR 1:050		
Amended	2975	
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Amended	2976	
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Amended	2977	
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Amended	2872	
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201 KAR 2:010		
Amended	1159	
Died*		11-7-91
Amended	1911	2-19-92
201 KAR 2:061	2449	
As Amended	2773	3-4-92
201 KAR 2:105		
Amended	2348	
Amended	2832	
As Amended	2917	
201 KAR 2:167	2734	
Withdrawn		2-14-92
Resubmitted	3071	
201 KAR 2:200	3072	
201 KAR 9:031		
Amended	88	
As Amended	991	9-24-91
201 KAR 9:041		
Amended	89	8-30-91
201 KAR 9:175		
Amended	327	
As Amended	992	9-24-91
201 KAR 9:300	210	
As Amended	996	10-11-91
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As Amended	996	9-24-91
201 KAR 10:080	1726	
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201 KAR 11:230		
Amended	2592	
201 KAR 18:131	2450	
201 KAR 20:056		
Amended	331	
As Amended	997	9-24-91
201 KAR 20:390		
Amended	2874	
201 KAR 22:020		
Amended	334	9-24-91
201 KAR 22:040		
Amended	335	9-24-91
201 KAR 22:053		
Amended	1379	1-10-92
201 KAR 22:070		
Amended	336	9-24-91
201 KAR 22:101		
Amended	338	9-24-91
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Amended	339	9-24-91
201 KAR 22:135		
Amended	340	9-24-91
201 KAR 23:070		
Amended	733	
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201 KAR 30:100	940	11-22-91
201 KAR 30:110	945	11-22-91
201 KAR 30:120	946	
As Amended	2203	11-22-91
201 KAR 30:130	947	11-22-91
301 KAR 1:015		
Amended	735	10-22-91
301 KAR 1:075		
Amended	736	10-22-91

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Amended	74	7-31-91
Amended	1160	11-26-91
Amended	2350	
301 KAR 1:200		
Amended	738	10-22-91
301 KAR 2:044		
Amended	740	
As Amended	1329	10-22-91
301 KAR 2:047		
Amended	2593	
301 KAR 2:111		
Amended	309	
As Amended	682	8-28-91
301 KAR 2:140		
Amended	1161	11-26-91
301 KAR 2:170		
As Amended	18	6-26-91
301 KAR 2:190		
Repealed	1331	10-22-91
301 KAR 2:195	948	
As Amended	1331	10-22-91
301 KAR 2:220		
Amended	1381	12-17-92
301 KAR 2:250		
Amended	2597	
301 KAR 3:021		
Amended	90	8-28-91
301 KAR 3:080		
Repealed	619	8-9-91
301 KAR 10:010	212	
Amended	704	9-25-91
302 KAR 20:230	2070	
As Amended	2774	2-10-92
302 KAR 45:010		
Amended	743	
As Amended	1840	11-26-91
306 KAR 1:010		
Amended	2876	
306 KAR 1:020		
Amended	2877	
306 KAR 1:030		
Amended	2877	
306 KAR 1:040		
Amended	2878	
306 KAR 1:050		
Amended	2879	
306 KAR 1:060		
Amended	2879	
306 KAR 1:070		
Amended	2880	
306 KAR 1:090		
Amended	2881	
306 KAR 2:010		
Amended	2881	
400 KAR 1:070	556	
Withdrawn		9-3-91
401 KAR 4:220		
As Amended	22	6-26-91
401 KAR 5:031		
Amended	1388	
Amended	2331	1-27-92
401 KAR 6:310		
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401 KAR 8:010		
Amended	1165	
As Amended	1841	11-26-91
401 KAR 8:020		
Amended	1170	
As Amended	1845	11-26-91
401 KAR 8:070		
Amended	1175	
As Amended	1849	11-26-91
401 KAR 8:150		
Amended	1180	
As Amended	1853	11-26-91
401 KAR 8:200		
Amended	1186	
As Amended	1857	11-26-91
401 KAR 30:010		
Amended	2978	
401 KAR 30:031	3074	
401 KAR 31:010		
Amended	92	9-25-91
401 KAR 31:030		
Amended	103	9-25-91
401 KAR 31:040		
Amended	106	9-25-91
401 KAR 31:060		
Amended	118	
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401 KAR 31:110		
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As Amended	999	9-25-91
401 KAR 32:010		
Amended	125	
Amended	710	
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Amended	127	9-25-91
401 KAR 34:230		
Amended	132	
Amended	712	9-25-91
401 KAR 35:200		
Amended	136	
As Amended	1003	9-25-91
401 KAR 35:220		
Amended	139	9-25-91
401 KAR 35:240		
Amended	143	9-25-91
401 KAR 37:100		
Amended	145	9-25-91
401 KAR 45:010	3076	
401 KAR 45:020	3078	
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401 KAR 45:210	3115	
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401 KAR 48:050		
Amended	147	9-25-91
401 KAR 50:010		
Amended	744	
Died*		10-15-91
Amended	2599	
Amended	2926	
401 KAR 50:012		
Amended	749	
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Amended	2604	
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401 KAR 50:046	952	
Died*		10-15-91
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Amended	2930	
401 KAR 51:017		
Amended	750	
Died*		10-15-91
Amended	2605	
401 KAR 58:005		
Recodified from 401 KAR 63:045		2-24-92
401 KAR 58:010		
Recodified from 401 KAR 63:050		2-24-92
401 KAR 59:001	2741	
Amended	2933	
401 KAR 59:185		
Amended	2616	
Amended	2936	
401 KAR 59:190		
Amended	2619	
Amended	2938	
401 KAR 59:210		
Amended	2622	
Amended	2939	
401 KAR 59:212		
Amended	2625	
Amended	2941	
401 KAR 59:214		
Amended	763	
Died*		10-15-91
Amended	2629	
Amended	2943	
401 KAR 59:225		
Amended	767	
Died*		10-15-91
Amended	2632	
Amended	2945	
401 KAR 59:230		
Amended	771	
Died*		10-15-91
Amended	2635	
Amended	2947	
401 KAR 59:240		
Amended	774	
Died*		10-15-91
Amended	2638	
Amended	2949	
401 KAR 59:315	2744	
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Amended	2950	
401 KAR 61:050		
Amended	2640	
401 KAR 61:090		
Amended	2643	
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Amended	2646	
401 KAR 61:100		
Amended	2650	
401 KAR 61:105		
Amended	2652	
401 KAR 61:110		
Amended	2655	
401 KAR 61:120		
Amended	2658	
401 KAR 61:122		
Amended	2661	
Amended	2955	
401 KAR 61:124		
Amended	777	
Died*		10-15-91
Amended	2664	
401 KAR 61:125		
Amended	2667	
401 KAR 61:130		
Amended	2670	
401 KAR 61:132		
Amended	780	
Died*		10-15-91
Amended	2672	
Amended	2956	
401 KAR 61:137		
Amended	784	
Died*		10-15-91
Amended	2676	
401 KAR 61:150		
Amended	787	
Died*		10-15-91
Amended	2678	
401 KAR 61:155		
Amended	2680	
401 KAR 61:160		
Amended	790	
Died*		10-15-91
Amended	2682	
401 KAR 61:175		
Amended	792	
Died*		10-15-91
Amended	2684	
401 KAR 63:001	2750	
Amended	2958	
401 KAR 63:025		
Amended	2686	
401 KAR 63:045		
Recodified to 401 KAR 58:005		2-24-92
401 KAR 63:050		
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405 KAR 7:001	2453	
Amended	2834	
405 KAR 7:015		
Amended	341	12-17-91
405 KAR 7:020		
Amended	343	
Amended	1060	
Repealed	2112	11-27-91
405 KAR 7:021	2458	
405 KAR 7:030		
Amended	353	11-26-91
405 KAR 7:035	560	
Amended	1069	
As Amended	1865	11-26-91
405 KAR 7:080		
Amended	356	
As Amended	2204	11-26-91
405 KAR 8:001	2460	
Amended	2837	
405 KAR 8:010		
Amended	360	
Amended	1072	
Withdrawn		10-30-91
Amended	1912	
Amended	2542	
As Amended	2774	
405 KAR 8:020		
Amended	375	11-26-91
405 KAR 8:030		
Amended	379	
Amended	1087	
As Amended	2207	
Withdrawn		3-5-92
Amended	2992	
405 KAR 8:040		
Amended	394	
Amended	1100	
As Amended	2220	
Withdrawn		3-5-92
Amended	3004	
405 KAR 10:001	2468	
Amended	2842	

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405 KAR 10:050		
Amended	409	
Withdrawn		8-15-91
405 KAR 10:200		
Amended	411	
As Amended	1868	11-26-91
405 KAR 12:001	2472	
405 KAR 16:001	2475	
Amended	2844	
405 KAR 16:180		
Amended	416	
Amended	1114	
As Amended	2234	
Withdrawn		3-5-92
Amended	3017	
405 KAR 16:190		
Amended	420	
As Amended	1872	11-26-91
405 KAR 16:200		
Amended	424	
Amended	1117	
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405 KAR 16:210		
Amended	431	
As Amended	1875	
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405 KAR 18:001	2482	
Amended	2849	
405 KAR 18:180		
Amended	434	
Amended	1123	
As Amended	2245	
Withdrawn		3-5-92
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405 KAR 18:190		
Amended	438	
As Amended	1877	11-26-91
405 KAR 18:200		
Amended	442	
Amended	1125	
As Amended	2248	12-17-91
405 KAR 18:220		
Amended	449	
As Amended	1880	
As Amended	2254	11-26-91
405 KAR 20:001	2490	
Amended	2853	
405 KAR 20:010		
Amended	452	12-17-91
405 KAR 24:001	2495	
415 KAR 1:010		
Amended	311	9-25-91
415 KAR 1:020		
Amended	312	
As Amended	1005	9-25-91
415 KAR 1:030		
Amended	313	9-25-91
415 KAR 1:040	214	
Amended	715	9-25-91
500 KAR 8:010		
Amended	148	
Withdrawn		7-1-91
Amended	454	
Amended	1131	
As Amended	1333	11-8-91
500 KAR 8:020	564	
Amended	1132	
As Amended	1334	11-8-91
500 KAR 8:030	565	
Amended	1132	11-8-91

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Amended	795	11-8-91
Amended	1927	2-7-92
Amended	2352	3-7-92
Amended	2882	
501 KAR 6:030		
Amended	455	10-6-91
Amended	1929	2-7-92
Amended	2688	
Amended	3022	
501 KAR 6:040		
Amended	797	11-8-91
Amended	2884	
501 KAR 6:050		
Amended	152	9-6-91
Amended	1403	1-10-92
501 KAR 6:060		
Amended	1194	12-8-91
501 KAR 6:070		
Amended	153	9-6-91
Amended	457	
As Amended	1006	10-6-91
Amended	1931	2-7-92
501 KAR 6:080		
Amended	154	9-6-91
501 KAR 6:090		
Amended	459	10-6-91
Amended	1196	12-8-91
Amended	2885	
501 KAR 6:130		
Amended	798	11-8-91
Amended	1404	1-10-92
501 KAR 6:140		
Amended	155	9-6-91
Amended	800	11-8-91
Amended	1197	12-8-91
501 KAR 6:150		
Amended	1405	1-10-92
Amended	1933	3-7-92
Amended	3024	
501 KAR 6:160		
Amended	1935	
Amended	2690	
601 KAR 1:029		
Amended	2354	
Withdrawn		12-18-91
Amended	2691	
601 KAR 1:030		
Amended	2355	
Withdrawn		12-18-91
Amended	2692	
601 KAR 1:031	2499	
Withdrawn		12-18-91
Resubmitted	2753	
601 KAR 1:040		
Amended	2359	
Withdrawn		12-18-91
Amended	2695	
Amended	2961	
601 KAR 1:045		
Amended	2362	
Withdrawn		12-18-91
Amended	2697	
601 KAR 1:116	1258	
Amended	1897	1-10-92
601 KAR 1:120		
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601 KAR 1:140		
Amended	2363	
Withdrawn		12-18-91
Amended	2698	
Withdrawn		3-2-92

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Amended	2365	
Withdrawn		12-18-91
Amended	2700	
As Amended	2919	
601 KAR 9:135		
Amended	2367	3-7-92
601 KAR 12:060	567	
As Amended	1007	10-1-91
601 KAR 40:010	955	11-8-91
Amended	2701	
601 KAR 40:020	956	11-8-91
Amended	2702	
603 KAR 5:066		
Amended	2370	3-7-92
603 KAR 5:070		
Amended	460	
As Amended	1008	
As Amended	1335	10-1-91
Amended	2372	3-7-92
603 KAR 5:071		
Amended	464	10-1-91
603 KAR 5:250		
As Amended	280	7-2-91
605 KAR 1:010		
Amended	466	10-1-91
605 KAR 1:030		
Amended	467	10-1-91
605 KAR 1:050		
Amended	469	10-1-91
605 KAR 1:090		
Amended	470	10-1-91
605 KAR 1:130		
Amended	471	10-1-91
605 KAR 1:160		
Amended	474	10-1-91
605 KAR 1:190		
As Amended	1338	11-8-91
701 KAR 1:001	2754	
701 KAR 5:020		
Amended	1199	
As Amended	1882	12-8-91
701 KAR 5:050		
Amended	2704	
As Amended	2920	
701 KAR 5:090	217	9-6-91
701 KAR 5:100	219	
As Amended	685	9-6-91
701 KAR 7:010		
Repealed	568	10-6-91
701 KAR 7:011	568	10-6-91
702 KAR 1:001	569	10-6-91
702 KAR 1:010		
Repealed	259	7-11-91
702 KAR 3:201	2755	
702 KAR 3:220		
Amended	476	11-8-91
702 KAR 3:250	220	
As Amended	686	9-6-91
702 KAR 4:050		
Amended	1936	
Withdrawn		11-21-91
Amended	2377	
As Amended	2785	3-7-92
702 KAR 4:110		
Repealed	259	7-11-91
702 KAR 4:120		
Repealed	259	7-11-91
702 KAR 4:130		
Repealed	259	7-11-91

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Amended	3026	
702 KAR 5:030		
Amended	477	11-8-91
Amended	3027	
702 KAR 5:080		
Amended	157	
Withdrawn		7-24-91
Amended	478	
Amended	1133	11-8-91
702 KAR 5:140		
Repealed	570	10-6-91
702 KAR 5:141	570	10-6-91
702 KAR 5:150		
Amended	481	10-6-91
702 KAR 7:065		
Amended	1200	12-8-91
704 KAR 3:005		
Repealed	260	7-11-91
704 KAR 3:006	571	
Amended	1136	
As Amended	1340	11-8-91
Amended	2705	
704 KAR 3:007	2757	
704 KAR 3:010		
Repealed	574	10-6-91
704 KAR 3:012	574	10-6-91
704 KAR 3:025		
Repealed	574	10-6-91
704 KAR 3:030		
Repealed	574	10-6-91
704 KAR 3:035		
As Amended	45	7-5-91
704 KAR 3:410		
Amended	160	
As Amended	687	9-6-91
704 KAR 4:020		
Amended	1202	
As Amended	2256	1-10-92
704 KAR 7:060		
Amended	2707	
704 KAR 7:090		
Amended	482	
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704 KAR 15:010		
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704 KAR 15:015		
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704 KAR 15:030		
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704 KAR 15:090		
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704 KAR 15:091	574	10-6-91
704 KAR 20:001		
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704 KAR 20:002		
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704 KAR 20:003		
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704 KAR 20:005		
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704 KAR 20:128		
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704 KAR 20:310		
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704 KAR 20:450		
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704 KAR 20:580		
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704 KAR 20:590	221	9-6-91
704 KAR 20:600	223	9-6-91
704 KAR 20:610	2903	
704 KAR 20:640	2906	
704 KAR 20:650	2906	
705 KAR 3:011	575	10-6-91
705 KAR 3:050		
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705 KAR 3:090		
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705 KAR 5:050		
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707 KAR 1:040		
Amended	1939	
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707 KAR 1:054		
Amended	486	
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707 KAR 1:150	228	
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740 KAR 1:010		
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Amended	2381	3-4-92
740 KAR 1:030		
Amended	2382	3-4-92
740 KAR 1:040		
Amended	2384	3-4-92
740 KAR 1:050		
Amended	2385	3-4-92
740 KAR 1:060		
Amended	2386	3-4-92
740 KAR 1:080		
Amended	2387	3-4-92
740 KAR 1:090		
Amended	2388	3-4-92
740 KAR 1:100		
Amended	2389	3-4-92
770 KAR 1:010	2072	2-7-92
770 KAR 1:020	2073	2-7-92
770 KAR 1:030	2074	2-7-92
770 KAR 1:040	2075	2-7-92
770 KAR 1:050	2076	2-7-92
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780 KAR 2:070		
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780 KAR 2:130		
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780 KAR 2:150	3118	
780 KAR 3:020		
Amended	1407	
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780 KAR 9:010		
Amended	2894	
783 KAR 1:030	232	
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784 KAR 1:010	576	
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803 KAR 1:063		
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803 KAR 1:070		
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803 KAR 2:015		
Amended	165	
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803 KAR 2:307		
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803 KAR 2:318		
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803 KAR 2:320		
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803 KAR 2:403		
Amended	184	9-6-91
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803 KAR 2:423		
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803 KAR 25:011		
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803 KAR 25:061	2758	
804 KAR 1:100		
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805 KAR 1:020		
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805 KAR 1:050		
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805 KAR 1:120	233	
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805 KAR 1:130	234	
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805 KAR 4:010		
Amended	77	7-31-91
805 KAR 4:085		
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805 KAR 4:100		
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805 KAR 4:110		
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806 KAR 3:150	239	
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806 KAR 3:160	958	11-8-91
806 KAR 3:170	959	11-8-91
806 KAR 4:010		
Amended	801	11-8-91
806 KAR 7:100	964	
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806 KAR 9:220		
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806 KAR 17:066		
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806 KAR 19:030		
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807 KAR 5:001		
Amended	191	
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807 KAR 5:005	241	
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807 KAR 5:006		
Amended	1953	
Amended	2554	2-26-92
807 KAR 5:008		
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807 KAR 5:023	1259	
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808 KAR 10:010		
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808 KAR 10:220	Amended	200
Withdrawn		8-20-91
808 KAR 10:260	244	
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808 KAR 10:270	245	
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810 KAR 1:001		
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810 KAR 1:002		
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810 KAR 1:003		
Amended	1408	
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810 KAR 1:004		
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Withdrawn		11-19-91
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810 KAR 1:013		
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810 KAR 1:015		
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810 KAR 1:021		
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810 KAR 1:023	2500	
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810 KAR 1:050		
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815 KAR 4:010		
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815 KAR 7:010		
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815 KAR 7:025		
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815 KAR 7:070		
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815 KAR 7:080		
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815 KAR 10:020		
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815 KAR 10:045	2758	
815 KAR 15:020		
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815 KAR 20:020		
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815 KAR 20:030		
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815 KAR 20:050		
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815 KAR 20:060		
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815 KAR 20:090		
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815 KAR 20:120		
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815 KAR 25:010		
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815 KAR 25:020		
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815 KAR 30:060		
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815 KAR 46:010		
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900 KAR 1:006		
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900 KAR 1:011		
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900 KAR 1:040		
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900 KAR 1:060		
Amended	1426	
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900 KAR 2:050	1729	
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902 KAR 10:140	579	
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902 KAR 13:010		
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902 KAR 13:040		
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902 KAR 13:050		
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902 KAR 13:070		
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902 KAR 13:080		
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902 KAR 13:090		
Amended	1439	
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902 KAR 13:100		
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902 KAR 13:101	1732	1-10-92
902 KAR 13:110		
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905 KAR 7:060		
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905 KAR 7:091	1740	1-10-92
905 KAR 7:100		
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905 KAR 8:010		
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Repealed	2281	1-10-92
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Repealed	2291	1-10-92
905 KAR 8:050		
Repealed	2291	1-10-92
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Repealed	2291	1-10-92
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Amended	2574	
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906 KAR 1:010		
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